

### 3.5 CASUAL EMPLOYEES

Notwithstanding anything to the contrary contained in this Agreement, none of the provisions of this Agreement, other than the following, shall apply to casual employees as defined:

- (1) The basis of contract of employment as a casual employee shall be hourly, and the employer shall pay such employee where the period of employment on any day -
  - (a) is of two hours duration or less, an amount equal to not less than two and two-third times the hourly wages; or
  - (b) is of longer duration than two hours but not more than nine hours, not less than the hourly wage for each hour or part of an hour worked; or
  - (c) is of longer duration than nine hours, overtime for such excess time on the basis of overtime prescribed in this Agreement.
- (2) The employer shall pay the remuneration due to a casual employee on termination of his employment.
- (3) For the purposes of this clause 'hourly wage' shall mean the minimum weekly wage prescribed for the type of work on which the casual employee is employed, divided by 45.

### 3.6 FIXED TERM CONTRACT

An employer and an employee may enter into a written fixed term contract; subject to the following conditions:

- (1) the parties shall clearly specify the duration of the contract;
- (2) the contract shall specify the conditions under which it will be terminated, and shall include provisions allowing for the early termination thereof by Agreement and/or whether it may be terminated owing to a fundamental breach thereof;
- (3) unless the contract is time-based in accordance with subclause (i) above the contract may be terminated upon the completion of a clearly defined task or project, in which case the onus shall rest upon the employer to prove that the task or project has been completed in every respect;

- (4) during the entire term of the contract the employee shall be deemed to be an ordinary employee of the employer, and shall enjoy all social security and other benefits available to employees on indefinite period contracts in the employ of the same employer;
- (5) the fact that an employee has entered into a fixed term contract shall not deprive him/her of any rights entrenched either in law or in accordance with the provisions of this Agreement, including the payment of remuneration which is not less than the minimum prescribed wages for the class of employee concerned; and
- (6) no employee shall be placed on a fixed term contract as a substitute for a probationary period.

### 3.7 TEMPORARY EMPLOYMENT SERVICE

- (1) For the purpose of this clause-

- (a) **“Temporary employment service”** means a person who operates a temporary employment service (formerly known as “Labour Brokers”) and who for reward, procures or provides to a client other persons-
  - (i) who render service to, or perform work for the client; and
  - (ii) who are remunerated by the temporary employment service.
- (b) A “client” means an employer registered as such in the Motor Industry in terms of clause 8 of the Administrative Agreement.
- (c) Temporary employment services shall be registered with MIBCO and CIPRO in order to operate within the Motor Industry.
- (d) Temporary employment services shall comply with the Industry Social Security Benefits Agreements and fund rules.

- (2) In accordance with section 198 of the Labour Relations Act –

- (a) A person whose services have been procured for or provided to a client by a temporary employment service shall be the employee of that temporary employment service and the temporary employment service shall be that person's employer, and
- (b) the temporary employment service and the client shall be jointly and severally liable if the temporary employment service in respect of any of its employees contravenes -

- (i) a collective Agreement concluded by a Bargaining Council that regulates terms and conditions of employment;
  - (ii) a binding arbitration award that regulates terms and conditions of employment;
  - (iii) the Basic Conditions of Employment Act; or
  - (iv) a determination made in terms of the Basic Conditions of Employment Act.
- (3) An employer shall comply with all the provisions of this Agreement and the Administrative Agreement in respect of those persons rendering services at or in respect of his establishment through any arrangement or Agreement with a temporary employment service, as if those persons were employed by the employer.
- (4) A person conducting business as a temporary employment service registered in terms of clause 8 of the Administrative Agreement and Chapter I of Division C of this Agreement shall be entitled to supply labour to an employer or establishment falling under or registered in terms of any other Chapter of this Agreement.
- (5) Notwithstanding anything else in this clause no employer operating in sector 5 will have any of their core work force belonging to temporary employment services by the end of February 2012.
- (6) Notwithstanding anything else in this clause for all employers operating in the rest of the industry no employer will have more than 35% of their core work force consisting of temporary employment services by the end of August 2013.
- (7) This Agreement shall not restrict the Parties rights to pursue the temporary employment services issue at any further NEDLAC processes.

### 3.8 PAYMENT OF EARNINGS

- (1) All earnings due shall be paid either hourly, daily, weekly, fortnightly or monthly, depending on the contract of employment, as the case may be, in cash, cheque or by means of electronic transfer; Provided that if payment is made by cheque, it shall be made at a time which permits the cheque to be cashed on the day of payment.
- (2) (a) Earnings shall be paid on the day and at the time and place stipulated in the notice referred to in clause 9(d)(i) of the Administrative Agreement.

- (b) The day referred to in paragraph (a) of this subclause shall be any day on which the employee concerned ordinarily works:

Provided that at the request of the employee and with the consent of the employer the employee may be paid on another week-day, ie excluding Sunday.

- (c) The time referred to in paragraph (a) of this subclause shall permit all employees who are being paid in cash, being paid by not later than their normal stopping time.
- (3) On the weekly or monthly pay-day referred to in subclause (2)(a) of this clause, all employees to whom the special circumstances referred to in subclauses (4) and (6) of this clause do not apply, shall be paid all the wages and all the allowances and/or commission other than leave pay accrued to them in respect of the week or month of employment just completed.
- (4) Where an employee assumes or returns to duty and has worked less than three shifts immediately preceding the ordinary pay-day the employer may carry over the earnings for such shift(s) to not later than the following pay-day.
- (5) The monthly earnings due to monthly paid employees shall be paid to them not later than the last working day of each calendar month: Provided that the commission on sales due to a motor vehicle salesperson shall not be calculated earlier than the 20th day of the month to which it relates and shall be paid by not later than the 7th day of the following month.

**[NOTE: For the provisions applicable to Sector 6 (Dealers Sales and Distribution establishments) and Sector 7 (Automotive Parts, Accessories, Equipment and Tools establishments) in respect of this subclause refer to Clause 4 of Division D of this Agreement]**

- (6) Upon termination of employment, the employer shall pay an employee his earnings calculated up to the time and date of termination of services, on the date of such termination.
- (7) An employer who wishes to change the day on which earnings are paid to his employees, shall notify his employees of his intention to change this day by displaying at least 14 days before the change takes place, a suitable notice in a prominent place on his premises.
- (8) All earnings shall be handed to employees in sealed containers on which shall be reflected, or which shall be accompanied by a statement showing
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- (a) the name of the employer;
  - (b) the full names of the employee;
  - (c) the date of payment;
  - (d) the period in respect of which payment is made;
  - (e) the number of ordinary and overtime hours worked and the earnings due;
  - (f) the number of hours worked on a Sunday and the earnings due therefore;
  - (g) details of any other earnings;
  - (h) details of any deductions which have been made;
  - (i) the amount enclosed; and
  - (j) any amount due as leave pay in terms of the Main Agreement unless such leave pay has to be sent in terms of that Agreement to the secretary of a Regional Council.
- (9) No employee shall be required as part of his contract of employment to board and/or lodge with his employer or at any place nominated by the employer or to purchase any goods from the employer.
- (10) Unless otherwise provided for in this Agreement, no deductions or set-off of any description, other than the following shall be made from the earnings which an employee would normally be entitled to receive:
- (a) Where an employee is absent from work, other than on paid leave, a deduction proportionate to such absence calculated on the basis of the wage which such employee was receiving in respect of his ordinary hours of work at the time thereof: Provided that -
    - (i) where such absence is owing to a disablement or an illness falling within the scope of the Compensation for Occupational Injuries and Diseases Act, 1993, the deduction shall, in respect of the first week of absence, not exceed 70 per cent of the employee's wage;
    - (ii) an employer may as a condition precedent to the payment of any amount in terms of proviso (i) require the employee to produce a medical certificate stating the nature and duration of the employee's incapacity;
  - (b) holiday, insurance, provident and/or pension funds or medical aid schemes where these are not administered by a Regional Council or the Council, and where an employee through negotiations between himself and his employer agrees on the amount to be paid by the employee to accept board and/or lodging from his employer;

- (c) tea, sports or similar clubs;
- (d) purchases by employees from their employers;

Provided that in the case of Division B employees who are in receipt of remuneration, excluding commission on sales, in excess of –

**in Area A –**

from 7 February 2011 to 31 August 2011 – R126 912 per annum  
for the period 1 September 2011 to 31 August 2012 – R138 324 per annum  
for the period 1 September 2012 to 31 August 2013 – R149 736 per annum

**in Other Areas**

from 7 February 2011 to 31 August 2011 – R108 884 per annum  
for the period 1 September 2011 to 31 August 2012 – R119 568 per annum  
for the period 1 September 2012 to 31 August 2013 – R130 252 per annum

the deduction enumerated in subclauses (a) and (b), together with other similar deductions, may be made subject to the written consent of the employee only; Provided further that such deductions are not in conflict with any contract on commission work that exist between the employer and employee.

- (e) traffic fines in cases where the guilty person has been identified beyond doubt; Provided that in the event of an employee being required to drive an unroadworthy or unlicensed vehicle, such fines shall be excluded;
- (f) Deductions in terms of damage to vehicles or property in terms of Clause 9(3) of Division A of this Agreement: Provided that the maximum deduction may not exceed 30% of an employee's weekly/monthly earnings;
- (g) Deductions or set-off upon termination of employment from all moneys owing to an employee except pension and/or provident funds in respect of loans in terms of a signed acknowledgment of debt;

Provided further that it would not be necessary to obtain the Regional Council or the Council's consent for deductions other than those enumerated above, if:

- (i) deductions otherwise comply with this clause;
  - (ii) the employee signs a standard Council acknowledgment of debt;
  - (iii) the amount of the deduction is limited to 30% of the earnings, excluding statutory deductions; and
  - (v) a copy of the acknowledgment of debt is given to the employee.
- (11) Every employee shall, if so required by his employer, upon receiving payment of his earnings, acknowledge receipt thereof in writing.
- (12) If an employer, owing to clerical or accounting or administrative error, or miscalculation, pays an employee any remuneration or leave pay in excess of the amount legally payable, the employer shall be entitled to recover the amount of the overpayment by deduction from subsequent wages or earnings or leave pay, subject to the following conditions:
- (a) The deductions may be made from one or more payments of earnings or leave pay, but no one deduction may exceed 20 per cent of the payment from which it is deducted;
  - (b) no such deduction shall be made unless the employer, in writing, notifies the employee at the time of the first deduction, and the Council within seven days of the first deduction, of the circumstances under which the overpayment was made, the amount thereof, and the amount of the proposed deduction or deductions.

### **3.9 DIFFERENTIAL RATES OF WAGES AND EMPLOYMENT ON JOURNEYMAN'S WORK**

#### **(1) *Employment on journeyman's work -***

- (a) No employer shall employ or utilise any person, other than a journeyman, B/A journeyman, operative engine assembler, apprentice or trainee under the Skills Development Act, 1998, on journeyman's work:

Provided that this clause shall not be deemed to prohibit the employment of other classes of employees, at the wages prescribed for such classes, on the operations and in the circumstances specified in the definitions of such classes:

Provided further that such employment is not a contravention of the provisions of clause 3, Chapter 1, Division C.

- (b) No employee shall instruct or permit any employee (working under his supervision), other than a journeyman, B/A journeyman, operative engine assembler, apprentice or trainee under the Skills Development Act, 1998, to perform journeyman's work.
  - (c) No employee, other than a journeyman, B/A journeyman, operative engine assembler, apprentice or trainee under the Skills Development Act, 1981, shall perform journeyman's work.
- (2) **Legal employment** - An employer who, without contravening subclause (1) of this clause, requires or permits a member of one class of his employees to perform for longer than 60 minutes in the aggregate on any day, either in addition to his own work or in substitution therefor, work of another class for which either -
- (a) a wage higher than that of his own class; or
  - (b) a rising scale of wages terminating in a wage higher than that of his own class,
- is prescribed shall pay to such employee in respect of that day -
- (i) in the case referred to in paragraph (a), not less than the daily wage calculated at the higher rate; and
  - (ii) in the case referred to in paragraph (b), not less than the daily wage calculated on the notch in the rising scale immediately above the wage which the employee was receiving for his ordinary work.



- (3) Any person that makes an arbitration award regarding the interpretation or application of clause 3.9(1) of Division A may award to the Council an amount not exceeding the difference between the amount which the employer paid to the employee and the amount which the employer would have paid if the contravention or failure had not occurred provided that if the arbitrator is unable on all the evidence to determine the difference exactly he or she shall to the best of his or her ability estimate the difference. The Council must upon receipt of that amount deposit the amount into a Special Account established by the Council for that purpose.

### 3.10 PIECE WORK

- (1) Piece-work may not be given out or performed unless with the consent of the Regional Council concerned.
- (2) Whenever piece-work is performed, an employee so employed shall be paid the full amount earned by him under the piece-work rates agreed to between himself and his employer: Provided, however, that no employee shall be paid less than the prescribed amount which he would have earned if he had been employed on a time-work basis for the period taken to perform the work concerned.
- (3) Apprentices shall not on any account be employed on piece-work.

### 3.11 COMMISSION WORK

- (1) The basis on which the commission that an employer contracts to pay an employee, in addition to his wage, shall be specified in writing.
- (2) When an employer contemplates to change or cancel the basis of the commission stipulated in (1), the employer shall:
  - (a) Give 4 weeks' written notice of his intention to change or cancel the basis of the contract, to a motor vehicle sales person or traveller and if the employee affected is a part salesperson or service supply sales person, the notice period shall be one week.
  - (b) The written notice shall contain at least the following information:
    - (i) the reasons for the proposed changes or cancellation;
    - (ii) the date when the said changes or cancellation are likely to take effect.

- (c) Allow the employee/s an opportunity to make representations about any matter dealt within the notification and consider such representation before any change.

### 3.12 STAND-BY AND CALL-OUT ALLOWANCES

- (1) The payment of standby and call-out allowances shall be applicable only to Division B employees and journeymen employed in establishments registered under Chapters I or IV of Division C of this Agreement.
- (2) **Standby allowance:**
  - (a) Any employer may require a journeyman or Division B employee to 'standby' on any Saturday and/or Sunday: Provided that such employee shall be entitled to notice, in writing, of not less than one week to that effect.
  - (b) Whenever an employee is required to 'stand by' in terms of this subclause he shall be paid, irrespective of whether he is required to work while on 'standby', a 'standby' allowance of not less than R80,52 in respect of each day on which he is required to so 'standby'.

Provided that whenever he is required to work whilst on 'standby', the 'standby' allowance shall not be set off against the remuneration payable in terms of this Agreement for such work.
  - (c) An employee who is required to 'standby' shall present himself for duty within one hour of being called and, where he fails to present himself, the 'standby' allowance shall be forfeited.
  - (d) The provisions of this clause shall not apply to employees who before the close of business on Friday enter into an Agreement with their employers to supervise shift changes of and/or collect cash from forecourt attendants on the succeeding Saturday or Sunday.
- (3) **Call-out allowance:**
  - (a) An employer may call out a journeyman or Division B employee to work prior to his normal starting or after his normal finishing time on any day of the week: Provided that a call-out allowance of R86,27 shall be paid in each case where such employee is so called out: Provided further that a call-out allowance shall not be paid to an employee in respect of the first call-out whilst such employee is paid a standby allowance for that day.

- (b) An employee who is so called shall present himself for duty within one hour of being called and where he fails to present himself, the call-out allowance shall be forfeited.
- (c) Whenever an employee is called out, the call-out allowance shall not be set off against remuneration payable in terms of this Agreement for such work.

### 3.13 TRAVELLING ALLOWANCES

- (1) An employer who requires an employee, other than a traveller, supply sales person or service supply salesman, to work away from the establishment where he is ordinarily employed shall provide or arrange for the mode of transport, and shall pay such employee -
  - (a) whilst travelling as a passenger, at ordinary rates of wages, not exceeding, however, one day's pay in respect of every 24 consecutive hours' travelling time;
  - (b) whilst on the job or whilst travelling in a vehicle which he is required to drive, at ordinary rates of wages for any part of the work and/or driving which is done during the normal hours of the establishment in which he is employed, and at overtime rates as laid down in this Agreement for any part of the work and/or driving which is done outside of such normal hours;
  - (c) second-class return fare if he travels by train and a refund of the cost of his meals and bedding on the train;
  - (d) a refund of board and lodging when on the job or travelling to and from the job;
  - (e) not less than R65 per night for such nights as he is prevented by his work from returning to his home.
- (2) A traveller, supply sales person or service supply salesman who -
  - (a) on any journey undertaken in the performance of his duties is absent from his place of residence and his employer's establishment for any period in excess of six consecutive hours, shall be -
    - (i) reimbursed by his employer against receipt or dockets for all expenses reasonably incurred by him for the provision of any meals and refreshments for himself during such period of absence not extending over a night; or

- (ii) paid a subsistence allowance or reimbursed by his employer against receipts or dockets for expenses reasonably incurred by him in respect of refreshments, meals and accommodation during each night of absence ('night' meaning for the purpose hereof the period between 23:00 and 04:00), not less than R135 for each night or reimbursement of actual expenditure, whichever is the greater;
  - (b) uses his employer's motor vehicle or who is required to travel by train or any other but his own means of conveyance, shall be reimbursed by his employer for all reasonable transport expenses incurred by him in the performance of his duties, and for the purposes of this paragraph the overnight garaging of a motor vehicle shall be deemed to be a transport expense
  - (c) is required or permitted to provide a motor vehicle for the performance of his duties, shall be paid by his employer an inclusive transport allowance in respect of each kilometre travelled in such vehicle in the performance of his duties; such transport allowance shall be as determined by the Council from time to time.
- (3) Any allowances and expenses payable to a traveller, supply sales person or service supply salesman in terms of subclause (2) shall be paid by his employer within seven days of such employee's written claim therefor: Provided that the employee shall not submit more than one claim for any such allowances and expenses in any one week, nor shall he submit such claims at intervals between claims of more than one month.
- (4) The provisions of this clause shall not apply to mobile workshops: Provided that bedding and cooking equipment are supplied by the employer.

## **CLAUSE 4 – REGULATION OF WORKING HOURS**

### **4.1 HOURS OF WORK**

#### **A. Division B employees**

- (1) (a) Subject to the provisions of subclause (4) of this clause, the ordinary hours of work of any employee, other than a part-time employee, shall notwithstanding anything to the contrary contained in this subclause, not exceed 45, excluding meal intervals, in any one week, and eight, excluding meal intervals, on any one day: Provided that:

- (i) in any establishment where on one day in every week the ordinary hours of work are not more than five, any employee may be required or permitted to work for an additional period not exceeding half an hour on each of the remaining days of the week; or
- (ii) an employee who does not ordinarily work on more than five days a week may on any working day be required or permitted to work for an additional period of 15 minutes per day to a maximum of 60 minutes per week;
- (iii) subject to the provisions of paragraph (1)(a)(i) and (ii) of this clause, an employee's ordinary hours of work shall terminate not later than 20:00 on any day and subject to the provisions of subclause (2)(a) of this clause, shall be continuous.
- (iv) employees may, subject to their consent and subclause (2)(b) hereof, work flexible working hours over seven days a week and for hours beyond 08:00 to 17:00.

**Note:**

1. Employers may apply for exemption from the provisions of subclause (1)(a)(iii) of this clause, which exemption shall be subject to compliance with predetermined guidelines.
  2. Any change to an employee's ordinary hours of work, which prevailed at the date of publication of this Agreement, shall be subject to mutual Agreement having been reached between himself and his employer and no intimidation shall be exercised by an employer to reach such Agreement.]
- (b) The ordinary hours of work of a part-time employee shall not exceed five on any day.
- (2) No employer shall require or permit any employee -
- (a) to work for a continuous period of more than five hours without an uninterrupted interval of less than one hour:

Provided that, for the purposes of this paragraph, a period of work interrupted by a period of less than one hour shall be deemed to be continuous:

Provided further that an employer may agree with those of his employees who normally work on only five days each week that the uninterrupted interval referred to in paragraph (a) of this subclause shall be reduced to not less than 30 minutes, but before a reduced interval may be put into operation the employer shall enter the details of the Agreement to the reduced interval, including the terms thereof and the employee's consent thereto, in a proper record to be kept for inspection purposes;

- (b) to work his ordinary weekly hours over more than five and a half days in any week.
- (3) All employees, except travellers and their assistants, shall be entitled to and be granted a rest interval of 10 minutes at as nearly as practicable to the middle of each morning and afternoon work period, and such interval shall, for the purpose of calculating wages, be reckoned as part of the ordinary working hours.
- (4) Whenever any traveller or his assistant is at any time during the course of his employment required to work away from the establishment of his employer, the provisions of subclause (2) of this clause shall not apply and the hours of work stipulated in subclause (1)(a) of this clause may for purposes of such work be extended by up to 15 minutes in a day but not more than 60 minutes in a week.
- (5) For the purposes of this clause, an employee who is arrested or detained by the police for any offence or suspected offence shall, for the period during which he is under arrest or so detained and unable to continue his employment, be deemed to have absented himself without permission.

#### **All other employees**

- (1) With the exception of the employees referred to in Clause 2 (1)(c)(i) and (ii) of this Division, the ordinary hours of work of a workshop employee shall not exceed 45 hours, excluding meal intervals, in any one week and not more than nine and a quarter hours, excluding a meal interval, on any one day.
- (2) (a) (i) A workshop employee shall not be required or permitted to work for a continuous period of more than six hours without being granted an uninterrupted meal interval of at least one hour.

For the purposes of this paragraph, a period or periods of work interrupted by intervals of less than one hour shall be deemed to be a continuous period. An employer may, however, agree with his employees that the said uninterrupted meal break may be reduced to not less than thirty minutes.

- (ii) Whenever an Agreement has been reached between the employer and his employees to reduce the meal break to 30 minutes, such Agreement shall be recorded in writing and be kept on record for inspection purposes.
- (b) Workshop employees shall not be required to work their ordinary weekly hours over more than six days in any week, nor shall other employees be required to work their ordinary weekly hours over more than six days in any week.
- (3) In respect of establishments registered under Chapters I and IV of Division C of this Agreement only, the following shall apply:-
  - (a) the ordinary hours of work of workshop employees shall be contained between the hours of 06:00 and 23:00, subject to the provisions relating to the payment of shift allowances;
  - (b) a shift shall run for a continuous period of nine hours excluding meal breaks; provided that overtime shall be paid only after 45 hours in any week having been completed, irrespective of the hours of work per day and provided further that this provision shall not apply in cases where an employee is absent from work for part of the week due to proven illness, annual leave, family responsibility leave or absence with the consent of the employer.
  - (c) a shift shall run for a continuous period of nine hours excluding meal breaks after which overtime shall be payable;
  - (d) the determination of a shift pattern shall be arranged by mutual Agreement between the employer and his employees;
  - (e) no employee shall be required or permitted to work more than one shift in any 24-hour period, with the exception of shift changes;
  - (f) employees may, subject to their consent, work more than two Sundays per month;

- (g) a 10% shift allowance shall be paid in respect of shifts commencing after 14:00: Provided that this paragraph shall not be applicable to forecourt attendants;
  - (h) transport for employees whose shifts ends after 20:00 may be arranged by mutual Agreement between the employer and his employees: Provided that where an employer and his employees cannot reach mutual Agreement, the Regional Council concerned may be requested to assist in arriving at such an Agreement;
  - (i) an employee shall be granted a rest period of not less than 36 hours after having worked his ordinary hours per week.
  - (j) employees may, subject to their consent and subclause (2)(b) hereof, work flexible working hours over seven days a week and for hours beyond 08:00 to 17:00.
- (4) All workshop employees, except service supply salesmen (employed only in establishments registered under Chapters I and IV of Division C of this Agreement), shall be entitled to and be granted a rest interval of ten minutes as near as practicable to the middle of each morning and afternoon work period and such interval shall, for the purpose of calculating wages, be reckoned as part of the ordinary working hours.
- (5) Whenever any service supply salesperson is at any time during the course of his employment required to work away from the establishment of his employer, the provisions of subclause (2) of this clause shall not apply and the hours of work stipulated in subclause (1) of this clause may for purposes of such work be extended by up to 15 minutes in a day but not more than 60 minutes in a week.
- (6) Notwithstanding anything to the contrary contained in this Agreement, it shall be permissible, whenever in any parking garage a night parking service is conducted, to employ general workers between 18:00 on any day and 08:00 on the next day for the purposes of night parking services only, for a maximum of seven hours per night on seven successive nights: Provided, however, that after working 14 consecutive nights any such general worker shall be entitled to one free night on full pay as if he had on such night worked his average ordinary working hours for that night of the week, and if such employee does not avail himself of this right, he shall instead be paid one seventh of his normal weekly wage in addition to his ordinary wage.



- (7) Whenever a general worker is employed on night parking services he shall be paid by his employer not less than one week's wages as laid down in clause 2 of Chapter I of Division C of this Agreement for the first 45 hours of his employment in any such week and for any hours worked in excess of 45 hours in any week such general worker shall be paid at a rate of not less than one and a half times his ordinary wage.
- (8) Subject to the provisions of clause 3.8(10) of this Division relating to absences from employment and clause 4.6 of this Division relating to shorttime, whenever:
- (a) any general worker or forecourt attendant employed in an establishment that is registered under Chapter I of Division C of this Agreement: or
  - (b) any grade of operative or general worker employed in an establishment that is registered under Chapter II of Division C of this Agreement: or
  - (c) any employee other than a journeyman or machine setter employed in an establishment that is registered under Chapter III of Division C of this Agreement: or
  - (d) any grade D operative employed in an establishment that is registered under Chapter IV of Division C of this Agreement: or
  - (e) any employee other than a journeyman or brakedrum skimmer or machine setter employed in an establishment that is registered under Chapter V of Division C of this Agreement,
- works for less than 45 hours in any one week owing to –
- (i) the usual working hours of the establishment being less than 45;
  - (ii) the employer being unable to regulate the shifts of such employee to 45 hours; and/or
  - (iii) any reason other than his absenting himself without the employer's permission,

such employee's week shall be deemed to be 45 hours.

- (9) For the purpose of this clause, an employee who is arrested or detained by the police for any offence or suspected offence shall, for the period during which he is under arrest or so detained and unable to continue his employment, be deemed to have absented himself without permission.
- (10) Notwithstanding the provisions of this clause, an employer and employee may, in Agreement with each other, compress the 45-hour working week into four days: Provided that the normal working hours shall not exceed 12 hours in any one day.

## 4.2 OVERTIME

### A. Division B employees

- (1) (a) Where any employee is required or permitted to work in excess of the days or hours prescribed in clause 4.1 of this Division, any such excess shall be overtime and the employee shall be paid for the overtime at the rates specified in subclause (8) of this clause: Provided that overtime shall not extend beyond 23:00 Mondays to Fridays, and 18:00 on Saturdays.
- (b) The provisions of this clause shall be subject to the provisions of clause 4.3 dealing with work on Sundays.
- (2) No employee shall be required or permitted to work overtime for more than 10 hours in any one week.
- (3) An employee may be required to work an additional 10 hours' overtime over and above the 10 hours referred to in subclause (2) of this clause, provided a licence of exemption has been obtained as follows:
  - (a) The employer shall submit an application to the Regional Secretary of the Regional Council;
  - (b) the Regional Secretary of the Regional Council shall consult with the employers' organisation and the trade union representing the employees concerned on the merits of the application for exemption; and

- (c) if approved, the Regional Secretary of the Regional Council shall issue a suitable licence of exemption (subject to the provisions of this subclause that authorise the additional overtime to a maximum of 10 hours per week); and
  - (d) the Regional Secretary shall submit the licence of exemption to the Regional Council for ratification at the next meeting of the Regional Council and, failing ratification, the licence of exemption shall be null and void.
- (4) The maximum of the total overtime (overtime and the additional overtime together) shall not exceed 60 hours in any period of four continuous weeks.
- (5) Whenever an employee is requested to work overtime in excess of 10 hours (additional overtime) his employer shall notify the employee not less than 72 hours in advance of the intention to work such additional overtime.
- (6) Notwithstanding any other provision, no employee shall qualify for overtime payment in respect of any week during which he has worked less than 45 hours. The required 45 hours to qualify for overtime shall be subject to a *pro rata* reduction if any of the following occur in a particular week:
  - (a) Statutory public holidays during the week referred to in clause 9.6 of Division A; and/or
  - (b) absence during the week with the permission or condonation of the employer; and/or
  - (c) the commencement of a new contract of employment during that week
- (7) An employee who is aggrieved by the employer's non-condonation of his absence for purposes of calculating the 45 hours for purposes of calculating overtime may appeal to a Regional Council against the employer's decision. The Regional Council may, after considering any reasons that may be submitted in support of such decision, confirm that decision or give such other decision as in its opinion ought to have been given in that case. The employee shall have the right to further appeal against the Regional Council's decision to the National Council, whose decision shall be final.

- (8) An employee shall not be paid less for overtime than –
- (a) one and a half times the ordinary wages for overtime worked between 06:00 and 23:00;
  - (b) double the ordinary wages for overtime worked between 23:00 and 06:00 and/or on statutory public holidays.
- (9) No employee shall be required or permitted to work overtime in excess of two hours after the completion of his ordinary working hours on any particular day, unless such employee has been –
- (a) provided with an adequate meal prior to the commencement of such overtime; or
  - (b) paid a minimum allowance of R10,00 sufficiently in advance to enable such employee to obtain a meal prior to the commencement of the overtime work.
- (10) Notwithstanding anything to the contrary contained in this clause, no employee shall be required or permitted to work –
- (a) overtime for purposes of stock-taking for more than 15 hours in any one year or 15 hours spread over a period of more than 12 consecutive days;
  - (b) overtime for purposes other than stock-taking in excess of four hours on any one day:

Provided that whenever any employee is required to work overtime for purposes of stock-taking, his employer shall give written notice of not less than seven days of the intention to work such overtime to the employee concerned.

- (11) Subclause (10) shall apply to workshop administrative staff, clerical employees employed by filling and/or service stations and supply sales persons.
- (12) Notwithstanding any provision to the contrary, no employee shall be required to work overtime other than on a voluntary basis, free from any form of coercion, intimidation or victimisation.

**B. All other employees**

- (1) For the purpose of this Clause, "overtime" means all time worked, other than on Sundays, in excess of the number of ordinary hours of work prescribed in Clause 4.1 of this Division.
- (2)
  - (a) With the exception of the employees referred to in Clause 2.1(c)(i) & (ii) of this Division, no employee shall be required or permitted to work overtime for more than 10 hours in any one week.
  - (b) An additional 10 hours overtime may be worked by workshop employees employed in establishments registered under Chapters II, III and V of Division C, subject to the following conditions:-
    - (i) the Regional Secretary of the Regional Council concerned shall consult with the employers' organisation and trade union representing the employees concerned, and if approved, issue a suitable licence of exemption authorising the additional overtime;
    - (ii) all overtime prescribed in subclause (2)(a) and (b) of this clause shall be limited to 60 hours in any period of four continuous weeks;
    - (iii) licences of exemption issued shall be submitted to the Regional Council concerned for ratification at the next ensuing meeting of the Regional Council;
    - (iv) whenever a workshop employee is requested to work overtime in excess of 10 hours, his employer shall give notice of not less than 48 hours of the intention to work such additional overtime to the employee concerned.
- (3) Notwithstanding anything to the contrary contained in this clause, workshop administrative staff as defined in this Division, shall not be required or permitted to work -
  - (a) overtime on stocktaking for more than 15 hours in any one year or spread over a period of more than 12 consecutive days;
  - (b) overtime for purposes other than stocktaking for more than four hours on any one day;

Provided that whenever any employee is required to work overtime for purposes of stocktaking, his employer shall give the employee concerned notice in writing of not less than 7 days of the intention to work such overtime.

- (4) The minimum rates at which employees shall be remunerated for overtime worked shall be as follows:
- (a) In respect of workshop employees and grade I employees employed in establishments registered under Chapters I and IV of Division C of this Agreement -
    - (i) one and a half times his ordinary rate of remuneration for overtime worked between 06:00 and 23:00;
    - (ii) double his ordinary rate of remuneration for overtime worked between 23:00 and 06:00.
  - (b) In respect of workshop employees and chars employed in establishments registered under Chapters II and III of Division C of this Agreement -
    - (i) in the case of a journeyman: one and a half times his ordinary rate of remuneration;
    - (ii) in the case of an employee other than a journeyman: one and a third times his ordinary rate of remuneration.
  - (c) In respect of all workshop employees and chars employed in establishments registered under Chapter V of Division C of this Agreement: One and a half times their normal rate of pay for overtime.
- (5) Grade I and grade 2 employees, drivers of light vehicles and drivers of heavy vehicles, employed in establishments registered under Chapters I and IV of Division C of this Agreement and all employees employed in establishments registered under Chapters II, III and V of Division C, shall not qualify for overtime in respect of any week during which they worked less than 45 hours, this figure being subject to *pro rata* reduction in respect of the following that occur during a particular week:
- (a) A statutory public holiday.

- (b) Absence with the permission or condonation of the employer: Provided that an employee who is aggrieved by his employer's non-condonation of his absence may appeal to a Regional Council against the employer's decision applied to him, and the Regional Council may, after considering any reasons that may be submitted for such decision, confirm that decision or give such other decision as in its opinion ought to have been given in such case; in the event of the employee not being satisfied with the Regional Council's decision he may appeal against it to the National Council, whose decision shall be final.
  - (c) the beginning of a new contract of employment.
- (6) The provisions of clause 4(1)(b) of this Division and sub-clause (2) of this clause, shall not apply to any employee employed in an establishment registered under Chapters II, III and V of Division C of this Agreement, while employed on work which, owing to unforeseen circumstances such as fire, storm, accident, epidemic, act of violence, theft, or a breakdown of plant or machinery, must be done without delay or on any work in connection with the overhauling or repairing of plant or machinery that cannot be performed during ordinary working hours.

#### 4.3 SUNDAY WORK

##### A. Division B employees

##### (1) *The right to work on Sundays –*

- (a) For all employees Sundays shall be regarded as normal working days.
- (b) Employees may, subject to their consent, work more than two Sundays per month.

##### (2) *Hours of work on Sundays –*

The hours of work on Sundays shall be restricted to the hours between 06:00 and 18:00.

(3) ***Pay for Sunday work –***

The employer of an employee who works on a Sunday shall pay him at the rate of double the employee's wage for each hour worked, unless the employee ordinarily works on a Sunday, in which case the employer shall pay the employee at one and one-half times the employee's wage for each hour worked.

(4) Whenever any employee works not more than four hours on a Sunday to supervise shift changes and/or to collect cash from forecourt attendants, his employer shall pay him -

- (a) two hours' wages for work up to one hour;
- (b) an additional two hours' wages for every additional hour or part of an hour worked up to four hours.

(Note - An employee who on a Sunday does stock-taking or work of an emergency nature or who works for more than four hours on the duties specified in this subclause shall be paid in accordance with subclause (3) of this clause.)

B. **All other employees**

(1) ***The right to work on Sundays:*** For all employees Sundays shall be regarded as normal working days.

(2) ***Pay for Sunday work:-***

- (a) Whenever any employee other than a general worker, forecourt attendant and an employee in vulcanising establishments works on a Sunday, his employer shall pay him at the rate of double the employee's wage for each hour worked, unless the employee ordinarily works on a Sunday, in which case the employer shall pay the employee at one and one-half times the employee's wage for each hour work.
- (b) When any general worker or employee in a vulcanising establishment works his normal shift on any Sunday, his employer shall pay him not less than one and one-third his ordinary hourly wage in respect of each hour or part of an hour thereof and double his ordinary hourly wage for each hour or part of an hour thereafter but such general worker or employee in a vulcanising establishment shall not be entitled to a day's holiday in respect of such Sunday shift.



- (c) When any forecourt attendant works his normal shift on any Sunday, his employer shall pay him not less than one-and-one-half his ordinary hourly wage in respect of each hour or part of an hour thereof and double his ordinary hourly wage for each hour or part of an hour thereafter but such forecourt attendant shall not be entitled to a day's holiday in respect of such Sunday shift.

#### 4.4 SHIFT WORK

- (1) The following provisions shall apply to shifts worked in a vulcanising establishment registered under Chapter I of Division C of this Agreement and in establishments registered under Chapters II, III and Chapter V of Division C of this Agreement:
  - (a) No normal shift shall exceed nine and a quarter hours;
  - (b) not less than eight hours shall elapse between successive shifts of any employee;
  - (c) where an employee is employed between 18h00 and 06h00 his employer shall pay him at his ordinary rate of remuneration, plus 10 percent for each hour or part of an hour worked between these times;
  - (d) subject to subclause (3) of this clause, time worked by an employee after the completion of his normal shift shall, subject to the proviso to clause 4.1.B(6) of this Division, be regarded as overtime and be paid for in accordance with the overtime rates prescribed in the said clause.
- (2) In respect of a vulcanising establishment registered under Chapter I of Division C and a vehicle body building establishment registered under Chapter II of Division C, no shifts shall be worked between 18:00 on Saturday and 06:00 on Monday.
- (3) Where an employee's ordinary shift or part of it is worked on a Sunday in an establishment registered under Chapters III and V of Division C, the employee concerned shall be remunerated for such shift as follows:
  - (a) if the major portion of such shift is worked on a Sunday, the entire shift shall be deemed to have been worked on a Sunday and the employee shall be paid for it in terms of clause 4.3 of this Division;

- (b) if the lesser portion of such shift is worked on a Sunday, the entire shift shall be deemed to have been worked on a weekday, and the employee shall, subject to subclause (1) of this clause, be remunerated in terms of such shift at his ordinary rate of remuneration.

#### 4.5 NIGHT WORK

- (1) An employer who requires an employee to perform work on a regular basis after 23:00 and before 06:00 the next day must -
  - (a) inform the employee in writing, or orally if the employee is not able to understand a written communication, in a language that the employee understands -
    - (i) of any health and safety hazards associated with the work that the employee is required to perform; and
    - (ii) of the employee's right to undergo a medical examination in terms of subclause (b);
  - (b) at the request of the employee, enable the employee to undergo a medical examination, for the account of the employer, concerning those hazards -
    - (i) before the employee starts, or within a reasonable period of the employee starting, such work; and
    - (ii) at appropriate intervals while the employee continues to perform such work; and
  - (c) transfer the employee to suitable day work within a reasonable time if -
    - (i) the employee suffers from a health condition associated with the performance of night work; and
    - (ii) it is practicable for the employer to do so.
- (2) For the purposes of subclause (1), an employee works on a regular basis if the employee works for a period of longer than one hour after 23:00 and before 06:00 at least five times per month or 50 times per year.

#### 4.6 SHORT-TIME

- (1) Subject to the provisions of subclause (3) of this clause and notwithstanding anything to the contrary in this Agreement, an employer may employ his employees on short-time:

Provided that -

- (a) where such short-time is owing to slackness of trade and/or shortage of materials, if an employee is required not to attend the establishment on a particular day, the employer shall notify him of the fact not later than the day immediately preceding the day on which he is not required to work, and where the employee is expressly required by the employer to report at the establishment on any particular day for the purpose of ascertaining whether work will be available, he shall, if no work or if work of less than four hours' duration is available, be paid not less than four hours' in respect of such day;
  - (b) in respect of employees employed in establishments registered under Chapters III and V of Division C of this Agreement, no deduction shall be made in the case of short-time owing to a power failure or a general breakdown of plant or machinery, in respect of the first hour not worked, unless the employer has given his employee notice not later than on the immediately preceding day that no work will be available.
- (2) In the event of short-time being worked an employer shall not be required to pay wages to his employees except for the period actually worked or as otherwise expressly provided for in subclause (1) of this clause.
- (3) An employee may not be placed on short-time on any of the days that are public holidays in terms of section 1, or declared as such under section 2 of the Public Holidays Act, 1994.
- (4) Payment for public holidays during short-time shall be at short-time rates provided four calendar days' notice has been given to the employees.
- (5) An apprentice may not be placed on short-time except with the approval of Merseta.
- (6) In the event of any employee being placed on short-time in excess of four weeks, the employer concerned shall provide the Regional Council with jurisdiction over the establishment with the following information in writing:

- (a) The names of all employees placed on short-time;
  - (b) the reasons for extending the working of short-time beyond four weeks;
  - (c) the date on which short-time commenced; and
  - (d) the estimated duration of short-time.
- (7) In the event of short-time exceeding eight weeks the Regional Secretary shall report the matter to the Regional Council concerned.
- (8) An apprentice and trainee undergoing training under the Skills Development Act 1998, may not be placed on short-time except with the approval of the Registrar of Manpower Training.

#### **4.7 SPECIAL PROVISIONS RELATING TO WATCHMEN**

- (1) The following special provisions shall, notwithstanding anything to the contrary contained in this Agreement, apply to watchmen:
- (a) The normal hours of work of such employees shall not exceed 12 hours per shift and 84 hours per week and may be worked on any day of the week, including Sundays;
  - (b) for any time worked in excess of 12 hours per shift he shall be remunerated at the rate of one thirtieth of his weekly wage for each additional hour's work;
  - (c) after working seven consecutive shifts any such employee shall be entitled to one free shift on full pay as if he had worked his average ordinary working hours for that shift of the week: Provided that if such employee does not avail himself of this right, he shall instead be paid one seventh of his normal weekly remuneration in addition to his ordinary remuneration;
  - (d) a watchman shall be entitled to leave on full pay on all days which are public holidays in terms of section 1 or declared as such under section 2 of the Public Holidays Act, 1994 (Act 36 of 1994), and if he is required to work on any of these days his employer shall pay him, in addition to one seventh of his weekly wage, one eighty-fourth of his weekly wage for each hour or part of an hour so worked.

- (2) Every employer shall provide every watchman with -
- (a) any suitable and acceptable means of self-protection, excluding firearms;
  - (b) a police whistle;
  - (c) suitable provision for the warmth of such employee.
- (3) The minimum wage which shall be paid by an employer to a watchman shall be -
- (a) from 7 February 2011 31 August 2011 – R667,73 per week
  - (b) For the period 1 September 2011 to 31 August 2012 – R721,15 per week
  - (c) For the period 1 September 2012 to 31 August 2013 – R771,63 per week

Provided that whenever, on the instructions of his employer, a watchman carries out the physical searching of any person or vehicle entering or leaving his employer's premises, he shall be paid an allowance of R5,00 per week in addition to his normal wage.

- (4) Subject to the provisions of subclause (5)(a) of this clause, three weeks' leave on full pay shall be granted to all watchmen who have completed 12 months of continuous employment with the same employer since the date of engagement or from the date on which the previous leave fell due, whichever is the later.
- (5) Subject to the provisions of subclause (5)(a) of this clause, four weeks' leave on full pay shall be granted to all watchmen who on or after 1 December 1990 have completed 120 months or more continuous employment with the same employer since the date of engagement, subject to the following condition:
- (a) Annual leave may be split by mutual Agreement between the employer and employee, provided that no intimidation is exercised to obtain such an Agreement.

**CLAUSE 5 : LEAVE****5.1 ANNUAL LEAVE AND ACCRUED LEAVE PAY****(1) Definitions**

For the purposes of this clause:-

- (a) "leave cycle" means the period during which an employee earns three week's leave in terms of subclause (2) of this clause;
- (b) the terms "employment" and "shift" shall be deemed to include -
  - (i) shifts which are of shorter duration than those permitted in terms of this Agreement, because -
    - (aa) the employee arrived late at his place of work, but such lateness did not exceed half-an-hour; or
    - (bb) short-time was worked; or
    - (cc) such shorter shifts were worked with the permission of the employer;
  - (ii) shifts that the employee concerned normally would have worked but did not work because he was -
    - (aa) absent on paid leave in terms of this Agreement;
    - (bb) absent from work on the instructions or at the request of his employer;
    - (cc) absent from work owing to sickness or accident amounting in the aggregate to a period not exceeding 30 days in any leave cycle;
    - (dd) absent from work on any public holidays referred to in clause 9.6 of this Division;

Provided that an employee who after the expiration of his annual leave terminates his employment by desertion shall have no claim in respect of subparagraph (b)(i) of this definition;

- (c) "remuneration" means an employee's wages as defined in this Agreement, plus any bonus regularly paid to the employee, the amount of such bonus being deemed to be the average amount received by or accrued to an employee in respect of the period of 13 weeks immediately preceding the date the employee goes on annual leave or terminates his employment, or if a period of less than 13 weeks has been worked, the average amount received by or accrued to an employee in respect of the number of weeks actually worked.

Provided that in respect of a **motor vehicle salesperson and supply salesperson**, "remuneration for the purposes of calculating accrued leave pay shall mean an employee's wage as defined in the Agreement, plus any commission on sales regularly paid to the employee, the amount of such commission being deemed to be the average amount received by or accrued to an employee in respect of the period of 52 weeks immediately preceding the date the employee goes on annual leave or terminates his employment, or if a period of less than 52 weeks has been worked, the average amount received by or accrued for an employee in respect of the number of complete weeks actually worked.

[**Note** - A "bonus" regularly paid to an employee in terms of this definition does not include commission].

(2) **Annual Leave**

(a) **Three weeks' leave**

Subject to the provisions of subparagraph (b)(i)(aa) of this clause, three consecutive weeks leave on full pay shall be granted to all employees, including apprentices and trainees undergoing training under the Skills Development Act, 1998, who have completed the period of continuous employment with the same employer, as set out in the schedule below, since the date of their engagement or from the date on which their previous annual leave fell due, whichever is the later.

(b) **Four weeks' leave**

Subject to the provisions of paragraph (b)(aa) of this clause, four weeks' leave on full pay shall be granted to all employees who on or after 1 December 1990 have completed 8 or more periods of continuous employment with the same employer, as set out in the schedule below, since the date of their engagement, subject to the following conditions:

(i) **Chapter III employees only**

Provided that in the case of establishments registered under Chapter III of Division C of this Agreement, the annual leave shall be 4 weeks leave on full pay after 5 years of service. This provision will be effective as from 25 September 2007 and will not impact on the accrued years of service and/or leave cycle.

(ii) **All employees in the Industry**

- (aa) Annual leave may be split by mutual Agreement between the employer and employee, provided that no intimidation is exercised to obtain such an Agreement;
- (bb) the provisions of this clause relating to accrued leave pay, shall apply *mutatis mutandis* in the case of employees who qualify for four weeks' annual leave:

**SCHEDULE**

- (i) Weekly-paid employees, other than general workers employed at a parking garage exclusively on the duties connected with night parking services –
  - normally working a five-and-a-half day week: 313 shifts, excluding overtime;
  - normally working a five-day working week: 261 shifts, excluding overtime.
- (ii) Monthly paid employees and general workers employed at a parking garage exclusively in the duties connected with night parking services: 12 months.



**(3) Commencement of Annual Leave**

Annual leave shall become due immediately an employee has completed the qualifying period specified in subclause (2) of this clause but it may be taken before or after it becomes due if -

- (a) the circumstances of the employer's business so require: or
- (b) the employer and the employee so agree:

Provided that annual leave shall in no circumstances be taken more than two months before the due date, nor delayed for more than four months after the due date, unless the employee and the employer concerned have, before the expiration of such period of four months, agreed thereto, in writing, and shall not be delayed by more than six months after the due date.

**(4) Calculation of Annual Leave**

- (a) Pay for annual leave shall be calculated at the rate of remuneration the employee is receiving at the date on which he proceeds on his annual leave: Provided that this shall not be less than the rate prescribed for the relevant category of employee in the relevant Chapter or Division B of the Agreement, and shall be paid to him by the employer on the last working day prior to the beginning of his leave.

**(Note:** Pay for annual leave in respect of a motor vehicle sales person or supply sales person shall be payable in accordance with subclause (9)(b) of this clause)

- (b) The pay due to an employee for annual leave shall be paid by the employer on the last working day prior to the beginning of the employee's leave if the employee requests payment before proceeding on leave.

**(5) Public Holiday falling within annual leave**

- (a) If any of the paid public holidays referred to in clause 9.6 of this Division falls on a working day within the period of leave of an employee, the employer shall either-
  - (i) add one working day on full pay to the said period of leave in respect of each such paid public holiday; or

- (ii) pay to the employee in question one normal day's pay in lieu of leave on the pay-day immediately following such employee's period of leave.

**(6) Prohibition relating to Annual Leave**

- (a) Annual leave shall not be concurrent with any period during which the employee is under notice of termination of employment.
- (b) Sick leave shall not be concurrent with any period during which the employee is on annual leave, i.e. sick leave cannot be taken whilst on annual leave.
- (c) Subject to subclause (6)(a) of this clause, an employer shall permit an employee, at the employee's written request, to take leave during a period of unpaid leave which permission shall not unreasonably be withheld.
- (d) An employer may reduce an employee's entitlement to annual leave by the number of days of occasional leave on full pay granted to the employee at the employee's request in that leave cycle.
- (e) No employee shall engage in his normal occupation during the period of his leave and no employer shall require or knowingly permit any employee to work in the Industry during the period of his leave.

**(7) Deductions from leave pay**

Except as provided elsewhere in this Agreement, no deductions from leave pay shall be made as a set-off against any moneys that may be owing to the employer: Provided that the following conditions shall apply to staff loans:

- (a) Staff loans shall be limited to mutually agreed upon amounts advanced as a bona fide loan;
- (b) The employee shall consent to the staff loan in writing (acknowledgement of the loan stipulating the amount of the loan, interest if any, instalments and the terms of the loan);
- (c) A copy of the acknowledgement of the loan shall be kept for purposes of MIBCO inspections and the employee concerned shall be handed a copy thereof;

- (d) The maximum amount deducted each month shall be in accordance with the limitations set out in clause 5 of the Administrative Agreement;
- (e) The aforementioned limitations may be exceeded in the event of termination of employment of whatever reasons with the written approval from the Regional Council concerned.

**(8) Outstanding leave on termination of services**

- (a) On the termination of the services of an employee who has qualified for annual leave in terms of sub-clause (2) of this clause, but who has not been granted or has not taken his leave at the date of such termination, an amount of leave pay calculated in accordance with the provisions of subclause (9) of this clause and a holiday bonus in accordance with the provisions of Clause 6.1 of this Division shall be paid by his employer.
- (b) In the case of all employees the accrued leave pay referred to in subclause (9) of this clause shall be paid direct to the employee on termination of service.

**(9) Accrued Leave Pay**

- (a) An employee who is discharged from or leaves his employment before he has qualified for annual leave in terms of subclause (2) of this clause shall be entitled to accrued leave pay equivalent to three fifty-seconds of one week's remuneration for each completed span of employment from the date of beginning work with the employer or from the date on which his last leave became due, whichever is the later. For the purposes of this subclause, "span" means the number of shifts normally worked by the employee in a week.

**Note:** Accrued leave pay is calculated by multiplying three weeks' wages by the fraction of a year worked, thus -

for six months' employment, leave pay is  $\frac{1}{2}$  x times three weeks' pay;  
 for 13 weeks' employment, leave pay is  $\frac{1}{4}$  x times three weeks' pay;  
 for five weeks' employment, leave pay is  $\frac{5}{52}$  x three weeks' pay.

To arrive at three weeks' pay for a *monthly-paid* employee, multiply the monthly pay by 9/13. Thus for a monthly-paid employee the leave accrued in-

six months is  $\frac{1}{2}$  x 9/13 x one month's pay;  
 13 weeks is  $\frac{1}{4}$  x 9/13 x one month's pay;  
 five weeks is  $\frac{5}{52}$  x 9/13 x one month's pay.

- (b) In the case of a motor vehicle sales person and supply sales person accrued leave pay shall be calculated on the basic wage plus average commission on sales earned over the preceding 52 weeks, or accrued in respect of the number of complete weeks actually worked should the latter period be less than 52 weeks.
- (c) Accrued leave pay held by an employer on behalf of an employee who for health reasons or any other incapacity has become unable to continue with his occupation shall become payable immediately to the employee, and accrued leave moneys due to an employee who dies in the course of his employment shall become payable immediately to his estate.

**(10) Leave pay on closing of establishment once a year**

- (a) In the case of establishments registered under Chapters II, III, IV and Chapter V of Division C of this Agreement an employer may at any time, but not more than once in any period of 12 consecutive months, close his establishment for purposes of granting his employees paid leave as prescribed in this clause, and where at the date of closing of the establishment any employee is not entitled to the full prescribed period of paid annual leave, the employer shall pay him an amount on the basis laid down in subclause (9) of this clause as if his employment had terminated, plus remuneration in respect of any paid public holidays which fall during the period the establishment is closed and which are required to be added to an employee's annual leave in terms of Clause 5.1(5) of this Division at a rate of not less than he would normally have received for his ordinary working hours for that day of the week:

Provided that in respect of establishments registered under Chapters II, III and V of Division C of this Agreement, maintenance staff may, subject to the provisions of subclause (6)(e) of this clause, be required or permitted to work during the period the establishment is closed in terms of this subclause.

- (b) For the purpose of this clause, 'maintenance staff' shall mean employees engaged in the maintenance, overhauling or repairing of machinery, equipment or plant.
- (c) An employer who decides to close his establishment in terms of this subclause shall advise his employees of his decision at least three months before such closing.

## 5.2. SICK LEAVE

- (1) "**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) During every sick leave cycle, an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks, i.e. 30 working days if he normally works a five-day week or 36 working days if he normally works a six-day week.
- (3) Despite subclause (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 of sick leave in terms of subclause (2) by the number of days' sick leave taken in terms of subclause (3).
- (5) Subject to subclause (7), 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) An employee may take one day per year sick leave in terms of the provisions of this clause for medical tests, e.g. PAP smears, TB tests and/or similar health care tests: Provided that proof is supplied to the employer that the employee did undergo those tests.
- (7) (a) A person who is required by his employer to produce a medical certificate if he has been absent from work for more than one day or more than two occasions during an 8 week period, shall produce such medical certificate as issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with the Professional Council established by an Act of Parliament within a period of not more than two days after his return to duty or such

employee shall forfeit his right to sick pay; provided that where the employee is absent from work as a result of sick leave on any day or days from Friday to Monday (inclusive ) and such day/days form part of his normal working week, he shall be required to produce such a medical certificate for such day/days"

- (b) Provided further that should any person be absent the day before or after a Public Holiday he shall be required to produce such a medical certificate for such day/days"
  - (c) If it is not reasonably practicable for an employee who lives on the employer's premises to obtain a medical certificate, the employer may not withhold payment in terms of subclause (7)(a) unless the employer provides reasonable assistance to the employee to obtain the certificate.
- (8) Notwithstanding the contents of this clause, no person who is entitled to sick pay benefits in terms of any sick fund schemes conducted by the Council, and who is absent from work through sickness or any accident not caused by his misconduct or neglect, will be entitled to any paid sick leave from his or her employer in terms of this clause.

### 5.3. MATERNITY LEAVE

- (1) An employee is entitled to a maximum of six consecutive months' maternity leave, and may exercise the option to return to work earlier.
- (2) An employee may commence maternity leave -
  - (a) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
  - (b) on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.
- (3) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
- (4) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.

- (5) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to -
  - (a) commence maternity leave; and
  - (b) return to work after maternity leave.
- (6) Notification in terms of subclause (5) must be given -
  - (a) at least four weeks before the employee intends to commence maternity leave; or
  - (b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- (7) For the purposes of calculating the period of employment in the Industry, the period an employee is on maternity leave, shall be regarded as employment in the Industry.

#### 5.4. FAMILY RESPONSIBILITY LEAVE

- (1) An employer shall, upon request, grant an employee, who has been in his employment for at least 4 months, during each annual leave cycle, a maximum of 3 days' paid family responsibility leave per annum in the aggregate in the following circumstances:
  - (a) When the employee's child is born;
  - (b) When the employee's child is sick; or
  - (c) In the event of the death of-
    - (i) the employee's spouse or life partner; or
    - (ii) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.
- (2) Subject to subclause (4), an employer shall 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.

- (3) An employee may take family responsibility leave in respect of the whole or part of a day.
- (4) Before paying an employee for leave in terms of this section, an employer may require reasonable proof of an event contemplated in subclause (1) for which the leave was required.

## **CLAUSE 6 : ADDITIONAL HOLIDAY PAY & HOLIDAY BONUS**

### **6.1 HOLIDAY BONUS**

#### **(1) Rates**

- (a) Employees excluding motor vehicles salesperson and supply salespersons for whom additional holiday pay is not prescribed in terms of this Agreement who qualifies for paid annual leave shall be paid a holiday bonus by their employers.
- (b) The amount of the holiday bonus referred in paragraph (a) of this subclause shall be two weeks' wages, with a maximum payment of -
  - (i) from 7 February 2011 to **31 August 2011**: R3 304,80 per annum
  - (ii) For the period **1 September 2011 to 31 August 2012**: R3 569,40 per annum.
  - (iii) For the period **1 September 2012 to 31 August 2013**: R3 819,60 per annum.

provided that in the case of establishments registered under **Chapter III** of Division C of this Agreement, the leave bonus will be three weeks calculated on actual wages (no capping) with effect from 25 September 2007.

- (c) Payment of the bonus shall be made as follows by mutual Agreement between employer and employee:
  - (i) on completion of 12 month's service; or
  - (ii) at commencement of the employee's annual leave; or
  - (iii) not later than the 20th day of December each year:
  - (iv) The holiday bonus shall become due and payable at the same date as the annual leave falls due.



Provided that in the event of Agreement not having been reached between the employer and the employee, the bonus shall be payable to the employee on completion of his leave cycle.

- (d) The amount of the holiday bonus referred to in paragraph (b) of this subclause shall be reduced by one fifty-second for each week during which the employee does not work a full five shifts, a "shift" for this purpose having the meaning given to this term in clause 5.1(1)(ii) of this Division.

**(2) Pro-rata payment of holiday bonus**

- (a) Where an employee leaves the service of his employer before qualifying for a leave bonus or additional holiday pay, such employee shall be paid a pro rata portion of his leave bonus or additional holiday pay, as the case may be, on termination of service; Provided that
  - (i) in the case of an employee whose services are terminated as a result of dismissal for misconduct, incapacity relating to poor performance or desertion; and such dismissal for reasons other than desertion is preceded by a formal hearing and the employee concerned is found guilty as charged, this subclause shall not apply;
  - (ii) where the employee concerned is found guilty and such finding is overturned during the Dispute Resolution process to the status of "unfair dismissal", such employee shall be granted the **pro rata** holiday bonus as prescribed in this clause;

**6.2 ADDITIONAL HOLIDAY PAY : APPLICABLE ONLY TO GRADE 7 & 8 EMPLOYEES**

**(1) Rates -**

- (a) Every employer registered in terms of this Agreement shall in respect of every grade 7 and grade 8 employee employed by him, pay additional holiday pay for each week of employment as follows

—

**Payable in respect of a Grade 7 employee:**

- (i) from 7 February 2011 to **31 August 2011**: R55,60 per week
- (ii) For the period **1 September 2011 to 31 August 2012**: R60,05 per week
- (iii) For the period **1 September 2012 to 31 August 2013**: R64,25 per week.

**Payable in respect of a Grade 8 employee:**

- (i) from 7 February 2011 to **31 August 2011**: R63,56 per week
- (ii) For the period **1 September 2011 to 31 August 2012**: R68,64 per week
- (iii) For the period **1 September 2012 to 31 August 2013**: R73,44 per week.

**(b) Provided that:-**

- (i) where a grade 7 or grade 8 employee receives or is entitled to receive wages for less than 23 hours in the aggregate in any week, no additional holiday pay shall be payable on behalf of such employee in respect of that week, unless such lesser wages are attributable to absence from work -
  - (aa) owing to sickness or accident not exceeding in the aggregate 30 days in any one year;
  - (ab) because of short-time; or
- (ii) where in any leave cycle a grade 7 or 8 employee has been absent from work through illness or accident for 30 days, his employer may reduce the additional holiday pay by one-fifth of the weekly amount payable, in respect of each further day of absence through illness or accident.

**(2) Payment of additional holiday pay to Council -**

Subject to the provisions of subclause (3) of this clause, the amounts payable in terms of subclause (1) of this clause shall be remitted by the employer monthly, but not later than the 10th day of the month immediately following that to which such amounts refer, together with a written statement of the names of the employees concerned and the amount of the additional holiday pay being sent for each such employee to the secretary of the Regional Council in whose area of jurisdiction the establishment is situated.

**Note:**

1. Forms prepared specifically for the inclusion of the details required by this subclause are obtainable from the secretary of the Regional Council concerned.
2. Notwithstanding the provisions of subclause (2) of this clause, an employer may apply to the Regional Council concerned for an exemption in terms of which such additional holiday pay may be paid direct to the employee when he proceeds on annual leave.

**(3) Effect of absence from work on additional holiday pay –**

- (a) In cases where a grade 7 or grade 8 employee has been absent from work for the reasons specified under proviso (b)(i) and (ii) of subclause (1) of this clause, the additional holiday pay in terms of subclause (1) of this clause shall be paid by the employer direct to the beneficiary on or before each pay-day falling within his period of absence.
- (b) In cases where a grade 7 or grade 8 employee has been absent from work for the reason specified under proviso (b)(i) of subclause (1) of this clause, the additional holiday pay payable in terms of subclause (1) of this clause shall be paid direct to the beneficiary when he qualifies for or takes his annual leave.

**(4) Payable before beginning of period of leave –**

The additional holiday pay payable in terms of subclause (1) of this clause shall be payable to grade 7 and grade 8 employees when they proceed on annual leave, and application for it shall be lodged with the Regional Secretary concerned at least two weeks before the beneficiary's leave is due to begin.

**(5) Deductions from additional holiday pay -**

Except as provided elsewhere in this Agreement, no deduction from additional holiday pay shall be made as a set-off against any money that may be owing to the employer.

**(6) Payment of additional holiday pay held as a result of incapacity or death**

Additional holiday pay held by a Regional Council or by an employer on behalf of an employee who for health reasons or any other incapacity has become unable to continue at his occupation shall become payable immediately to the employee, and additional holiday pay due to an employee who dies in the course of his employment shall become payable immediately to his estate.

**(7) Special account –**

All amounts received in respect of additional holiday pay shall be placed in a special account operated by Regional Councils.

**(8) Payment of additional holiday pay to employee –**

Except as otherwise provided in this clause, additional holiday pay held on behalf of an employee shall be paid to him -

- (a) if he leaves the Industry, on the expiration of 52 weeks calculated from the date on which the additional holiday pay commenced to accrue;
- (b) while he is employed in the Industry, when he proceeds on annual leave, or earlier, at the discretion of the Regional Council concerned.

**(9) Interest on late payment to Council –**

Should any amount due in terms of this clause not be received by the Council by 15th day of the month following the month in respect of which it is payable, the employer shall pay interest on such amount or on such lesser amount as remains unpaid, calculated at the rate prescribed in clause 21 of the Administrative Agreement, from such 15th day until the day upon which payment in cash is actually received by the Regional Council concerned

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

**6.3. ADDITIONAL HOLIDAY PAY FOR APPRENTICES**

- (1) Every employer shall in respect of every apprentice and trainee undergoing training under the Skills Development Act, 1998, employed by him pay additional holiday pay for each week of employment as follows:

- (a) In the case of apprentices who have entered into three year contracts of apprenticeship:

- (i) from 7 February 2011 to **31 August 2011:**

For first year of contract	R30,26
For second year of contract	R37,51
For third year of contract	R46,10

- (ii) For the period **1 September 2011 to 31 August 2012:**

For first year of contract	R33,59
For second year of contract	R37,51
For third year of contract	R51,17

- (iii) For the period **1 September 2012 to 31 August 2013:**
    - For first year of contract R36,95
    - For second year of contract R41,26
    - For third year of contract R56,29
- (b) In the case of apprentices who have entered into four year contracts of apprenticeship:
  - (i) from 7 February 2011 to **31 August 2011**
    - For first year of contract R30,26
    - For second year of contract R33,19
    - For third year of contract R37,51
    - For fourth year of contract R46,10
  - (ii) For the period **1 September 2011 to 31 August 2012:**
    - For first year of contract R33,59
    - For second year of contract R36,84
    - For third year of contract R41,64
    - For fourth year of contract R51,17
  - (iii) For the period **1 September 2012 to 31 August 2013:**
    - For first year of contract R36,95
    - For second year of contract R40,52
    - For third year of contract R45,80
    - For fourth year of contract R56,29
- (c) Provided that –
  - (i) where an apprentice and trainees undergoing training under the Skills Development Act, 1998, receives or is entitled to receive wages for less than 23 hours in the aggregate in any week, no additional holiday pay shall be payable on behalf of such employee in respect of that week, unless such lesser wages are attributable to absences from work –
    - (aa) owing to sickness or accident not exceeding in the aggregate 30 days in any year;
    - (ab) because of short-time where permission has been granted; or

- (ii) where in any leave cycle an apprentice and trainees undergoing training under the Skills Development Act, 1998, has been absent from work through illness or accident for 30 days, his employer may reduce the additional holiday pay by one fifth of the weekly amount payable in respect of each further day of absence through illness or accident.
- (2) Subject to the provisions of subclause (3) of this clause, the amounts payable in terms of subclause (1) of this clause shall be remitted by the employer monthly, but not later than the 10th day of the month immediately following that to which such amounts refer, together with a written statement of the names of the employees concerned and the amount of the additional holiday pay being sent for each such employee to the secretary of the Regional Council in whose area of jurisdiction the establishment is situated.

**[Note:**

  - 1. Forms prepared specifically for the inclusion of the details required by this subclause are obtainable on application from the secretary of the Regional Council concerned.
  - 2. Notwithstanding the provisions of subclause (2), an employer may apply to the Regional Council concerned for an exemption in terms of which such additional holiday pay may be paid direct to the employee when he proceeds on annual leave.]
- (3) In cases where an apprentice and trainee undergoing training under the Skills Development Act, 1998, has been absent from work for the reasons specified in subclause (1)(i)(aa) and (ab), the additional holiday pay payable in terms of sub-clause (1) of this clause shall be paid by the employer direct to the beneficiary on each payday falling within his period of absence.
- (4) The additional holiday pay payable in terms of subclause (1) of this clause shall be payable to apprentices and trainees undergoing training under the Skills Development Act, 1998, when they proceed on annual leave, and application for it shall be lodged with the Regional Secretary concerned at least two weeks before the beneficiary's leave is due to commence.
- (5) Subject to the provisions of clause 7.1(4) of Division A of this Agreement, no deductions from additional holiday pay shall be made as a set-off against any moneys which may be owing to the employer.

- (6) 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 pay interest on such amount or on such lesser amount as remains unpaid, calculated at the rate prescribed in Clause 21 of the Administrative Agreement, from such 15th day until the day upon which payment in cash is actually received by the Regional Council concerned: Provided that a Regional Council shall be entitled in its absolute discretion to waive the payment of such interest or part thereof.

## **CLAUSE 7 : TERMINATION OF EMPLOYMENT**

### **7.1. TERMINATION OF SERVICE**

#### **(1) Period of Notice**

##### **Division B employees**

- (a) Subject to the provisions of any written Agreement between employer and employee stipulating a period in excess of that provided for in this clause, an employer or his employee shall give notice of intention to terminate a contract of service of not less than one week in the case of weekly-paid employees and two weeks in the case of monthly-paid employees; provided that in the event of an employer cancelling or changing a contract providing for the payment of commission to a parts salesperson or supply sales person and such employee gives notice of his intention to terminate his contract of employment, the employee may at his option reduce the notice period to one week, notwithstanding any written Agreement stipulating longer notice.
- (b) The notice referred to in subclause (1) hereof shall be given in writing, shall take effect from the day on which it is given and may be given on any day of the week or month: Provided that the period of notice shall not run concurrently with, nor shall notice be given during the employee's absence on annual leave or sick leave.

##### **All other employees**

An employer or his employee for whom wages are prescribed in this Agreement, except for employers and employees covered in terms of Division B of this Agreement, who gives notice to terminate a contract of employment shall give not less than one day's notice in the first week of employment and after the first week of employment, not less than one week in the case of weekly-paid employees and two weeks in the case of monthly-paid employees.

**(2) Termination without notice**

An employer or employee may terminate the contract without notice by paying or forfeiting to the employee/employer, as the case may be, an amount equal to that which the employee is earning during a week at the time of such termination:

Provided that this subclause shall not affect -

- (i) the right of an employer or employee to terminate the contract without notice for misrepresentation or any cause recognised by law as sufficient;
- (ii) (aa) a written Agreement between an employer and his employee which provides for a period of notice of equal duration on both sides and for longer than that prescribed in this clause;  
  
(bb) the payment or forfeiture in lieu of notice shall correspond to the period of notice agreed upon;
- (iii) the right of an employer to claim whatever notice forfeiture is applicable in the case of an employee who deserted:

Provided further that where the earnings of an employee at the date of termination have been reduced by deductions in respect of short-time the expression "is earning during a week at the time of such termination" shall be deemed to mean "would have received at the time of such termination if no deductions had been made in respect of short-time".

**(3) Formalities regarding notice of termination**

The notice prescribed in subclause (1) may be given on any work-day and shall take effect from the day on which it is given: Provided that -

- (a) the period of notice shall not run concurrently with, nor shall notice be given during, an employee's absence on annual leave.
- (b) notice shall not be given during an employee's absence on sick leave granted either in terms of clause 5.2 of Division A or any sick fund scheme conducted by the Council unless such employee is permanently unfit for normal work.
- (c) Notice of termination of a contract of employment must be given in writing except when it is given by an illiterate employee.



- (d) If an employee who receives notice of termination indicates to his employer that he 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.

**(4) Desertion of employee**

Notwithstanding anything to the contrary contained in this Agreement, should any money owing by the employer to the employee by way of wages be insufficient to meet the full amount of the forfeiture referred to in subclauses (1) and (2) above, the employer shall be entitled to recover such amount from other benefits (if any) accruing to such employee at the time of his desertion.

**7.2 SUSPENSION OF EMPLOYEES**

An employee who is a commission earner, who is suspended pending a disciplinary hearing, shall receive his remuneration in the event that he is not found guilty. For the purposes of this clause, remuneration shall be calculated as provided in Clause 5.1(1)(iii), i.e. an employee found not guilty will be paid basic wages plus average commission earned as calculated in terms of Clause 5.1(1)(iii).

**7.3 RETRENCHMENT PAY**

- (1) Notwithstanding anything to the contrary contained in this Agreement, an employer shall, whenever an employee's services are terminated for the reason that he is retrenched, pay to such an employee, in addition to any payment that may be due in lieu of notice of termination of services, a sum equal to two weeks' wages for each completed year of service for the first four years' service with an employer, and one week's wages thereafter with that employer; provided that two weeks' retrenchment pay calculated on a pro-rata basis after only four months' employment in the first year of employment shall be applicable:

Provided further that –

- (a) in the case of a motor vehicle salesperson or supply salesperson "wages" shall mean their basic wage plus average commission on sales earned over the preceding period of 13 weeks;

- (b) the earnings of an employee may be reduced as an alternative to retrenchment where this has been agreed to in writing by the employer, the employee and the trade union representing the employee and, in the case of a non-party establishment and a non-union employee in a party shop, the employer shall apply to the Regional Council concerned for such approval.
- (c) Any employee who unreasonably refuses to accept an offer of alternative employment, either with the same, or with a different employer, shall forfeit entitlement to retrenchment pay, providing the employer initiating the retrenchment makes a written offer of alternative employment on behalf of himself or another employer, and the offer must be reasonable taking into account location, status, its nature, remuneration and employees' capacity, and providing further that the right to retrenchment pay shall not be affected where the retrenched employee secures alternative employment through his own efforts without assistance from the retrenching employer.

#### **7.4. DESERTION**

##### **(1) Desertion**

(An employee will be regarded as having deserted from his employer's service after a continuous absence of five working days and without notification to his employer of his whereabouts: Provided that -

- (a) the employer attempts to contact the employee in writing at his last known address supplied by the employee;
- (b) the employee was duly notified in writing of the necessity to furnish his employer with his address and any changes of address;
- (c) the employee shall be allowed a period of one month to lodge with his employer a written appeal against his dismissal.

##### **(2) Recovery of outstanding moneys**

Employers may deduct or set-off upon termination of service of employment from all moneys owing to an employee except pension and/or provident funds in respect of loans in terms of a signed acknowledgment of debt.