

No. R. 448

28 May 2010

**LABOUR RELATIONS ACT, 1995****BARGAINING COUNCIL FOR THE FURNITURE MANUFACTURING  
INDUSTRY OF THE WESTERN CAPE: EXTENSION TO NON-PARTIES OF  
THE MAIN COLLECTIVE AGREEMENT**

I, MEMBATHISI MPHUMZI SHEPHERD MDLADLANA, Minister of Labour, hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the collective agreement which appears in the Schedule hereto, which was concluded in the Bargaining Council for the Furniture Manufacturing Industry of the Western Cape and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the agreement, shall be binding on the other employers and employees in that Industry with effect from .....7 June 2010.....and for the period ending 30 June 2011.

**MMS MDLADLANA  
MINISTER OF LABOUR**

**SCHEDULE****BARGAINING COUNCIL FOR THE FURNITURE  
MANUFACTURING INDUSTRY OF THE WESTERN CAPE****AGREEMENT**

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the

**Cape Furniture Manufacturers' Association**

(hereinafter referred to as the "Employers" or the "Employers' organisation"), of the one part, and the

**National Union of Furniture and Allied Workers of  
South Africa**

(hereinafter referred to as the "Employees" or the "trade union") of the other part,

being the parties to the Bargaining Council for the Furniture Manufacturing Industry of the Western Cape.

**DIVISION OF AGREEMENT**

This Agreement is divided into three parts as follows:

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#### **C – Contributions and deductions**

Clause	31	-	Holidays and Holiday and Bonus Fund
Clause	32	-	Subsistence allowance
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Clause	37	-	Agency Shop
Clause	38	-	Bargaining Levy
Clause	39	-	Medical III Health Benefit Fund

#### **PART II**

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#### **PART III**

Annexure	A	-	Job Grading and minimum wages
Annexure	B	-	Monthly statement to be submitted in terms of clause 12
Annexure	C	-	Hours of work notice required under clause 17(6)
Annexure	D	-	Registration as an Employer Form to be submitted in terms of clause 6
Annexure	E	-	Weekly return of Employees to be submitted in terms of clause 14
Annexure	F	-	Dispute Resolution Procedure in terms of clause 15
Annexure	G	-	Public Holidays in terms of clause 31
Annexure	H	-	Provident Fund percentage contributions

## **PART I**

### **PROVISIONS APPLICABLE TO THE FURNITURE MANUFACTURING INDUSTRY THROUGHOUT THE AREAS COVERED BY THE AGREEMENT, UNLESS THE CONTRARY IS STATED**

#### **A – Administrative issues**

##### **1. SCOPE OF APPLICATION OF AGREEMENT**

- (1) The terms of this Agreement shall be observed in the Furniture Manufacturing Industry of the Western Cape: -
  - (a) by all Employers who are members of the Employers' organisation and by all Employees who are members of the trade union, and who are engaged and employed in the Industry, respectively; and
  - (b) in the Magisterial Districts of Barkly West, Beaufort West, Bellville, Bredasdorp, Britstown, Caledon, Calvinia, Carnarvon, Ceres, Clanwilliam, De Aar, Fraserburg, Goodwood, Gordonias, Hay, Heidelberg (C.P.), Herbert, Hermanus, Hopefield, Hopetown, Kenhardt, Kimberley, Kuils River, Kuruman, Ladismith, Laingsburg, Malmesbury, Mitchell's Plain, Montagu, Moorreesburg, Namaqualand, Paarl, Piketberg, Prince Albert, Riversdale, Robertson, Simon's Town, Somerset West, Stellenbosch, Strand, Sutherland, Swellendam, The Cape, Tulbagh, Vanrhynsdorp, Victoria West, Vredendal, Wellington, Williston, Worcester, Wynberg, and that portion of the Magisterial District of Postmasburg which, prior to the publication of Government Notice No. 1254 of 27 June 1975, fell within the Magisterial District of Kuruman, but excluding that portion of the Magisterial District of Kuruman which, prior to the publication of Government Notice No. 1314 of 28 August 1964, fell within the Magisterial Districts of Postmasburg, Philipstown and Prieska.
- (2) Notwithstanding the provisions of sub-clause (1), the terms of this Agreement shall: -
  - (a) apply to all Employees in the furniture manufacturing industry and to all the Employers of such Employees;
  - (b) apply to learners in so far as they are not inconsistent with the provisions of the Skills Development Act, 97 of 1998, or any contract entered into or any condition fixed there under.

##### **2. PERIOD OF OPERATION OF AGREEMENT**

This Agreement shall come into operation:-

- (1)
  - (a) in respect of parties to this agreement, on the date of signature;
  - (b) in respect of non-parties, on such date as fixed by the Minister of Labour in terms of section 32 of the Act.
- (2) This Agreement shall remain in force for the period ending 30 June 2011.

### 3. DEFINITIONS

Any expressions used in this Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, any references to an Act shall include any amendments to such Act and, unless the contrary intention appears, words importing the masculine gender shall also include the feminine and vice versa.

- (1) Unless inconsistent with the context, the following definitions shall apply to all Parts of this Agreement, and -

**"Act"** means the Labour Relations Act, No. 66 of 1995;

**"Bonus"** means -

- (a) any payment in addition to the prescribed or agreed wage of an Employee arising from employment under a bonus incentive scheme which is stipulated as such in the wage register;
- (b) any other special or occasional payment by an Employer to an Employee in excess of the prescribed or agreed wage stipulated by him as such in the wage register and which the Employer can withdraw at will;

**"Casual Employee"** means an Employee who is employed by the same Employer for not more than 24 hours in any one month;

**"Council"** means the Bargaining Council for the Furniture Manufacturing Industry of the Western Cape, registered in terms of section 29 of the Labour Relations Act, 1995;

**"Employee"** for the purpose of this agreement a person who works for, or renders services to any other person, is presumed, regardless of the form of the contract, to be an employee, if any one or more of the following factors are present:

- (a) the manner in which the person works is subject to the control or direction of another person;
- (b) the person's hours of work are subject to the control or direction of another person;
- (c) In the case of a person who works for an organisation, the person forms part of that organisation;
- (d) the person has worked for that other person for an average of at least 40 hours per month over the last three months;
- (e) the person is economically dependent on the other person for whom he or she works or renders services;
- (f) the person is provided with tools of trade or work equipment by the other person; or
- (g) the person only works for or renders services to one person.

If one or more of these factors are present, the person is presumed to be an Employee until the contrary is proved.

**"Employer"** means a person who employs Employees in the Furniture Manufacturing Industry, including a Labour Broker who supplies Employees to the Furniture Industry;

**"Employment"** means the total length of all periods of an Employee's service in the Furniture Manufacturing Industry, but excluding a period of broken service in excess of 12 consecutive months;

**"Establishment"** means any place in which the Furniture Manufacturing Industry is carried on;

**"Furniture Manufacturing Industry" or "Industry"** means, without in any way limiting the ordinary meaning of the expression, the industry in which employers and their employees are associated for the manufacture, either in whole or in part, of all types of furniture, bedding as well as upholstery and/or re-upholstery and will, inter alia, include the following:

**(a) Furniture**

Manufacturing, repairing, staining, spraying, polishing, re-polishing, making loose covers and/or cushions, wood machining, veneering laminating, woodturning, carving, assembling, painting, wood bending, veneering and laminating and/or foiling of board used for furniture, and all parts of materials used in the construction of furniture; and further includes repairing, re-upholstering or re-polishing furniture in or in connection with establishments in which the production of furniture or any operation associated with the preparation of any article of furniture for sale, either in whole or in part, is carried on. Including manufacturing, repairing, polishing, re-polishing, staining, spraying of pianos, organs, pool and snooker tables, kitchen cupboards, attached wall cupboards, built-in cupboards, free standing bars or built-in bar counters, cane, wicker or grass furniture, cabinets including cabinets for musical instruments and radios, wireless or television cabinets, bathroom cupboards, cupboard tops and furniture for tea-rooms, restaurants, offices, hotels, hospitals, churches, schools, libraries, other educational institutions, conference centres and theatres but excluding the manufacturing of furniture made mainly of metal and/or plastic materials.

**(b) Bedding**

The manufacturing, repairing, covering, re-covering of mattress bases, mattresses, spring mattresses, overlays, bolsters, pillows, cushions for studio couches, spring units, box-spring mattresses and studio couches but excluding the manufacturing of bedding made mainly of metal and/or plastic materials.

**"Studio Couch"** means an article of furniture, which is designed for seating and for conversion into a double bed or two or more beds and of which the frames are constructed mainly of metal and the seating and/or sleeping surfaces consist of mattresses and/or cushions.

**(c) Upholstery**

The upholstering or re-upholstering of any furniture, or item of furniture, bedding, pelmets and mattress bases.

**"Hourly rate"** means the rate determined in accordance with the provisions of clause 24 of this Agreement;

**"Labour Broker"** means any person who, for reward, procures for or provides to a client other persons—

- (a) who render services to, or perform work for, the client; and
- (b) who are remunerated by the Labour Broker.

**"Learner"** means an Employee serving under a written contract of learnership registered or deemed to be registered under the provisions of the Skills Development Act 97, of 1998;

**"Night work"** means work performed after 18H00 and before 06H00 the next day;

**"Normal retirement age"** means the age of 60 years;

**"Normal time"** means the standard minimum hours that an Employee is required to work on which the Employees basic weekly wage rate is paid;

**"Ordinary hours"** means the hours between the specified starting and finishing time of work for each day of the week excluding the meal interval;

**"Piece-work"** means any system according to which payment is based on quantity or output of work done;

**"Redundancy"** means that a position becomes permanently superfluous as a result of re-organisation or technological change, and that, consequently, there is no foreseeable possibility of Employees who lose their employment through redundancy being re-employed in their previous positions;

**"Registrar"** means the Registrar of Labour Relations appointed in terms of section 108 of the Labour Relations Act, No. 66 of 1995;

**"Remuneration"** means any payment in money made or owing to any person which arises in any matter whatsoever out of employment;

**"Retrenchment"** means the loss of employment as a result of a downturn in the economic affairs of an establishment or as an operational requirement;

**"Shop steward"** means a member of a Trade Union who is elected to represent the Employees in a workplace;

**"Senior Shop Steward"** means that shop steward, elected by the Union members from the three or more shop stewards in a plant or establishment, which qualifies for more than two shop stewards, in terms of clause 30 of the Main Collective Agreement and shall be recognized as exercising authority over other shop stewards in such plant or establishment;

**"Short time"** means a reduction in the number of ordinary working hours in an establishment owing to slackness of trade, shortage of raw materials or a general breakdown of plant or machinery caused by accident or other unforeseen emergency;

**"Temporary employment services"** means any person who, for reward, procures for or provides to a client other persons—

- (a) who render services to, or perform work for, the client; and
- (b) who are remunerated by the temporary employment service.

**"wage"** means that portion of the remuneration payable in money to an Employee in respect of his ordinary hours of work;

#### 4. EXEMPTIONS

- (1) The Council may grant exemption from any or all the provisions of the Agreement for any good and sufficient reason.
- (2) The Council shall fix, in respect of any person granted exemption, the conditions subject to which such exemption is granted and the period during which such exemption shall operate: Provided that the Council may, if it deems fit, after one week's notice in writing has been given to the person concerned, withdraw any license of exemption.
- (3) The Secretary may refer to an independent body to hear and decide, as soon as possible, any appeal brought by a party or non-party subject to this collective agreement against: -
  - (a) the Bargaining Council's refusal of an application for exemption from the provisions of the collective agreement as soon as possible;
  - (b) the withdrawal of such an exemption previously granted by the Bargaining Council;
- (4) The independent body may, having regard to the individual merits of each application, grant an exemption to an Employer or an Employee from this agreement if: -
  - (a) it is fair to both Employer, its Employees and other Employers and Employees in the furniture industry; and
  - (b) it does not undermine the agreement; and
  - (c) it will make a material difference to the viability of an applicant's business; and
  - (d) it will assist to overcome economic hardship occurring during the currency of the agreement and will save unnecessary job losses.
- (5) The Secretary of the Council shall issue to every person granted exemption a license signed by the Chairman and Secretary of the Council setting out -
  - (a) the full name of the person concerned;
  - (b) the provisions of the Agreement from which exemption is granted;
  - (c) the conditions fixed in accordance with the provisions of sub-clause (2) subject to which such exemption is granted;
  - (d) the period for which the exemption shall operate; and
  - (e) the reason for the exemption being granted.
- (6) The Secretary of the Council shall -
  - (a) number consecutively all licenses issued;
  - (b) retain a copy of each license issued; and
  - (c) where exemption is granted to an Employee, forward a copy of the license to the Employer concerned.
- (5) All applications for exemption shall be in writing.



## 5. EXPENSES OF THE COUNCIL

- (1) For the purpose of meeting the expenses of the Council, every Employer shall deduct R2.00 per week from the wages of each of his Employees for whom a wage is paid.
- (2) To the amount so deducted, as per sub-clause (1), the Employer shall add a like amount and:-
  - (a) forward month by month, and not later than the 15th day of each month, the total sum to the Secretary of the Council.
  - (b) an Employer who is in arrears with payments in terms of paragraph 2 and 2(a) and who fails, after having been warned in writing by the Council to forward the outstanding amounts within seven days of such warning shall, upon being notified by the Council in writing to do so, submit the amounts payable in terms of this clause week by week so as to reach the Secretary not later than the Friday following the pay day of the week in respect of which the amounts are due. An Employer to whom the provisions of this paragraph apply may, upon so being notified by the Council in writing, revert to the payment of amounts payable in terms of this clause on the monthly basis provided for in sub-clause (a).
  - (c) should any amount due in terms of this clause not be received by the Council by the 15th day of the month following the month in respect of which it is payable, the Employer shall forthwith be liable for and be required to pay interest on such amount or on such lesser amount as remains unpaid at the rate prescribed by the Prescribed Rate of Interest Act, Act No. 55 of 1975, as amended, calculated from such 15th day until the day upon which payment is actually received by the Council:

Provided that the Council shall be entitled in its absolute discretion to waive payment of such interest or part thereof in any individual instance.

In the event of the Council incurring any costs or becoming obliged to pay any collection commission by reason of the failure of the Employer to make any payment on or before the due date, the Employer shall then also be liable forthwith to pay all such costs of whatever nature as between attorney and client and all such collection commission, and the Council shall be entitled in its absolute discretion to allocate any payment by the Employer firstly in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.

## 6. REGISTRATION OF EMPLOYERS

- (1) Every Employer on whom this Agreement is binding and who has not already done so in terms of a previous agreement shall, within one month of the date on which this Agreement becomes binding on him, forward to the Secretary of the Council a duly completed registration form in the form specified in Annexure D to this Agreement, together with the documents specified in such Annexure--

Note. - This Annexure is obtainable from the Secretary of the Council,

P.O. Box 1123, Woodstock, 7915.

- (2) Within seven days of the occurrence of any of the following events, namely-
- (a) any change in the particulars specified in Annexure D to this Agreement;  
or
  - (b) the sequestration of the Employer's estate or the voluntary surrender thereof; or
  - (c) the provisional or final winding up or the provisional or final placing of the Employer under judicial management; or
  - (d) the acquisition or commencement by the Employer of any other business which is subject to this Agreement; or
  - (e) the transfer or abandonment of the business carried on by the Employer;

every Employer shall furnish the Secretary of the Council with a written statement setting forth full particulars of such change or event.

## **7. EXHIBITION OF AGREEMENT**

- (1) Every Employer on whom this agreement is binding must:-
- (a) keep a copy of the collective agreement affixed in a conspicuous place where it is readily accessible to the Employees at all times;
  - (b) on request give a copy of the collective agreement to:-
    - (i) an Employee who has paid the prescribed fee in regulation 8 of the General Administrative Regulations to the Labour Relations Act, 66 of 1995; or
    - (ii) an Employee who is a Trade Union representative or a member of a workplace forum free of charge, on request.

## **8. KEEPING OF RECORDS**

Every Employer must keep records as required in terms of section 31 of the Basic Conditions of Employment Act, 75 of 1997. These records shall be kept written in a legible and indelible manner.

## **9. TRADE UNION REPRESENTATIVES ON THE COUNCIL**

- (1) Every Employer shall grant to any of his Employees who are representatives on the Council every reasonable facility to attend to their duties in connection with meetings of the Council.
- (2) If more than one Trade Union representative on the Council is from the same Employer, the Employer shall not be expected to pay for more than one of the Employee's lost time while attending to or performing duties as a delegate to the Council.

## 10. ADMINISTRATION OF AGREEMENT

The Council shall be the body responsible for the administration of this Agreement, and may issue expressions of opinion and rulings not inconsistent with the provisions thereof for the guidance of Employers and Employees.

## 11. AGENTS

- (1) The Minister shall appoint, at the request of the Council, one or more specified persons as Designated Agents to assist in giving effect to the terms of this Agreement.

The agent shall have the right to: -

- (a) enter, inspect and examine any premises or place in which the Furniture Manufacturing Industry is carried on at any time when he has reasonable cause to believe any person is employed therein; and
  - (b) orally examine, either alone or in the presence of any other person, as the Agent thinks fit, with respect to matters relating to this Agreement, every Employee whom the Agent finds in or about the premises or place and require such Employee to answer questions put to such employee; and
  - (c) require the production of any notice, book, list or document which is by this Agreement required to be kept, exhibited or made, and inspect, examine and copy the same; and
  - (d) require the production of and inspect, examine and copy all pay sheets or books wherein an account is kept of actual wages paid to an Employee.
- (2) The Agent, when entering, inspecting or examining any such place shall, on request show his certificate of authority, and may take with him an interpreter.
- (3) Every person upon whom the provisions of this Agreement are binding shall grant the Agent all facilities referred to above.

## 12. MONTHLY STATEMENT

- (1) All payments to be made to the Council in terms of clauses 5, 31, 33, 34 and 35 of this Agreement and clause 8 of the Provident Fund Agreement published under Government Notice No. R.2016 of 25 November 1994 as amended shall be accompanied by a statement in the form prescribed in Annexure B to this Agreement.
- (2) Any monies received by the Council from an Employer as payment in terms of sub-clause (1) shall, taking into account all amounts then owing to the Council by that Employer, in the sole discretion of the Council, be allocated to and set off: -
  - (a) against such amounts as have, at the date of such payment, been owing to the Council for the longest period of time, regardless of the intention of or any indication given by the said Employer at the time of payment in respect of allocation of such payment; or
  - (b) on a pro rata basis, against any amounts owing to the Council; or
  - (c) first against the Provident Fund contributions and thereafter as per (a) above.

## 13. NORMAL RETIREMENT AGE

- (1) An Employee entering the Industry may retire at the age of 60 years.

- (2) Every Employer registered with the Council in terms of clause 6 of this Agreement, and every Employee employed in the Industry as at the date on which this Agreement comes into operation, must submit the Employee's identity number and/or alternatively other acceptable documentary proof of the Employee's age to the Council.

#### **14. WEEKLY RETURN OF EMPLOYEES**

- (1) Every Employer shall submit to the Council a statement in the form prescribed in Annexure E to this Agreement, reflecting particulars of Employees engaged, discharged, or who resigned during any one week, not later than the Friday following the pay-day of the week to which the statement relates.

#### **15. DISPUTE RESOLUTION PROCEDURE**

- (1) In the event of a dispute arising about the interpretation or application of the collective agreement the parties to the dispute must:-
  - (a) first refer the dispute to the Council for conciliation, if the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration.
  - (b) The party who refers the dispute to the Council must satisfy it that a copy of the referral has been served on all the other parties to the dispute;
- (2) If a dispute is referred to the Council, the Council must attempt to resolve the dispute:-
  - (a) through conciliation; and
  - (b) if the dispute remains unresolved after conciliation, the Council must arbitrate the dispute if:-
    - (i) the Labour Relations Act requires arbitration and any party to the dispute has requested that it be resolved through arbitration; or
    - (ii) all the parties to the dispute consent to arbitration under the auspices of the Council.
- (3) The dispute resolution procedure, as per annexure F deals with the manner in which the Council and its conciliators conduct dispute resolution proceedings.

#### **16. THRESHOLD MEMBERSHIP FOR A SEAT ON THE COUNCIL**

- (1) In order for another trade union to have a seat on the Council the respective union must have a minimum membership of twenty percent of the total number of employees employed in the Industry as signed up members.
- (2) In order for another employers organisation to have a seat on the Council the respective employers association must have a minimum membership of twenty percent of the total number of employers in the Industry as signed up members.
- (3) The applicant party must make written application to the Council requesting a seat on the Council and submit to the Secretary of the Council documented proof of membership.

**B – Terms and Conditions of Employment****17. HOURS OF WORK**

- (1) Save as is otherwise provided in this Agreement, no Employer shall require or permit an Employee, other than foremen, managers, sub-managers, senior managerial, professional, technical or administrative personnel in receipt of a salary of not less than R149736.00 per annum as per Government Gazette No. 30720 of 1 February 2008 –
  - (a) to work for more than 44 hours normal time, excluding meal intervals, in any one working week, comprising of: -
    - (i) Monday, Tuesday, Wednesday, Thursday, Friday.
- (2) The Employer must decide on the firm's ordinary weekly working hours from a range of ordinary weekly working hours from 40 hours to a maximum of 44 hours per week.
- (3) The Employer must inform Employees and the Council of their firm's ordinary weekly working hours and to display them in a conspicuous place within the workplace.
- (4) Should an Employer wish to change the firm's ordinary working hours from what they had notified the Council and their Employees they would be required to apply for an exemption from the Council before implementing any change to their ordinary weekly working hours. The Council may require seventy five per cent of the firm's Employees to support the proposed change to the firm's ordinary weekly working hours.
- (5) All hours worked in excess of a firm's normal weekly working hours must be paid in accordance with the Basic Conditions of Employment Act, 75 of 1997.
- (6) Every Employer shall display in his establishment in a place readily accessible to his Employees a notice in the form prescribed in Annexure C to this Part of the Agreement specifying the starting and finishing time of work for each day of the week, forenoon and afternoon intervals and the meal interval.

**18. PAYMENT OF REMUNERATION**

- (1)
  - (a) Remuneration shall be paid in cash or electronically deposited into the Employee's bank account and be available to the Employee at normal closing time on pay-day or on termination of employment if this takes place before the ordinary pay-day.
  - (b) Should an Employee be paid in cash and the Employer wishes to change to paying wages by electronic transfer, the Employer must get the consent of the Employee.
- (2) Remuneration due to Employees in terms of this Agreement shall be:

- (a) if paid in cash be handed, in a sealed envelope bearing on the outside the name of the Employer, the address of the Employer, the date of payment, the name or number of the Employee and the amount of money contained therein and how such amount is arrived at; or
- (b) if paid electronically in terms of paragraph 1(a) of this clause, shall be handed a wage advice bearing on the outside the name of the Employer, the address of the Employer, the date of payment, the Employee's bank account details, the name or number of the Employee and the amount of money electronically deposited into the Employee's bank account and how such amount is arrived at.

## **19. EMPLOYMENT OF MINORS**

- (1) No person shall employ a child in the Industry: -
  - (a) who is under 15 years of age; or
  - (b) who is under the minimum school-leaving age in terms of any law, if this is 15 or older.
- (2) No person may employ a child in employment: -
  - (a) that is inappropriate for a person of that age;
  - (b) that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.
- (3) A person who employs a child in contravention of sub-clause (1) or (2) commits an offence.
- (4) Employment of Children of 15 Years or Older: -
  - (a) Subject to section 43 (2) of the Basic Conditions of Employment Act, 75 of 1997, the Minister may, on the advice of the Council, make regulations to prohibit or place conditions on the employment of children who are at least 15 years of age and no longer subject to compulsory schooling in terms of any law.
  - (b) A person who employs a child in contravention of sub-clause (4)(a) commits an offence.
- (5) Medical Examinations: -

The Minister may, after consulting the Council, make regulations relating to the conduct of medical examinations of children in employment.
- (6) Prohibitions: -
  - (a) It is an offence to: -
    - (i) assist an Employer to employ a child in contravention of this Agreement; or
    - (ii) discriminate against a person who refuses to permit a child to be employed in contravention of this Agreement.

(7) Evidence of Age: -

In any proceedings in terms of this Agreement, if the age of an Employee is a relevant factor for which insufficient evidence is available, it is for the party who alleges that the employment complied with the provisions of this clause to prove that it was reasonable for that party to believe, after investigation, that the person was not below the permitted age in terms of sub-clause (1) and (2) and (4).

(8) Prohibition of Forced Labour

- (a) Subject to the Constitution of the Republic of South Africa, all forced labour is prohibited.
- (b) No person may for his or her own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of sub-clause (a).
- (c) A person who contravenes sub-clause (8)(a) or (8)(b) commits an offence.

## 20. FORENOON AND AFTERNOON INTERVALS

- (1) Every Employee shall be given an interval of 10 minutes both in the forenoon and afternoon each day, which shall be reckoned as time worked. This interval shall be specified on the prescribed form referred to in clause 17(6).

## 21. ABATEMENT OF WAGES

- (1) No Employee shall, while in the employ of an Employer, give to and no such Employee shall receive from such Employer any gift, bonus, loan, guarantee or refund either in cash or in kind which will in effect amount to abatement of the wages which must in terms of this Agreement be paid to such Employee.
- (2) No Employee shall be required as part of his contract of service to board or lodge with his Employer or at any place nominated by his Employer or to purchase any goods or hire property from his Employer.

## 22. TERMINATION OF EMPLOYMENT

- (1) Subject to sub-clause (4) hereof, a contract of employment terminable at the instance of a party to the contract may be terminated only on notice of not less than: -
- (a) one week, if the Employee has been employed for six months or less;
  - (b) two weeks, if the Employee has been employed for more than six months but not more than one year;
  - (c) four weeks, if the Employee has been employed for one year or more.
- (2) Notice of termination of a contract of employment must be given in writing: -
- (a) except when it is given by an illiterate Employee;
  - (b) if an Employee who receives notice of termination is not able to understand it, the notice must be explained orally by, or on behalf of, the Employer to the Employee in an official language the Employee reasonably understands.

- (3) Notice of termination of a contract of employment given by an Employer must: -
  - (a) not run concurrently with any period of leave to which the Employee is entitled in terms of clause (30), except sick leave.
- (4) Payment instead of notice: -
  - (a) Instead of giving an Employee notice in terms of sub-clause (1), an Employer may pay the Employee the remuneration the Employee would have received, calculated in accordance with this agreement, if the Employee had worked during the notice period.
  - (b) If an Employee gives notice of termination of employment, and the Employer waives any part of the notice, the Employer must pay the remuneration referred to in sub-clause (4)(a), unless the Employer and Employee agree otherwise in writing.
  - (c) If an Employee fails to give and/or work out their required notice, as per sub-clause (1) hereof, the Employer may claim notice pay from the Employee's annual leave and/or bonus.
- (5) Nothing in this clause affects the right: -
  - (a) of a dismissed Employee to dispute the lawfulness or fairness of the dismissal in terms of Chapter VIII of the Labour Relations Act, 66 of 1995, or any other law; and
  - (b) of an Employer or an Employee to terminate a contract of employment without notice for any cause recognised by law.

### **23. NIGHT SHIFT WORK**

- (1) In this section, "night work" means work performed after 18:00 and before 06:00 the next day.
- (2) An Employer may only require or permit an Employee to perform night work, if so agreed, and if: -
  - (a) the Employee is compensated by the payment of a 15 per cent allowance on their wage rate, in addition to their wage rate, for all time worked during the night shift, or by a reduction of working hours; and
  - (b) transportation is available between the Employee's place of residence and the workplace at the commencement and conclusion of the Employee's shift.
- (3) If a shift worked by an Employee falls on a public holiday and another day, the whole shift is deemed to have been worked on the public holiday, but if the greater portion of the shift was worked on the other day, the whole shift is deemed to have been worked on the other day.

### **24. HOURLY RATE**

- (1) Notwithstanding anything to the contrary in this Agreement, all work performed by Employees, other than Employees in receipt of a fixed weekly or monthly wage, shall be paid for at an hourly rate, the hourly rate to be determined by



dividing the actual weekly wage by 44 or such lesser number of hours ordinarily worked by an establishment.

- (2) In order to determine the hourly rate of a monthly-paid Employee in order to calculate the overtime pay that may be due to such Employee, his monthly wage shall be divided by 4,333 and thereafter by 44 or such lesser number of hours ordinarily worked by an establishment.
- (3) In determining the actual weekly or monthly wage of any worker engaged in night-shift work there shall be included therein the additional 15 per cent of the wage rate referred to in clause 23.

## 25. SICK LEAVE

- (1) In this Chapter, "sick leave cycle" means the period of 36 months' employment with the same Employer immediately following: -
  - (a) an Employee's commencement of employment; or
  - (b) the completion of that Employee's prior sick leave cycle.
- (2)
  - (a) During every sick leave cycle, an Employee is entitled to ten (10) days paid sick leave per annum.
  - (b) Should an Employee exhaust the number of paid sick leave days available due to hospitalisation, serious and or chronic illness, such an Employee is entitled to claim further days of paid sick leave, provided that there are days of sick leave available in that Employee's current three (3) year cycle.  
In such an event, the number of days over and above the available sick leave balance for that year will be deducted from the future years in the cycle and will mean for such a person, the annual paid sick leave days will be less than ten (10) days per annum for the balance of that three (3) year sick leave cycle."
- (3) Despite sub-clause (2), during the first six months of employment, an Employee is entitled to one day's paid sick leave for every 26 days worked.
- (4) During an Employee's first sick leave cycle, an Employer may reduce the Employee's entitlement to sick leave in terms of sub-clause (2) by the number of days' sick leave taken in terms of sub-clause (3).
- (5) Subject to sub-clause 6, an Employer must pay an Employee for a day's sick leave: -
  - (a) the wage the Employee would ordinarily have received for work on that day; and
  - (b) on the Employee's usual pay day.
- (6) Proof of Incapacity
  - (a) An Employer is not required to pay an Employee in terms of sub-clause (5) if the Employee has been absent from work for more than two consecutive days or on more than two consecutive occasions during an eight week period and, on request by the Employer, does not produce a medical certificate stating that the Employee was unable to work for the duration of the Employee's absence on account of sickness or injury.

- (b) The medical certificate must be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament.
- (c) An Employer is not required to pay an Employee in terms of sub-clause (5) if the Employee has been absent from work on a Friday, or on a Monday, or on a day before or after a public holiday should the Employee not produce a valid medical certificate covering the days of absence.

## **26. MATERNITY LEAVE AND TEMPORARY CONTRACT EMPLOYEES**

- (1) A female Employee shall be entitled to unpaid maternity leave as provided hereunder:

Provided that the Employee has worked for the same Employer for a period of 12 consecutive months (excluding unpaid leave) immediately preceding such maternity leave: -

- (a) The maternity leave shall be for a period not exceeding six months, commencing one month prior to the expected date of her confinement.
  - (b) During such leave, the Employee shall have a guarantee of re-employment on the same terms and conditions that applied at the date of her going on leave.
  - (c) Should such terms and conditions have been altered during her maternity leave by an amendment to any of the Agreements under the Council's jurisdiction, such new terms and conditions shall then apply.
- (2) The maternity leave with the guarantee of re-employment shall be subject to the following conditions:
  - (a) The Employee on maternity leave shall give her Employer not less than five working days notice of her intention to return to work.
  - (b) Proof of the confinement shall be submitted to the Employer upon the Employee's return to work in the form of a birth certificate, or death certificate in the case of a miscarriage.
  - (c) The Employer shall be permitted to employ a temporary Employee in the same category as the Employee who has been granted maternity leave on a temporary contract agreement for the period of absence of the Employee who has been granted maternity leave.
  - (d) During the period referred to in sub-clause (2)(c), all the provisions of the Agreements administered by the Council shall apply to the Employer and the temporary Employee.
  - (e) The services of a temporary Employee employed in terms of this clause may be terminated by the Employer or Employee as provided for in clause 22 hereof.

## **27. SEVERANCE PAY**

- (1) On the termination of an Employee's contract of employment as a result of any of the following: -

- (a) Retrenchment;
- (b) short time;
- (c) redundancy.

Such Employee shall receive from his Employer severance pay: Provided that the Employee has served one year's continuous service with such Employer.

- (2) The severance pay payable by the Employer to the Employee pursuant to sub-clause (1) above shall be the sum of: -
  - (a) one week's wages: plus thereafter
  - (b) one additional week's wages for each completed year of service
- (3) Employees whose services are terminated for reasons related to operational requirements shall: -
  - (a) receive first preference should the positions that they previously occupied with the same employer become available within a period of six months following the date of their retrenchment; and
  - (b) On the retrenched employee's re-employment, as stipulated in sub-clause (3)(a) here above, such employee shall not be paid less than their wage rate applicable as at the date of their retrenchment.

## **28. CASUAL EMPLOYEES**

- (1) A casual Employee means an Employee who works less than 24 working hours in a month for an Employer.

## **29. FAMILY RESPONSIBILITY LEAVE**

- (1) This clause applies to an Employee: -
  - (a) who has been in employment with an Employer for longer than four months; and
  - (b) who works for at least four days a week for that Employer.
- (2) An Employer must grant an Employee, during each annual leave cycle, at the request of the Employee, a total of 3 days paid leave and 2 days unpaid leave per annum, which the Employee is entitled to take: -
  - (a) when the Employee's child is born; or
  - (b) when the Employee's child is sick; or
  - (c) when the Employee's spouse or life partner is sick; or
  - (d) in the event of the death of: -
    - (i) the Employee's spouse or life partner; or
    - (ii) the Employee's parent, adoptive parent, grandparent, parent in-law, child, adoptive child, grandchild or sibling.
- (3) Subject to sub-clause (5), an Employer must pay an Employee for a day's family responsibility leave: -
  - (a) the wage the Employee would ordinarily have received for work on

- that day; and
  - (b) on the Employee's usual pay day.
- (4) An Employee may take family responsibility leave in respect of the whole or a part of a day.
- (5) Before paying an Employee for leave in terms of this section, an Employer may require reasonable proof of an event contemplated in sub-clause (1) for which the leave was required.
- (6) An Employee's unused entitlement to leave in terms of this section lapses at the end of the annual leave cycle in which it accrues.

### 30. TRADE UNION REPRESENTATIVES

- (1) Number of Shop Stewards - In any workplace in which at least 10 members of a representative trade union are employed, those members are entitled to elect from among themselves—
  - (a) if there are 10 members of the trade union employed in the workplace, one trade union representative;
  - (b) if there are more than 30 members of the trade union employed in the work place, two trade union representatives;
  - (c) if there are more than 50 members of the trade union employed in the workplace, two trade union representatives for the first 50 members, plus a further one trade union representative for every additional 50 members up to a maximum of seven trade union representatives;
  - (d) if there are more than 300 members of the trade union employed in the workplace, seven trade union representatives for the first 300 members, plus one additional trade union representative for every 100 additional members up to a maximum of 10 trade union representatives;
  - (e) if there are more than 600 members of the trade union employed in the workplace, 10 trade union representatives for the first 600 members, plus one additional trade union representative for every 200 additional members up to a maximum of 12 trade union representatives; and
  - (f) if there are more than 1 000 members of the trade union employed in the workplace, 12 trade union representatives for the first 1 000 members, plus one additional trade union representative for every 500 additional members up to a maximum of 20 trade union representatives.
- (2) The names/s of the shop steward and/or senior shop steward/s elected in the Employer's establishment shall be conveyed to the Employer in writing by the trade union as soon as they become known.
- (3) The constitution of the representative Trade Union governs the nomination, election, terms of office and removal from office of a trade union representative.
- (4) A trade union representative has the right to perform the following functions:-
  - (a) at the request of an Employee in the workplace, to assist and represent the Employee in grievance and disciplinary proceedings;
  - (b) to monitor the Employer's compliance with the workplace-related provisions of this Agreement, any law regulating terms and conditions of employment and any collective agreement binding on the Employer;

- (c) to report any alleged contravention of the workplace-related provisions of this Act, any law regulating terms and conditions of employment and any collective agreement binding on the Employer to:-
    - (i) the Employer; and
    - (ii) the representative trade union; and
    - (iii) the Council; and
  - (d) to perform any other function agreed to between the representative trade union and the Employer.
- (5) Shop Steward Training - For the purpose of attending training courses and/or training seminars arranged by the trade union which is a party to this Agreement, shop stewards shall be entitled to three days paid leave per annum and senior shop stewards to six days paid leave per annum with effect from the date of the coming into operation of this Agreement, subject to the following conditions: -
  - (a) The cycle of shop steward leave shall commence on 1 January of each year. Leave not taken by a shop steward and/or senior shop steward shall accrue to a newly elected shop steward and/or senior shop steward during any one-leave cycle. Shop Steward leave shall not be cumulative nor be transferable from one Employer to another or from one year to another.
  - (b) Shop stewards' leave shall be taken only during the first eight calendar months of the year.
  - (c) The trade union shall make the training course and/or training seminar content available to the Employer at least seven days in advance.
  - (d) Prior arrangements shall be made by the trade union with an Employer for the release of the senior shop steward and/or shop stewards. Not more than 50 percent of elected senior shop stewards and/or shop stewards at any particular Employer's firm shall attend the training course and/or training seminar on any particular day.
  - (e) A senior shop steward and/or shop stewards from any one Employer's firm shall not be required to attend a training course and/or training seminar on/over consecutive days.
  - (f) The trade union shall furnish the Employer with written proof that the training course and/or training seminar, for which purpose the paid leave was granted, was attended by the particular senior shop steward and/or shop stewards.

### **31. HOLIDAYS AND HOLIDAY AND BONUS FUND**

- (1) All public holidays as specified in the Public Holidays Act, No. 36 of 1994, or as further declared by the President of the Republic of South Africa by publication in the Government gazette, shall be paid public holidays in terms of this agreement, refer to annexure G of this agreement;
- (2) Whenever a public holiday, as referred to in sub-clause (1), falls on a Sunday the following Monday shall be a public holiday, in terms of section 2 (1) of the Public Holidays Act, No. 36 of 1994.
- (3) Every Employer shall grant his Employees annual leave of 15 consecutive paid working days.
- (4)
  - (a) Subject to the provisions of sub-clause (3), all amounts payable in terms of sub-clause (3) shall be paid by the Employer to the Secretary of the Council month by month, and not later than the 15th day of each month following that in respect of which they are due.

- (b) An Employer who is in arrears with payments in terms of paragraph (a) and who fails, after having been warned in writing by the Council, to forward the outstanding amounts within seven days of such warning shall, upon being notified by the Council in writing to do so, submit the amounts in terms of this clause week by week so as to reach the Secretary not later than the Friday following the pay-day of the week in respect of which the amounts are due. An Employer to whom the provisions of this paragraph have been applied may, only upon being notified by the Council in writing, revert to the payment of amounts payable in terms of this clause on the monthly basis in terms of paragraph (a).
- (c) Should any amount due in terms of this clause not be received by the Council by the 15th day of the month following the month in respect of which it is payable, the Employer shall forthwith be liable for and be required to pay interest on such amount or on such lesser amount as remains unpaid at the rate prescribed by the Prescribed Rate of Interest Act, No. 55 of 1975, as amended, calculated from such 15th day until the day upon which the payment is actually received by the Council:

Provided that the Council shall be entitled in its absolute discretion to waive payment of such interest or part thereof in any individual instance. In the event of the Council incurring any costs or becoming obliged to pay any collection commission by reason of the failure of the Employer to make any payment on or before the due date, the Employer shall then also be liable to forthwith pay all such costs of whatever nature as between attorney and client and all such collection commission, and the Council shall be entitled in its absolute discretion to allocate any payment by the Employer firstly in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.

- (d) Amounts payable in terms of sub-clause (3) hereof shall be paid by the Employer in addition to any wage or overtime pay payable to an Employee in terms of this Agreement, and shall not be deducted from the wages or overtime pay of such Employee.
- (e) The Council shall keep a record of each Employee in respect of whom payments are made in terms of sub-clause (3) hereof into the Cape Furniture Holiday and Bonus Fund and of the amount paid to the Cape Furniture Holiday and Bonus Fund in respect of the Employee.
- (f) The Cape Furniture Holiday and Bonus Fund shall be utilised for the purpose of distribution to Employees of holiday pay.
- (g) The Council shall from time to time invest on fixed deposit or on call with a bank or registered building society any of the money belonging to the Cape Furniture Holiday and Bonus Fund surplus to its requirements, and any interest accruing from such investment shall accrue to the general funds of the Council in consideration of the Council's administration of the Fund.
- (h) Moneys due to Employees who cannot be traced and who have not claimed payment within a period of two years from the date on which the moneys become payable shall accrue to the funds of the Council.
- (i) A public accountant who shall be appointed by the Council and whose remuneration shall be decided by the Council, shall audit the accounts of