



# THE TRAINING LAYOFF SCHEME

1 October 2009



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## Background to the training layoff scheme

Countries across the world, including South Africa, are affected by the deepest & most serious economic crisis in at least 80 years.

NEDLAC, in partnership with the Presidency, have agreed on a collective response to the challenge facing us. The purpose of the initiative is to ensure:

- That the poor & the most vulnerable are protected as far as possible from its impact;
- That the economy is ready to take advantage of the next upturn & that the benefits of such growth are shared by all our people.

NEDLAC Framework Document – February 2009



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## Background to the training layoff scheme (cont.)

The NEDLAC Framework Document prioritises training & skills development & introduces the training layoff as follows:

“In addition to other measures to avoid retrenchment, one further option that parties will consider is training layoffs

- financed by the NSF & SETA’s;
- for workers whose employers would ordinarily retrench them;
- & which can be introduced on terms that would keep them in employment during the economic downturn;
- but re-skill them as an investment for the future economic recovery.”

NEDLAC Framework Document – February 2009



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## What is a training layoff?

**“A training layoff is a temporary suspension of work of a worker or group of workers that is used for training purposes.**

**The layoff depends on an agreement between an employer & a trade union on behalf of workers, or, in the absence of a trade union, between an employer & individual workers;**

**who may otherwise be subject to dismissal for operational requirements.**

**Participation in the training layoff is voluntary.”**

A Guide to the Training Layoff Scheme, DOL, 18 September 2009



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## What are the aims of the training layoff scheme?

- Retain employment & avoid retrenchments.
- Enhance the skills of workers.
- Support companies to survive the recession.
- Position workers & employers to take advantage of the next economic upturn.
- Social partners strongly encouraged to participate.

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## What are the main aspects of the scheme?

- A temporary suspension of work used for training.
- Retention of the employment contract.
- Training to be flexible, but linked to the skills needs of the company.
- A training allowance paid to the affected workers.
- Employer carries the costs of a basic package of social benefits.



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## How is the scheme delivered?

- **There is a single point of entry via the CCMA. All parties wishing to participate do so through the CCMA.**
- **The CCMA recommends participation in the scheme & facilitates the conclusion of a Training Layoff Agreement.**
- **SETAs facilitate the provision of training, fund training costs, apply to the DoL Committee for training allowances & transfer funds to employers.**
- **The DoL Committee considers the CCMA recommendation & pays training allowances to SETA's on application.**
- **Employers pay the training allowances to the affected workers.**



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## Who may use the training layoff scheme?

- Employers, trade unions, an individual worker or group of workers may participate in the scheme.
- Only workers earning up to R180 000-00 per year and who may be at risk of retrenchment are eligible, subject to certain conditions.
- The scheme is limited to employers facing economic distress and contemplating retrenchment of workers.
- Employers must be in the position to benefit from the short-term relief & re-absorb workers at the conclusion of the training layoff.
- Employers must be compliant with statutory obligations.



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## Who pays for the training layoff scheme?

- **The National Jobs Fund – R2.4bn received from the NSF (R1.2 bn) & the UIF (R1.2bn).**
- **The DoL Committee (NSF, UIF) covers the cost of the training allowance.**
- **The SETAs cover the cost of training.**
- **Employers continue to cover the cost of the basic social security package.**
- **Workers forgo 50% of their normal wage.**

## What are workers' terms & conditions of employment during the training layoff period?

- The training allowance is calculated on a maximum income of R149 736 per annum; R12 478 per month; R2 880 per week (UIF thresholds).
- The training allowance may be up to 50% of the worker's normal wage up to a maximum of R6 239-00 per month or R1 440-00 per week.
- To qualify there must be full layoff lasting a continuous period of at least four weeks or partial layoff (short time) lasting at least two days a week or 16 days (shifts) in any 8 week period.

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## What are workers' terms & conditions of employment during the training layoff period? (cont.)

### Social benefit contributions:

- Employers pay full contributions (unless otherwise agreed) to basic social security package to which workers entitled at time of introduction of the training layoff.
- The basic social security package is pension/provident fund, death cover & unemployment insurance.
- Parties are free to negotiate a continuation of all existing social benefit contributions (e.g. medical scheme contributions and housing allowances).

## What are workers' terms & conditions of employment during the training layoff period? (cont.)

### Leave arrangements:

- Annual leave will be on the same contractual arrangements that ordinarily apply in the right to take leave.
- A worker will accrue sick leave & annual leave, payable at 50% of the ordinary rate.
- A worker will be entitled to maternity leave at the same rate that would have applied outside of the training layoff scheme.
- A worker will be entitled to family responsibility leave at 50% of the ordinary rate. The worker will be credited with the portion that was not paid.

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## What type of training options apply?

- **Training of workers in distressed companies should be linked to the skills needs of the employer, as far as is possible.**
- **Various training options may apply, depending on the nature of the business, the position of workers whose jobs are at risk & the future economic opportunities for the employer.**
- **The menu of training options may include apprenticeships, learnerships & skills programmes of shorter duration.**
- **Training may also include generic workplace skills, such as ABET courses & other generic skills that may further personal development.**

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## How is the contract of employment affected?

- The approach adopted is for the Training Layoff Agreement to constitute a collective (or individual) agreement that varies conditions of employment.
- Collective agreements varying conditions of employment may be negotiated & concluded for the duration of the training layoff.
- On conclusion of the training layoff, such agreements should not have the effect of varying downward any conditions of employment (unless so agreed by the scheme).
- The CCMA is responsible for facilitating Training Layoff Agreements.

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## How is the contract of employment affected? (cont.)

- Where an agreement is entered into independently of the CCMA, the parties have the responsibility to ensure the agreement complies with the terms & conditions of the training layoff scheme.
- Where required, Training Layoff Agreements will be subject to existing exemption procedures contained in bargaining council collective agreements.
- The employer must apply for an exemption from a council agreement where a Training Layoff Agreement is in conflict with its provisions for the duration of the training layoff.

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# How to participate in a training layoff

## The CCMA process

### Key aspects to the CCMA process

- A request for a training layoff may be made either directly to the CCMA by completing a form, or it may emerge as an alternative to retrenchment during a CCMA process.
  
- A CCMA Advisory Committee evaluates eligibility of parties for participation in the training layoff scheme based on whether:
  - the business is in financial distress;
  - has the potential to turn around after the training layoff period; &
  - whether the workers are eligible to participate in the scheme.



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# How to participate in a training layoff

## The CCMA process (cont.)

### Key aspects to the CCMA process (cont.)

- The CCMA Advisory Committee makes a recommendation in the form of an advisory award.
- If the recommendation is positive, the CCMA then facilitates the process to conclude a Training Layoff Agreement.
- The Training Layoff Agreement is perused for compliance & then forwarded, along with the advisory award & other documents, to the DOL Committee & the affected SETA.
- The DoL Committee considers the CCMA's recommendation.
- The CCMA monitors & reports on Training Layoff Agreements & the impact on the CCMA.



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# How to participate in a training layoff

## The CCMA process (cont.)

The 3 ways a training layoff may arise at the CCMA

- **Scenario 1** – the training layoff arises from a CCMA process dealing with operational requirements matters.
- **Scenario 2** – the training layoff arises from a request to participate from a party/parties in the labour market not involved in a CCMA process.
- **Scenario 3** – the training layoff arises from a Training Layoff Agreement concluded by parties in the labour market not involved in a CCMA process, along with a request to participate.



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# How to participate in a training layoff

## The CCMA process (cont.)

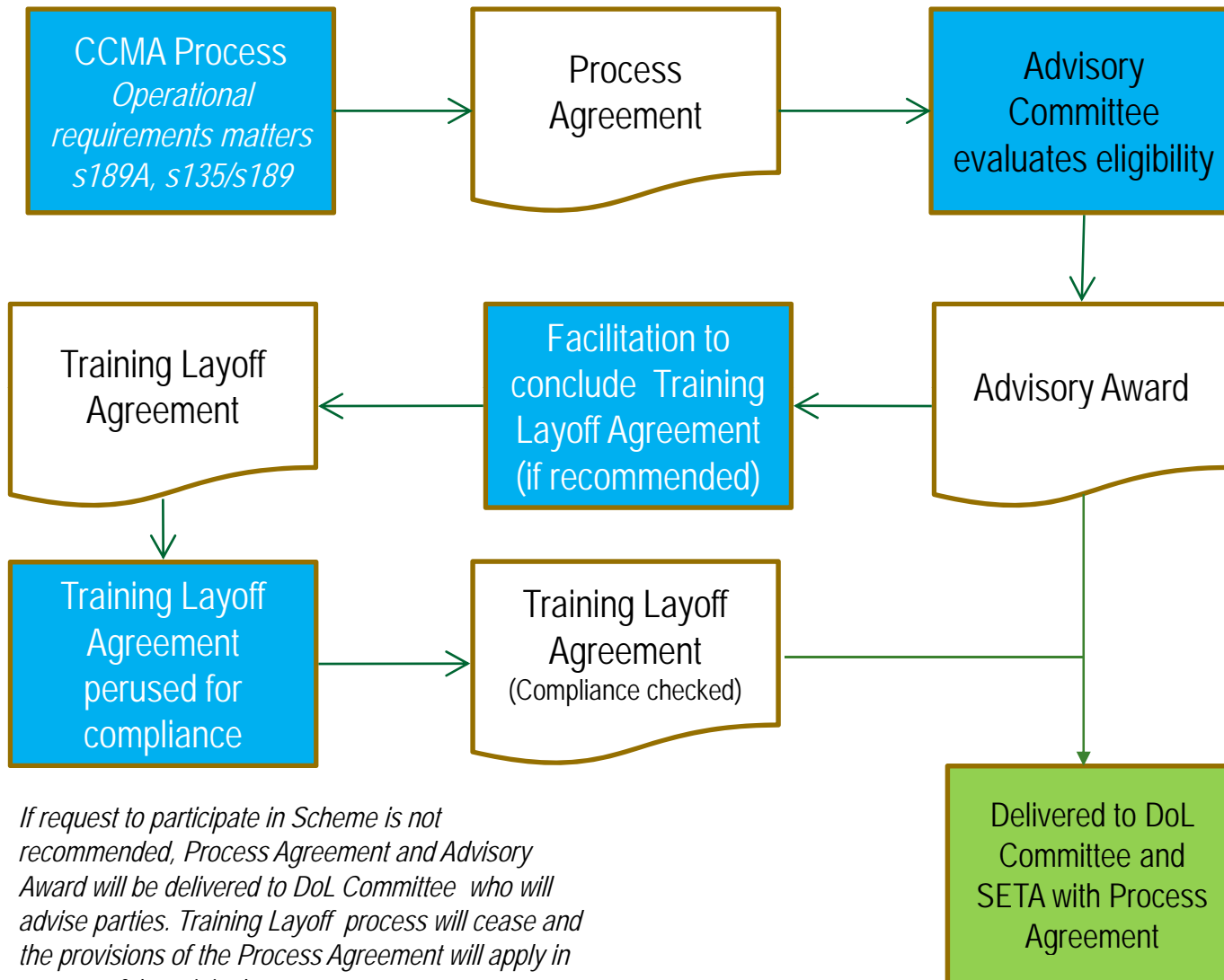
### The scenario 1 process – arising from a CCMA process

- The training layoff arises from a CCMA process dealing with operational requirements matters.
- This is in terms of LRA s189A facilitation or a s189 (s135) conciliation.
- A training layoff Process Agreement is concluded between the parties.

The scenario 1 process flow slide outlines the steps involved.



# PROCESS FLOW: Scenario 1



*If request to participate in Scheme is not recommended, Process Agreement and Advisory Award will be delivered to DoL Committee who will advise parties. Training Layoff process will cease and the provisions of the Process Agreement will apply in respect of the original process.*



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# How to participate in a training layoff

## The CCMA process (cont.)

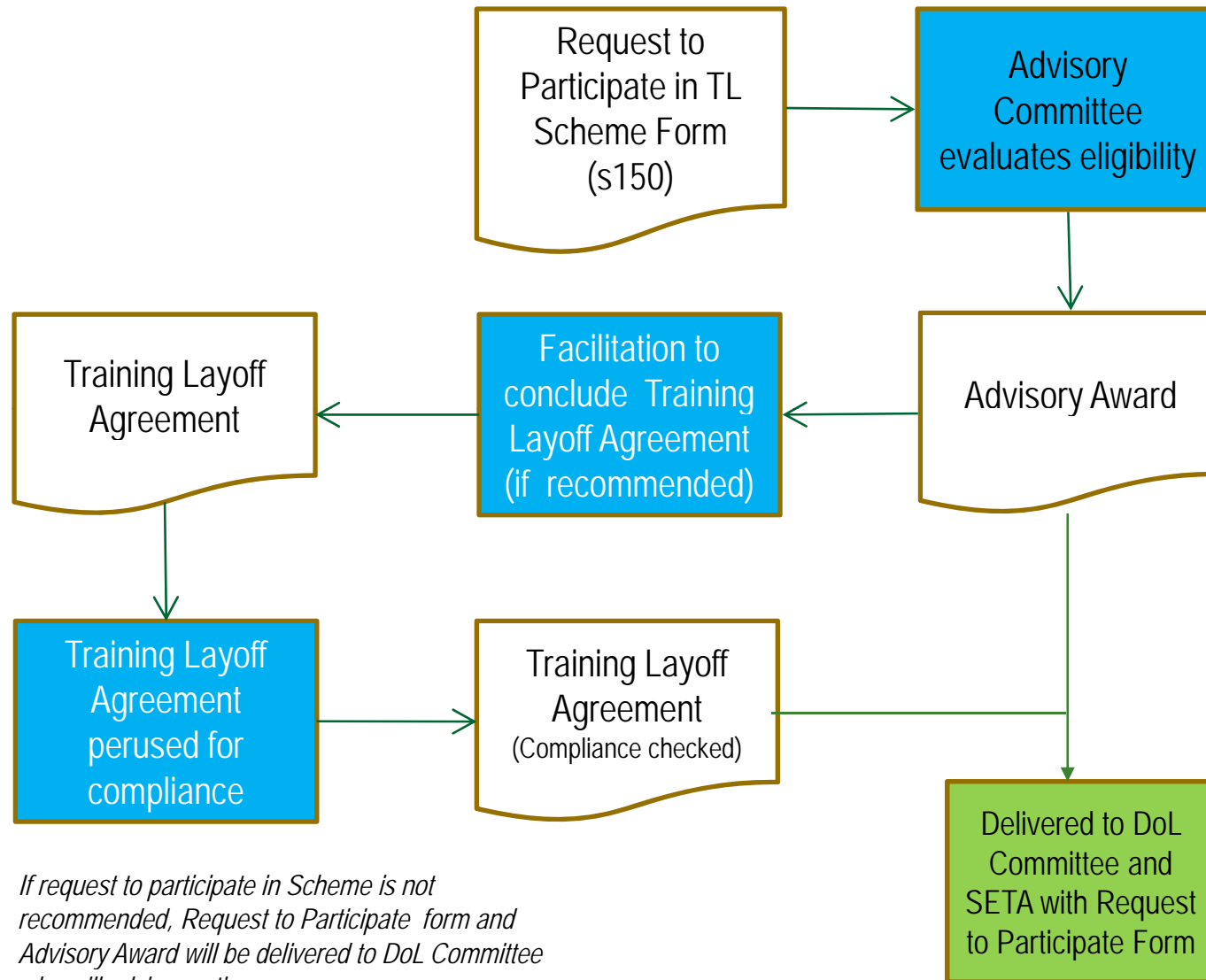
### The scenario 2 process – arising from the workplace, without an Agreement

- A Request to Participate in a Training Layoff form is completed from a party / parties in the labour market.
- This is in terms of LRA s150.
- The parties are not involved in a CCMA process.
- The layoff follows after the consent of both parties obtained.

The scenario 2 process flow slide outlines the steps involved.



## PROCESS FLOW: Scenario 2



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# How to participate in a training layoff

## The CCMA process (cont.)

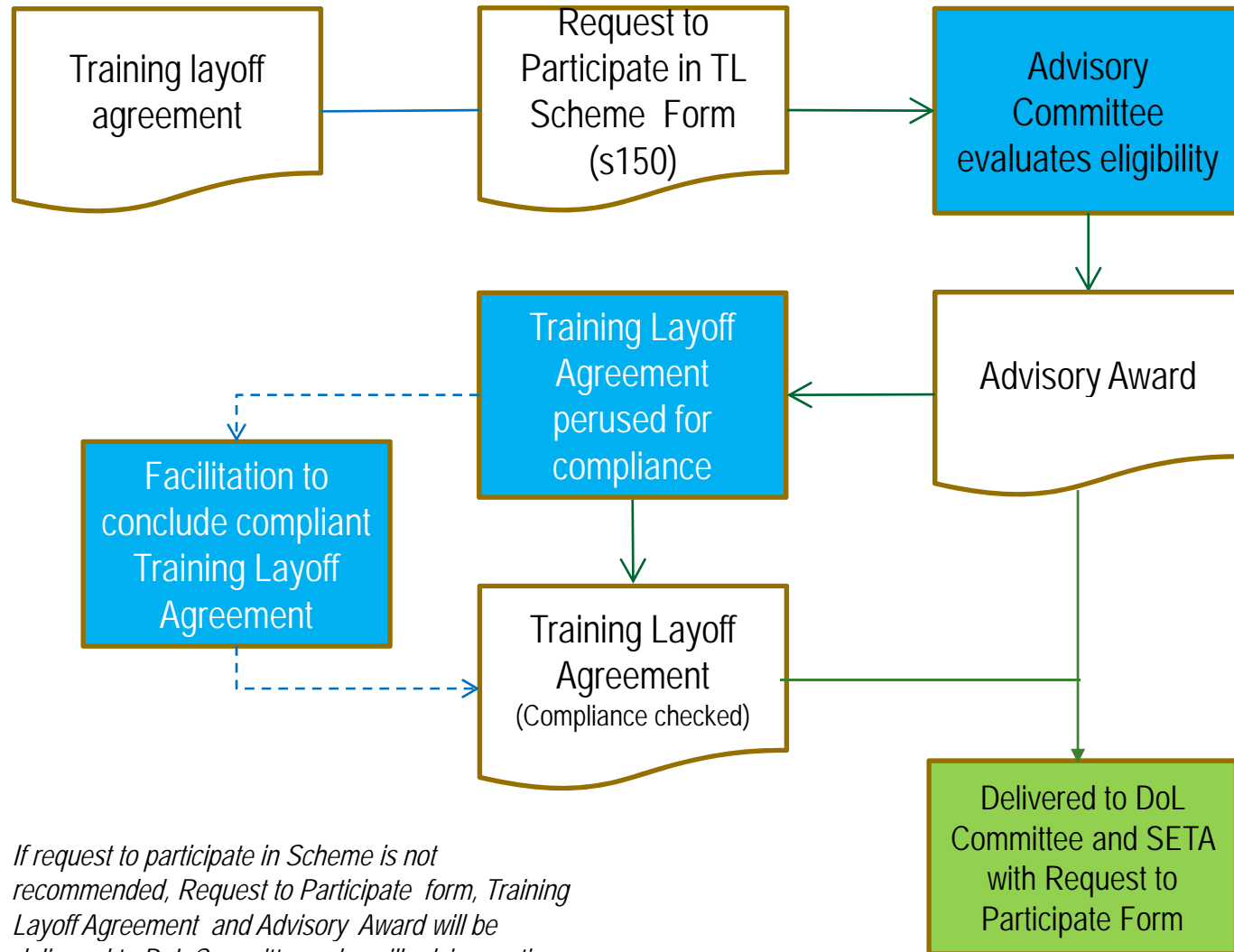
**The scenario 3 process** – arising from the workplace, with an Agreement

- A Training Layoff Agreement is concluded by parties in the labour market.
- The parties are not involved in a CCMA process.
- A Request to Participate in a Training Layoff form is also completed in terms of LRA s150.

**The scenario 3 process flow slide outlines the steps involved.**



## PROCESS FLOW: Scenario 3



*If request to participate in Scheme is not recommended, Request to Participate form, Training Layoff Agreement and Advisory Award will be delivered to DoL Committee who will advise parties.*

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# How to participate in a training layoff

## The CCMA process (cont.)

### The role of the CCMA Advisory Committee

- The CCMA Advisory Committee evaluates whether the company meets the eligibility requirements for participation in the scheme.
- The Advisory Committee makes a recommendation in the form of an advisory award to the DoL Committee (NSF, UIF).
- The parties must should submit the required information in order for the Advisory Committee to evaluate eligibility, as listed in the Request to Participate in Training Layoff or Training Layoff Process Agreement forms.



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# How to participate in a training layoff

## The role of DoL

- The DoL Committee considers the CCMA's recommendation.
- The DoL Committee funds the cost of the training allowance.
- The DoL Committee does this on the basis of an application lodged by the SETA.
- The funds are transferred to the SETA.
- The DOL plays an oversight & coordination role.



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# How to participate in a training layoff

## The role of SETA's

- Structures grant allocations to accommodate training layoff claims.
- Facilitates the provision of training for workers participating in the scheme. This includes engaging with individual companies regarding type, cost, provider & duration of training.
- Applies to the DoL Committee for funding of the training allowances.
- Makes transfers of funds to employers & training providers (received from the DoL Committee).
- Monitors & reports on the training layoff scheme.

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# How to participate in a training layoff

## The role of trade unions & workers

- Trade unions and workers participate in consultations around training layoffs as an alternative to retrenchment, appropriate training, and on the training allowance.
- Upon agreement, workers to sign variations to their contracts / trade unions to sign collective agreements varying conditions of service.
- Workers on a Training Layoff must attend and complete the training programme within the specified time period.
- Workers sign a training register.

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# How to participate in a training layoff

## The role of employers

- **Employers must discuss the training layoff scheme with affected workers / trade union.**
- **Employers requesting to participate in the training layoff scheme are expected to be compliant with their statutory obligations.**
- **Training allowances received from the SETA must be paid to the workers via the payroll system.**
- **Social benefit contributions to be paid for duration of training layoff scheme.**

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# How to participate in a training layoff

## The role of employers (cont.)

- **Assessment paid in respect of workers on a training layoff in terms of Compensation for Occupational Injuries and Diseases Act to continue to be paid.**
- **Training Layoff Agreements should not have the effect of varying downward any conditions of employment not agreed to as part of training layoff.**
- **If, at the end of the training layoff period, the employer still contemplates retrenching workers, the provisions of the Training Layoff Agreement & the training layoff Terms & Conditions will apply.**

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# How to participate in a training layoff

## The role of social partners + implementing partners

- A Steering Committee to consider changes to Terms & Conditions of the training layoff scheme.
- NEDLAC teams to review the training layoff scheme after three months.
- Ensure appropriate use of training layoff scheme.
- Communicate & support.

## Training Layoff scheme resource documents

- **Framework for South Africa's Response to the International Economic Crisis (NEDLAC, 19 February 2009).**
- **DoL Guide to the Training Layoff Scheme (18 September 2009).**
- **DoL Training Layoff Implementation Guide (7 September 2009).**
- **Terms & Conditions of Training Layoff Scheme**
- **CCMA/DoL/SETA process flow diagram.**
- **CCMA/SETA arrangements.**
- **CCMA Facilitator's Guide**
- **Request to Participate in Training Layoff form.**
- **Training Layoff Process Agreement Form.**
- **Agreement to Participate in the Training Layoff Scheme form.**



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## Acronyms used

- **NEDLAC: National Economic Development & Labour Council**
- **DoL: Department of Labour**
- **SETA: Sectoral Education & Training Authority**
- **CCMA: Commission for Conciliation, Mediation & Arbitration**
- **NSF: National Skills Fund**
- **UIF: Unemployment Insurance Fund**
- **LRA: Labour Relations Act, No 66 of 1995**



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# THANK YOU

