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**GENERAL NOTICES • ALGEMENE KENNISGEWINGS**

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**DEPARTMENT OF LABOUR****NOTICE 950 OF 2015****LABOUR RELATIONS ACT, 1995****BARGAINING COUNCIL FOR THE RESTAURANT, CATERING AND ALLIED TRADES:  
EXTENSION TO NON-PARTIES OF THE CONSOLIDATED MAIN COLLECTIVE  
AMENDING AGREEMENT**

I, **MILDRED NELISIWE OLIPHANT**, Minister of Labour, hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the **Bargaining Council for the Restaurant, Catering and Allied Trades** and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry with effect from the second Monday after the date of publication of this notice and for the period ending 31 May 2018.

  
**M N OLIPHANT****MINISTER OF LABOUR**

17/09/2015

**SCHEDULE****BARGAINING COUNCIL FOR THE RESTAURANT, CATERING AND ALLIED TRADES****COLLECTIVE AGREEMENT**

Concluded in accordance with the provisions of the Labour Relations Act, no 66 of 1995, made and entered into by and between

**CATRA**

(Hereinafter referred to as “the employers” or “the employers organisation”), of the one part, and the

**South African Commercial Catering and Allied Workers Union (SACCAWU)**

And

**Hotel, Liquor, Catering, Commercial and Allied Workers Union.**

**(HOTELICCA )**

And

**Future of South African Workers Union (FOSAWU)**

And

**Socialist Organised Workers Union (SOWU)**

And

**Food and Allied Workers Union (FAWU)**

And

**South African Equity Workers Association (SAEWA)**

(Hereinafter referred to as the “trade unions” of the other part), being the parties to the Bargaining Council for the Restaurant, Catering and Allied Trades.

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## 1. SCOPE OF APPLICATION

(1) The terms of this agreement shall be observed in the Restaurant , Catering and Allied Trades –

(a) By all employers who are members of the employers organisation and by all employees who are members of the trade unions

(b) In the Magisterial Districts of Alberton, Benoni, Boksburg, Brakpan, Delmas, Germiston, Johannesburg, Kempton Park, Krugersdorp, Randburg, Randfontein, Roodepoort, Springs, and Westonaria.

(2) The terms of this Agreement shall not apply to non-parties in respect of clauses 1, 1(a), 2 and 3 of this agreement

## 2. PERIOD OF OPERATION OF AGREEMENT



This Agreement shall come into operation on the date fixed by the Minister of Labour to be the effective date from which the Agreement shall be extended to become binding on non-parties, or the date on which the Minister of Labour declines to extend the Agreement to non-parties, and the Agreement shall remain in force for the period ending 31 May 2018.

### **3. INDUSTRIAL ACTION**

- (1) No person bound by the provisions of this Agreement entered into by the parties shall engage in or participate in a strike or lock-out or any conduct in furtherance of a strike or a lock-out in respect of any matter regulated by this Agreement for its duration
- (2) The forum for negotiation and conclusion of substantive agreements on wages, benefits and other conditions of employment between the members of the employer's organisation party to this Agreement, on the one hand and employees and trade unions on the other hand, shall be the Bargaining Council and not at shopfloor level.
- (3) No trade union or employer's organisation may attempt to induce or compel or be induced or compelled by any natural or juristic person or other organisation, by any form of strike or lock-out, to negotiate the issues referred to in paragraph 1 above, at any level other than this Bargaining Council.
- (4) Any inconsistent provisions of collective procedural agreements between employers and trade unions and their members shall be regarded by such parties as amended to accommodate the provisions of paragraph 2 and 3 above and shall not be binding on the parties to the extent that the provisions of such agreements conflict with those of paragraph 2 and 3 above.

### **4. DEFINITIONS**

Unless the context otherwise indicates, any expression which is used in this agreement and which is defined in the Act shall have the same meaning as in the Act and for the purpose of this Agreement an employee shall be deemed to be in that class in which he is wholly or mainly engaged: furthermore unless inconsistent with the context –

**“Agent,”** means any person employed by the Council and appointed in terms of its Constitution and who collects contributions on behalf of the Council or a third party and who may be delegated to investigate a complaint or carry out any other tasks which may be allocated to such person;

**“agreement”** means this Agreement and “Collective Agreement” has a corresponding meaning

**“Act”** means the Labour Relations Act, 1995 (Act No 66 of 1995)

**“actual wage”** means the wage rate per hour which an employer actually pays an employee in respect of the ordinary hours of work and “Wage” and “Prescribed Wage” have a corresponding meaning

**“assistant bartender”** means an employee who under the supervision of a bartender, does the work of a bartender, but who is not responsible for stock in a bar;

**“assistant clerk/cashier”** means an employee who, under the supervision of a clerk/cashier, does the work of a clerk/cashier, and has less than one year’s experience;

**“assistant manager”** means an employee who is specifically charged by his employer to assist the manager in his duties in an establishment and who may act for such manager in the employ of the firm in his absence;

**“baker”** means an employee who prepares makes and bakes wheaten products;

**“bartender”** means an employee who is engaged in supplying liquor to customers over a counter and receiving payment therefore, who is responsible for the balancing of the stock and cash receipts;

**“bread”** without limiting the ordinary meaning of the term, includes buns, rolls, fancy bread or any other similar wheaten, rye or maize products;

**“cafe”** without limiting the ordinary meaning of the term, means a business licensed or required to be licensed, under item 20 “cafe keeper” of the Transvaal Licence Ordinance, 1974 (Ordinance No 19 of 1974);

**“Cashier”** see “clerk”

**“casual employee”** means an employee, other than a special function casual employee, who is employed by the same employer on not more than three days in any week. Provided that such casual employee may be employed on not more



than four days in any week in which a paid public holiday falls, and may also be employed during any one or more of the following periods

- (a) 6 December to 15 January
- (b) Shows and exhibitions
- (c) The Easter weekend

**"catering"** means the provisions of meals and/or refreshments;

**"catering assistant"** means an employee who: -

- (a) Prepares any one or more of the following: Plain or toasted sandwiches, fresh fruit, fruit salads, salads from fresh or prepared vegetables, hamburgers, hot dogs, waffles, pancakes, pizzas, pies, curry and rice, common pan foods, grills, popcorn, fish and chips, vetkoek and grilled chicken, and or assists with the preparation of the menu of the establishment
- (b) Transmits orders and places such items of food mentioned in paragraph (a), and cold prepared foods, prepared salad dressings, stews, boiled meats and/or vegetables, either on plates or in containers ready for conveyance to the customers;
- (c) Operates an ice-cream dispenser and/or soda fountain and/or semi-automatic machine;
- (d) receives verbal or written orders from a waiter/wine steward for the supply/handling over to him of bottles of alcoholic or non-alcoholic drinks;

**"chef"** means an employee in a managerial position who is in position of a chef's certificate recognised by the Council and is in charge of the preparation of the food in an establishment;

**"child"** means a person who is under 18 years of age;

**"clerk/cashier"** means an employee engaged in any one or more of the following duties:

- (a) Clerical work, i.e. writing, typing and filing;
- (b) Operating office equipment;
- (c) Operating a cash register, and being responsible for balancing receipts and disbursements;



(d) Being in charge of stores and responsible for receiving, storing, assembling, packing and/or unpacking goods in a store or warehouse, and for the delivery of such goods;

(e) Operating a telephone switchboard, but does not include any other class of employee elsewhere defined in this clause, notwithstanding the fact that clerical work as herein defined may form part of such employee's work;

**"commission worker"** means a person who agrees in writing with the owner/management of an establishment to perform the duties of a waiter on which commission will be paid at the end of each shift/week/month: **Provided** that the commission worker shall not work more than 36 (thirty six) hours in any week.

**"commission work"** means work where an employer and employee have agreed in writing before the work commences that the employee will on a regular basis perform work on which a commission will be paid.

**"cook"** means an employee who is engaged in preparing, cooking and the presentation of food in an establishment and who may be responsible for kitchen organisation and control of stock, and includes a baker;

**"Council"** means the Bargaining Council for the Restaurant, Catering and Allied Trades, deemed to be registered in terms of the Act;

**"counter assistant"** means an employee who serves customers at a counter and who may receive payment for the goods sold, but excludes a bartender and assistant bartender;

**"day"** means a period of 24 consecutive hours calculated from the time an employee commences work;

**"delivery employee"** means an employee who is engaged in collecting or delivering messages, letters, documents or goods by means of a two or three-wheeled, motorised vehicle with an engine capacity not exceeding 200cm<sup>3</sup> and who may collect cash for C.O.D. sales;

**"designated agent"** means any person appointed by the Minister in terms of Section 33 of the Act;

**"dispute"** includes an alleged dispute;

**"driver"** means an employee who is engaged in driving a motor vehicle, and for the purpose of this definition the expression "driving a motor vehicle" includes all periods of driving, any time spent on work connected with the vehicle or the



load and all periods during which he is obligated to remain at his post in readiness to drive;

**“emergency work”** means –

- (a) Any work which, owing to unforeseen circumstances such as fire, storm, accident, epidemic, act of violence, civil unrest, theft or a breakdown of plant, motor vehicles or machinery, must be done without delay;
- (b) Any work in connection with the loading or unloading of –
  - (i) Trucks or vehicles of the South African Transport /services; or
  - (ii) A vehicle used by a cartage contractor in the fulfilment of his contract as such with the South African Transport Services; or
- (c) Any work in connection with the provisioning of aircraft;
- (d) Any work in connection with the guarding of premises or property for security reasons during building operations or structural alterations;

**“employee”** means any person who, excluding an independent contractor or person, works for another person and who receives, or is entitled to receive, any remuneration and any other person who in any matter assists in carrying or conducting the business of an employer; and further includes an employee who is employed by a labour broker or temporary employment service in the Sector, as defined;

**“employer”** means any person whomsoever who employs or provides work for any person or who permits such person whomsoever in any manner to assist him in the carrying on or conducting of a business in the Sector, as defined, and who remunerates or expressly or tacitly undertakes to remunerate such person; and “employ” or “employment” have corresponding meanings.

**“establishment”** means any place in or in connection with which one or more persons are employed in the Tearoom, Restaurant and Catering Trade, and includes clubs and/or canteens operated for gain;

**“exemptions committee”** means a committee established to consider applications for exemption from the provisions of this Agreement;

**“extra-heavy motor vehicle”** means a motor vehicle, the gross vehicle mass or the gross combination mass of which exceeds 16 000kg;



**“fixed-term contract”** means a contract in writing which stipulates the period of the employment contract and termination date and does not raise future expectations of continued or further employment;

**“functions supervisor”** means an employee who is personally in charge of and responsible for all the activities at a particular special function;

**“general assistant”** means an employee engaged in any one or more of the following duties:

- (a) Making porridge and preparing meals for the exclusive consumption of the employees of the establishment;
- (b) Packing or wrapping edibles for sale or delivery
- (c) Assisting with the checking of stores under supervision
- (d) Checking crockery, glassware, napery and other pantry requirements and checking dinning equipment;
- (e) Cleaning premises, the work place or any article
- (f) Cleaning, plucking or cutting raw poultry, raw fish or raw meat as part of the cleaning process, cleaning or peeling of fruit and vegetables, cutting of fruit and vegetables other than for salads and cutting bread;
- (g) Carrying, stacking or moving goods
- (h) Making or maintaining a fire and removing ashes and refuse;
- (i) Vending, collecting and/or delivering orders off the premises and accepting payment therefore;
- (j) Making tea, coffee, cocoa or similar beverages;
- (k) Loading and offloading
- (l) Repetitive mass-measuring to a set mass-meter
- (m) Opening or closing packets, containers or parcels;
- (n) Heat closing of polythene or similar pre-filled containers
- (o) Gardening;
- (p) Sharpening knives
- (q) Decanting into other containers, except for table use;
- (r) Guarding premises or other movable or immovable property by day, but excluding a watchman;

**“griller”** sees catering assistant;

**“gross vehicle mass”** in relation to a motor vehicle, means the maximum mass of such vehicle and its load as specified by the manufacturer or, in the absence of such specification, as determined by the registering authority;

**“head cook”** means an employee who does the work of a cook and is in charge of a kitchen where three or more cooks are employed

**“head waiter/ head wine steward”** see receptionist;

**“heavy motor vehicle”** means a motor vehicle, the gross vehicle mass of which exceeds 9 000kg but does not exceed 16 000kg;

**“independent exemptions board”** means a body as referred to in Section 32(3) (e) of the Act;

**“kitchen supervisor”** means an employee who is charged by his employer with the overall supervision over, responsibility for and direction of the activities carried on, or in connection with the kitchen of an establishment and the employees engaged therein, excluding the head cook and chef, and who may perform the duties of a cook;

**“law”** includes the common law;

**“light motor vehicle”** means a motor vehicle, the gross vehicle mass or gross combination mass of which does not exceed 3 500kg;

**“manager”** means an employee who is charged by his employer with the overall supervision over, responsibility for and direction of the activities carried on, in or in connection with that section of the establishment that has been placed under his authority, and who is directly responsible to the employer, and further includes the provision of attendance registers to all employees and the daily completion thereof as well as of the wage register when so instructed by his employer. Provided that where fewer than six employees are employed, this employee shall be deemed to be a supervisor;

**“management trainee”** means an employee who for a period of 18 months is employed in various departments of an establishment for the purpose of training as a manager, and whose employment in a particular establishment for this purpose has the approval of the Council:

**“meals”** without limiting the ordinary meaning of the terms including pies, pastries, pizzas, vetkoek, confectionary, snacks, take away meals or any edibles or drinkables fit for human consumption;



**“medical practitioner”** means a person entitled to practise as a medical practitioner in terms of section 17 of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974), as amended, from time to time.

**“medium motor vehicle”** means a motor vehicle, the gross vehicle mass or the gross combination mass of which exceeds 3 500kg but does not exceed 9000kg.

**“midwife”** means a person registered or enrolled to practise as a midwife in terms of section 16 of the Nursing Act 1978 (Act No. 50 of 1978), as amended, from time to time;

**“minister”** means the Minister of Labour;

**“motor vehicle”** means any self propelled vehicle with an engine capacity exceeding 200cm<sup>3</sup> used for conveying goods and includes a mechanical horse, a motor cycle or a motor tricycle and a tractor;

**“month”** means the period extending from a day in any month up to and including the proceeding day corresponding numerically to the first-mentioned day in the following month, e.g. 7 April to 6 May;

**“new Employer”** means the owner of a business newly established in the trade, during the first 12 months of its existence in the trade, who at no time employs more than five employees in the aggregate; Provided that if the existing business undergoes a change of name or ownership (including a change of directors, members or partners) while largely retaining the same employees and/or clients, it shall not be regarded as a new employer;

**“night work”** means worked performed after 18:00 and before 06:00 the next day;

**“overtime”** means the time that an employee works during a day or a week in excess of ordinary hours of work;

**“part-time driver”** means an employee who is ordinarily engaged in work other than driving a motor vehicle, but who on more than two days in any week is engaged in driving a motor vehicle for not more than three hours in the aggregate on any such day, and for the purpose of this definition the expression “driving a motor vehicle” includes all periods of driving and any time spent while in charge of the vehicle, on work connected with the vehicle or the load;

**“part-time employee”** means an employee (other than a part-time driver) employed by the establishment for not more than 24 ordinary hours of work in any week;

**“premises”** includes any land, structure, vehicle or vessel;

**“paid holiday”** means a paid public holiday as defined in the Public Holidays Act, 1994;

**“Receptionist/head waiter/head wine steward”** means an employee who is engaged in making reservations in respect of tables, allocating seats and showing customers to their seats and is specifically charged by the employer or manager with supervisory responsibility over general assistants;

**“registered scope”** see sector;

**“refreshments”** without limiting the ordinary meaning of the term shall include all edibles and drinkables fit for human consumption.

**“remuneration”** means any payment in money or in kind or both in money and in kind, made or owing to any person in return for that person working for any other person, and “Remunerate” has a corresponding meaning;

**“sandwich”** means one or more slices of fresh or toasted bread, rolls, scones or buns with filling on or between such slice or slices, but excludes snacks or savouries;

**“Secretary”** means the Secretary of the Council and includes any official nominated or delegated by the Council to act on behalf of or perform the duties of the Secretary.

**“security guard”** means an employee who is engaged in any one of the following duties:

- (a) Authorised searching of goods, vehicles and persons;
- (b) Supervising or controlling one or more watchmen; and
- (c) Controlling or reporting on the movement of persons or vehicles through check-points or gates, and who may be required to perform any or all duties prescribed for a watchman

**“sector”** means the Tearoom, Restaurant, and Catering trade in which employers and their employees are associated wholly or mainly for the purpose of preparing, serving or providing meals or refreshments (whether liquid or otherwise) or both such meals and refreshments in or from any establishment or



part thereof, whether permanent, temporary, indoors or in the open air, and includes such activities when carried on in or from one or more classes of premises or parts thereof –

- (a) used as public restaurants, fish-and-chips shops, cafes, tearooms, roadhouses and take-away food outlets, except where the preparation and/or supply of ready-to-consume food and/or refreshments takes place on or from the premises of an accommodation establishment
- (b) where meals or non-alcoholic drinks are served for consumption on the premises or are provided for consumption away from the premises
- (c) where aerated or mineral waters are supplied in glasses or other containers for consumption on the premises; and
- (d) wherein or wherefrom the activities referred to herein are carried on in respect of or in connection with any entertainment and/or function, but does not include the sale and/or provision of edibles and/or liquid refreshments to persons attending cinema performances or theatre productions on the premises of and by the establishment providing such performances or productions, and also includes the supply of liquor in any such establishments or any such premises in terms of a liquor licence held or deemed to be held by such employers or issued under the Liquor Act, 1989, but does not include hotelkeepers, boarding-housekeepers or lodging-housekeepers and further includes all operations incidental to or consequent on any of the aforesaid activities;

**“serve”** means to send by registered post, telegram, telex, telefax or deliver by hand;

**“small employer”** means an employer who does not employ more than ten (10) employees at any time;

**“special function”** means any event or occasion, including a dance, diner, reception, sports gathering or agricultural, animal, horticultural or industrial show where meals and/or refreshments are provided;

**“special function casual employee”** means an employee who is employed by the day or the hour to work at a special function for not more than three days in any week: provided that such special function casual employee may be

employed on not more than four days in any week in which a public holiday falls, and may also be so employed during any one or more of the following periods:

- (a) 6 December to 15 January
- (b) Shows and exhibitions
- (c) The Easter weekend

**“staff supervisor”** means an employee who supervises at a special function under the direction of the employer, function supervisor or manager;

**“supervisor”** means an employee who under the direction of the employer, manager or assistant manager supervises the work of the employees in an establishment;

**“trade union representative”** means a trade union representative who is entitled to exercise the rights contemplated in section 14 of the Labour Relations Act, 1995;

**“waiter/wine steward”** means an employee other than a bartender, clerk/cashier or counter assistant, who performs any one or more of the following duties:

- (a) Serving meals and/or refreshments( whether alcoholic or non-alcoholic) to customers at tables or counters
- (b) Receiving payment for any order taken or executed and being responsible for payment
- (c) Setting and/or clearing tables
- (d) Checking and/or controlling dining-room and/or other pantry equipment
- (e) Filing butter and/or jam dishes and/or cruets, and may make salads.

**“wage”** means the amount of money payable to an employee in terms of clause 5 in respect of his ordinary hours of work as prescribed in clause 9: provided that if any employer regularly pays an employee in respect of such hours of work an amount higher than prescribed in clause 5, it means such higher amount;

**“watchman”** means an employee who is engaged mostly at night, in any one or more of the following duties:

- (a) Guarding, protecting or patrolling premises, buildings, structures or fixed or movable property



(b) Handling dogs in the performance of any or all of the duties referred to in (a) and

“week” in relation to an employee, means the period of seven days within which the working week of that employee falls.

## 5. WAGES

### Exemptions

Where a small employer or his employee can satisfy the council that any provisions of the agreement are restricting entrepreneurial initiative and/or employment opportunities, such an employer or employee may apply to the Council for exemption from the specific provisions and the Council may grant such an exemption. Please see clauses 14, 24 and 29.

An employee on probation earns ten percent (10%) less than the prescribed wage, for a period not exceeding three (3) months. The wages prescribed pertain to the payment for ordinary hours of work as prescribed in clause 9. Should statutory legislation reduce these ordinary hours of work the wages will automatically be reduced proportionately, bearing in mind the overtime aspect.

- (1) Subject to the provisions of sub-clause (3) of this clause and clause 6(9), the minimum wage which shall be paid in respect of the ordinary hours of work prescribed in clause 9 by an employer to each member of the under mentioned classes of employees shall be set out hereunder, and no employer shall pay, and no employee shall accept wages lower than the following for the under mentioned groups. Provided that the wages so prescribed may be reduced by not more than 10 percent by a new employer and a small employer as defined in clause 4.
- (a) Employees, other than part time, casual, special function and commission worker(s) employed in the Magisterial Districts of Alberton, Benoni, Boksburg, Brakpan, Delmas, Germiston, Johannesburg, Kempton Park, Krugersdorp, Randburg, Randfontein, Roodepoort, Springs and Westonaria.

## Minimum prescribed rate per hour in Rand for the period(s):

CATEGORY/CLASS	Current	From date of publication to 31/5/2016	From 1/6/2016 To 31/5/2017	From 1/6/2017 Thereafter
	H/RATE	H/RATE	H/RATE	H/RATE
CHEF/MANAGER	R29.53	R31.30	R33.18	R35.17
ASSISTANT MANAGER	R20.72	R21.97	R23.28	R24.68
BARTENDER, CASHIER CLERK SECURITY GUARD, SUPERVISOR	R18.41	R19.52	R20.69	R21.93
ASST BARTENDER/CASHIER	R15.83	R17.10	R18.13	R19.21
HCOOK/WAITER/HWINE STEWARD MAN.TRAINEE/RECEPTIONIST	R15.42	R16.66	R17.91	R18.98
KITCHEN SUPERVISOR	R14.04	R15.16	R16.30	R17.52
COUNTER ASST/PART-TIME DRIVERWAITER/WINE STEWARD	R13.71	R14.80	R15.91	R17.11
EMP. NOT SPECIFIED ELSEWHERE	R13.61	R14.70	R15.80	R16.98
MOTOR VEHICLE DRIVER (S) (A)EXTRA HEAVY	R16.39	R17.71	R18.77	R19.90
(B)HEAVY	R15.62	R16.87	R18.13	R19.22
(C)LIGHT	R13.48	R14.56	R15.65	R16.82
BAKER/COOK	R13.73	R14.83	R15.94	R17.13
CATERING ASST/DEL.EMP/ GENERAL ASSISTANT	R14.06	R15.19	R16.33	R17.55
WATCHMAN	R14.06	R15.19	R16.33	R17.55

**Note:** (i) The equivalent monthly or weekly total due, amounts to multiplying the hourly rate by the employee's ordinary hours of work as prescribed in clause 5(1), read with 5(2) and 5(3), Basis of Contract.

(ii) Deductions for food – clause 17(1) (a) – amount to R70.00 per month or R16.15 per week.

See clause 17(1) (b)



**(b) Part Time Employees**

A Part time employee shall be paid in respect of the ordinary hours of work prescribed in clause 9 for such part-time employee not less than 66.6% of the wage prescribed in paragraph (a) hereof.

**(c) Commission workers:**

- (1) The owner/management of an establishment and a commission worker may agree in writing that the commission worker will perform the duties of a waiter if and when so required by the owner on which a commission will be paid at the end of each shift/week/month.
- (2) The owner/management shall pay a commission worker the rates applicable for commission work as agreed: Provided that if during any calculation period, the commission worker does not earn an amount equivalent to at least the prescribed minimum wage for waiters, excluding any gratuity or tips, the owner shall pay the commission worker not less than the applicable minimum wage as prescribed for waiters for the hours that the commission worker worked.
- (3) An agreement to perform commission work in terms of this clause shall be concluded before the work commences and shall include-
  - (a) the commission worker's rate of commission;
  - (b) the basis for calculating commission;
  - (c) the period, over which the payment is calculated, which period may not be longer than one month;
  - (d) when the owner shall pay the commission to the commission worker which commission may not be paid more than seven days after the end of the period in which the commission was earned; and
  - (e) the type, description, number, quantity, margin, profit or orders (individual, weekly, monthly or otherwise) for which the commission worker is entitled to earn commission.
- (4) The owner/management shall supply the commission worker with a copy of the agreement to perform commission work prior to the commencement of commission work.
- (5) The commission worker may apply for full time employment as a waiter, if a vacancy exists within the establishment for a waiter and the commission worker qualifies for the position of a waiter.
- (6) An owner who intends to cancel or amend the agreement in operation shall give the commission worker not less than four weeks' notice of such intention.

**(d) Casual employee other than a special-function casual employee**

A casual employee shall be paid not less than one and a half times the hourly wage prescribed in paragraph (a) hereof for an employee of the same class as the one in which he is employed: Provided that

- (1) Where a casual employee performs the work of a class of employee for whom wages on a higher scale are prescribed, the expression "hourly wage" shall mean the highest wage prescribed for an employee of that class : and
- (2) Where a casual employee is required to work for less than three hours on any day he shall be deemed to have worked for three hours

**(e) Special – function casual employees**

Minimum hourly rates for the years ending on the last day of February of

	2016 R/h	2017 R/h	2018 R/h
General assistant	15:00	15:00	15:00
Catering assistant	16:00	16:00	16:00
Cook/Baker			
Counter assistant			
Waiter/ Wine Steward			
Assistant Bartender	17:00	17:00	17:00
Driver	18:00	18:00	18:00
Bartender	20:00	20:00	20:00
Clerk/Cashier			
Head cook			
Staff Supervisor	22:00	22:00	22:00

Where a special-function casual employee is required to work for less than five hours on any day he shall be deemed to have worked for five hours

**(2) Calculating of wages**

- (a) The daily wage of an employee shall be calculated by dividing his weekly wage as follows



- (1) By six in the case of an employee who works on six days per week
  - (2) By five in the case of an employee who works on five days per week
  - (b) The weekly wage of a monthly paid employee shall be calculated by dividing the monthly wage by four and one-third
  - (c) The hourly wage of an employee shall be calculated by dividing the weekly wage by the number of the weekly ordinary hours of prescribed for such employee in clause 9.
- (3) Basis of contract:** for the purpose of this clause the contract of employment of an employee, other than a casual employee, and a special – function casual employee, shall be on a weekly and, save as provided in clause 6(9), an employee shall be paid in respect of a week not less than the full weekly wage.
- (4) Differential wage:** Any employer who requires or permits a member of one class of his employees to perform work of another grade for longer than one hour in the aggregate on any day, either in addition to his own work or in substitution therefore, for which a wage higher than his own grade is prescribed in subclause (1), shall pay such employee in respect of such day not less than the daily wage calculated at the higher rate.
- (5)** Unless expressly otherwise provided in a written contract between an employer and his employee, nothing in this Agreement shall so be construed as to preclude an employer from requiring his employee to perform work of another grade, for which grade the same or lower wage is prescribed for such employee.
- (6) Reduction of wages:** An employer shall not reduce the wages of an employee who at the time this Agreement comes into operation or at any time thereafter, is paid a wage at a rate higher than the minimum rate prescribed for his grade in this Agreement, as long as he continues to work for the same employer. Provided that where a weekly-paid employee has been given one week's notice, or a monthly-paid employee two weeks' notice, of a change of conditions of employment and such employee agrees in writing to accept a transfer to a grade of work which a lower minimum wage is prescribed, this provision shall not apply.
- (7) Night Work:** An employer who requires a full time employee, other than a commission waiter, a casual employee, a special function casual employee



and employees referred to in clause 9(8) to perform night work shall pay such an employee, an amount of R0,88 per hour as a shift allowance, in addition to the employee's salary for the hours worked between 18:00 and 06:00 or grant the employee at least 10 minutes time off on full pay for every hour worked at the end of each week.

(8) An employer shall pay an employee other than part-time, casual, special function and commission workers the following as an annual bonus, payable during December :-

- (i) one week's wages for one year completed service;
- (ii) two weeks wages for two years completed service.

(8)(A) As from date of publication of this agreement an employer, other than a small employer shall pay an employee other than a part-time, casual, special function and commission workers the following as an annual bonus, payable during December:

- (i) three weeks wages for three and four years of completed service;
- (ii) four weeks wages, for five or more years completed service.

(9)(i) All employee(s) other than part-time, casual, special function waiter(s) and commission workers, earning less than R35000.00 per annum shall receive the full percentage increase as set out in the minimum prescribed rates.

(ii) All employees other than part-time, casual, special function waiter(s) and commission workers, earning R35000.00 per annum or more shall receive an increase of not less than 5%.

**(10)Work on Sunday:** An employer, other than a small employer, shall pay an employee, other than a commission worker, a casual employee or a special function casual employee, who ordinarily works on a Sunday, at one and one half times the employee's wage for each hour worked as from 1 January 2009: Provided that an employer may grant an employee who works on a Sunday, paid time off equivalent to the difference in value between the pay received by the employee for working on a Sunday and the pay that the employee is entitled to in terms subclause (1).



## 6. PAYMENT OF REMUNERATION

(1) Employees other than casual employees and special function casual employees: Save as provided in clause 16 and 17, any amount due to an employee, other than casual employees, special function casual employees and commission workers, shall be paid weekly or monthly in cash or, with consent of the employee, by uncrossed cheque, during the ordinary hours of work of the establishment, and –

(a) in the case of weekly paid employees pay day shall not be later than Saturday for employees who work on six days per week and Fridays for all the other employees, and shall include all overtime due to the employee up to the Wednesday preceding such payday

(b) in the case of monthly paid employees payday shall not be later than the last working day of the month: Provided that payment for any overtime worked after the 27<sup>th</sup> day of the month may be made not later than the payday following the month to which it relates.

(2) **Casual and Special function casual employees:** Save as provided in clauses 16 & 17, an amount due to a casual employee, or to a special function employee shall be paid in cash or, with the consent of the employee, by uncrossed cheque, and

(a) in the case of a casual employee, shall be paid at least once per week or on termination of employment;

(b) in the case of special function casual employee, shall be paid not later than Wednesday of each week and shall include all amounts due to the employee up to 06:00 on the Tuesday of that week;

(3) Notwithstanding anything to the contrary contained in this clause, all amounts due to an employee shall become payable upon termination of employment if this take place before the usual pay day, and in the case of summary dismissal owing to misdemeanour, all amounts due to an employee shall become payable within 72 hours of such dismissal.

(4) **Pay envelopes :** the amount due to an employee shall be contained in a sealed envelope or container on which shall be recorded or which shall be accompanied by a statement showing –

- (a) the employer's name, the employee's name or his number on the payroll, and his occupation;
- (b) payment for ordinary time worked;
- (c) payment for overtime worked
- (d) the details of any other remuneration arising out the employee's employment
- (e) the details of any deductions made
- (f) the actual amount paid to the employee;
- (g) the period in respect of which payment is made;
- (h) the number of ordinary and overtime hours worked by the employee:

Provided that such envelope, container or statement, shall reflect the particulars set out in Annexure A : Provided further that information in respect of time worked need not be furnished in the case of employees who are excluded from the hours of work provisions by virtue of clause 9 (8) (a) and such envelope or container on which these particulars are recorded, or such statement, shall become the property of the employee.

- (5) Premiums:** No payment shall be made to or accepted by an employer, either directly or indirectly, in respect to the employment or training by the employer of an employee: Provided that this sub-clause shall not apply in respect of a training scheme to which the employer is legally required to contribute.
- (6) Purchase of goods :** an employer shall not require his employee to purchase any goods from him or from any shop, place or person nominated by him.
- (7) Commission:** No employee shall be permitted to work on a commission basis only: Provided that an employer may pay commission over and above the minimum scale of wages prescribed.
- (8) Board and Lodging :** an employer shall not require his employee to board or lodge, or board and lodge with him or with any person or at any place nominated by him.
- (9) Deductions :** an employer shall not levy any fines against his employee, nor shall he make any deductions from his employee's remuneration other than in the following cases:



- (a) with the written consent of his employee, a deduction for a welfare organisation registered in terms of the Welfare Organisations Act, 1947, or a registered medical aid, pension or provident fund or funeral benefit
- (b) except where otherwise provided in this Agreement, whenever an employee is absent from work other than on the instructions or request of his employer, a deduction proportionate to the period of his absence and calculated on the basis of the wage which such employee was receiving in respect of his ordinary hours of work at the time of such absence.
- (c) If a employee is absent on the working day before or the working day following a public holiday for which he would be entitled to be paid without working, he shall forfeit pay for such paid holiday unless he can produce a medical certificate from a registered medical practitioner or any other medical certificate acceptable to the Council or unless he can satisfy the council that his absence was due to circumstances beyond his control
- (d) A deduction of any amount which an employer is legally or by order of any competent Court required or permitted to make, and with the written consent of the employee, any amount advanced from remuneration or lent to such employee.
- (e) Where an employee caused malicious damage to his employer's property or failed to return at the time of termination of employment any uniform supplied to him in terms of clause 8 hereof, a deduction in accordance with a decision taken by the Council or any subcommittee appointed by the council.
- (f) A deduction of the amount of any deficiency in cash handled solely by the employee who, in the case of a clerk/cashier, shall be responsible for balancing receipts and disbursements at the end of each shift: Provided that the employee accepts responsibility for such deficiency in writing and specifies therein the amount and conditions of repayment. Provided further that where the employee does not accept responsibility for such deficiency, the Council may at the request of the

employer or employee conduct an enquiry into the matter and make such recommendation as it deems fit.

(g) With the written consent of an employee, a deduction of any amount which an employer has paid in respect of the rent of any house or accommodation.

(h) A deduction for Bargaining Council expenses as provided in clause 21.

(i) A deduction in respect of meals as prescribed in terms of clause 17

(j) A deduction for trade union subscriptions in terms of clause 22(2)

(k) A deduction authorised by the Bargaining Council in terms of clause 13(5).

(10) Notwithstanding the provisions of sub-clause (9) (d) and (e) of this clause, the amount of such deductions shall, except where employment is terminated, not exceed a third of the total remuneration due to the employee.

**(11) Penalty for underpayment of minimum prescribed wages or unpaid arrear remuneration**

(a) whenever any amount payable to the Council or an employee is not paid in full and/or on the due date, a penalty of 10% shall be payable on such amount or any such lesser amount as may remain unpaid.

(b) The Council, in its sole discretion, may waive the right to impose the penalty referred to above.

**7. PAID HOLIDAYS**

(1) (a) Paid holiday means a public holiday as proclaimed in terms of the Public Holidays Act, 1994. Whenever a paid holiday falls on a Sunday, the following Monday shall be a paid holiday. Any paid holiday shall be exchangeable for any other day that is fixed by agreement or agreed to between an employer and employee.

(b) whenever an employee works for a period that falls partly on a public holiday and partly on an ordinary working day, such an employee shall, for the purpose of this clause, be deemed to have worked the whole period on the day on which the major portion of such working period falls.



- (2) When an employee is not required or permitted to work on a paid holiday that falls on a working day, his employer shall pay him his normal wage for that day.
- (3) When an employee works on a paid holiday that is a working day, his employer shall pay him double his hourly rate for all hours worked, with a minimum of a double a day's pay.
- (4) When an employee works on a paid holiday that falls on a day that is not his normal working day, his employer shall pay him either –
  - (a) double his hourly rate of pay for all hours worked, with minimum of double a day's pay; or
  - (b) one and a half times his hourly rate of pay, for all hours up to eight hours worked, with a minimum of eight hours' pay, and double time thereafter and grant him within seven days one day's leave on full pay: Provided that, with the written request of the employee, an extra day of leave may be granted in lieu of this day off.
- (5) If a paid holiday falls within an employee's period of annual leave, the period of such leave shall be extended by one working day for each paid holiday falling within his period of leave in terms of the provisions of clause 16(1).

#### **8. UNIFORMS, OVERALLS AND PROTECTIVE CLOTHING**

- (1) An employer shall supply and maintain free of charge any uniform, overall, washable coat, cap or apron that by any law he is compelled to provide for his employee and any such uniform, overall, washable coat, cap or apron shall remain the property of the employer.
- (2) An employer may require an employee to pay a deposit towards wearing apparel. The deposit shall be refunded on the apparel being returned in reasonable condition, less fair wear and tear.
- (3) An employer may agree with an employee that the employee shall clean his wearing apparel in his or her own time, for which the employer shall pay the employee R20.80 per week. This amount shall not be payable when the employee is off work.

## 9. HOURS OF WORK, OVERTIME AND PAYMENT FOR OVERTIME

(1) **Ordinary hours of work** : as from the date of coming into operation of this Agreement, an employer may not require or permit an employee to work more ordinary hours than in case of –

(a) a watchman –

(i) 50 hours in any week; and

(ii) subject to paragraph (i) hereof, 10 hours on any day;

(b) all other employees –

(i) 45 hours in any week; and

(ii) nine hours in a day

(iii) by an agreement the employees ordinary hours of work may be extended up to 15 minutes in a day but not more than 60 minutes in a week

(c) a casual employee, eight hours on any day

(d) a special function casual employee 15 hours on any day

(2) **Number of Working days**: an employer shall not require or permit an employee to work on more than six days per week, which includes Sunday, unless it is his day off. Please see clause 9(6) (b).

(3) **Meal Intervals** : an employer shall not require or permit an employee to work more than

(a) five hours continuously in the case of a six day week worker

(b) six hours continuously in the case of a five day week worker, subject to a bilateral agreement between the employer and the employee

(c) six hours continuously where the employee is requested to work a four day week; without a meal interval of not less than one hour, during which interval such an employee shall not be required or permitted to perform any work, and such interval shall not form part of the ordinary hours of work or overtime: Provided that –

i. an employer and his employee may agree to reduce the period of such interval to not less 30 minutes :

ii. any other interval of less than 30 minutes shall be deemed to be time worked:



- iii. any interval longer than three hours during the employee's ordinary hours of work, and longer than 30 minutes during or immediately before overtime is worked, shall be deemed to be overtime worked;
- iv. only one such interval during the employee's ordinary hours shall be deemed to be an interval, and not part of the ordinary hours of work.

(4) **Limitation of overtime:** an employer may not require or permit an employee to work overtime for more than , in the case of –

- (a) a casual employee, three hours on any day;
- (b) a special function casual employee, four hours on any day;
- (c) all other employees, four hours on any day and 16 hours in any week;

Provided that the weekly limitation of overtime prescribed in this clause may not be exceeded by more than 20 hours

- (i) during unforeseen circumstances; and
- (ii) during –
  - (aa) the period 6 December to 15 January;
  - (ab) shows and exhibitions;
  - (ac) the Easter weekend.

(5) An employer shall be entitled to require an employee, other than a par-time employee, to work overtime on any day except on the employee's day off, and such overtime shall not exceed four hours per day and sixteen hours per week.

(6) **Payment of overtime:**

- (a) An employer shall pay an employee who works overtime at a rate not less than one and a half times his ordinary wage in respect of the total period so worked on any day or during any week.
- (b) Where an employee agrees to work overtime on his day of rest owing to unforeseen circumstances, he shall be granted two full working days off, or he shall be paid not less than double his hourly rate of pay.
- (c) By agreement an employer may pay an employee not less than the employee's ordinary wage for overtime worked and grant the employee

- at least 30 minutes time off on full pay for every hour of overtime worked;  
or
- (d) Grant an employee at least 90 minutes paid time off for each hour of overtime worked.
  - (e) An employer must grant paid time off within three months of the employee becoming entitled to it.
- (7) Save as is provided for in sub-clause (3), all hours of work of an employee on any day shall be consecutive.
- (8) **Savings:** (a) The provisions of this clause shall not apply to an employee if and for so long as such employee is in receipt of a regular wage at a rate of not less than R45 000,00 per annum.

## 10. PROHIBITION OF EMPLOYMENT

An employer shall not employ –

- (a) any person under the age of 15 years;
- (b) any female during the period commencing four weeks prior to the expected date of her confinement and ending eight weeks after the date of her confinement. (The employer may require the employee to provide a doctor's certificate); and
- (c) an alien without a work permit ; and
- (d) a child in employment –
  - (i) that is inappropriate for a person of that age;
  - (ii) that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.

## 11. SPECIAL – FUNCTION CASUAL EMPLOYEES

- (1) **Travelling to place of work:** A special function casual employee shall be deemed to have commenced work from the time he is required to present himself for work, and does so at a place designated by the employer, and shall be deemed to have ceased work on being returned to the designated place by his employer.



(2) **Payment for cancelled shifts:** An employer who fails to give a special - function casual employee not less than 48 hours' notice of the cancellation of any arrangement to work at a function shall pay such employee an amount as though such employee had worked not less than five hours at the function concerned: Provided that where a function is cancelled owing to an act of God, the employer shall be entitled to cancel his arrangement with the special - function casual employee by giving not less than 24 hours' notice, failing which the employee shall be entitled to five hours pay as aforesaid.

(3) **Disciplining of special-function casual employee:**

(a) A special-function casual employee shall give his employer not less than 48 hours' notice of the cancellation of any arrangement to work at a function: Provided that such employee shall be entitled to give his employer 24 hours' notice of such cancellation in the event of being prevented by any act of God from fulfilling such arrangement or producing a medical certificate stating that he was prevented from working at the particular function as a result of his being incapacitated.

(b) An employee who has not given the notice or produced the medical certificate referred to in paragraph (a) shall pay the employer in lieu of such notice an amount equal to five hours' pay, or an employer may appropriate to himself from any moneys which he owes to such employee by virtue of any provision of this Agreement an amount of not more than that which such employee would have had to pay him in lieu of notice.

## 12. CONTRACT OF EMPLOYMENT

(1) Every employer shall in accordance with the Basic Conditions of Employment Act, No 75/1997, provide each employee with a letter of employment or enter into an agreement showing at least the following:

- (a) The employee's full name and identity number;
- (b) The full name of the employer and the physical address of the establishment;
- (c) The date of commencement of service;
- (d) The type of work and the basic wage offered;

- (e) That the conditions of employment as prescribed in this agreement apply; and
  - (f) The Bargaining Council's address and office hours (8:00 to 15:00).
- (2) The original of this letter of employment shall be signed by both the employer and employee and the employer shall keep a copy for himself.
- (3) For the purpose of assessing the capabilities of a prospective employee, he may be employed as a temporary employee for a period not exceeding three months: Provided that the employer has clearly defined, in writing, to the employee his temporary status at the time of engagement. Should his services be retained beyond the expiration of the three – month's period, he shall immediately be classified as a permanent employee, with a credit for service from the date when first employed.

### **13. NOTICE OF TERMINATION OF CONTRACT OF EMPLOYMENT**

- (1) An employer or his employee, other than a casual employee, a special function employee, who desires to terminate the contract of employment, shall give –
- (a) during the first month of employment, not less than one working day's notice;
  - (b) during the second, third and fourth months of employment, one week's notice, and
  - (c) thereafter, two weeks notice, of termination of contract, or an employer or employee may terminate the contract without notice by paying the employee or the employer, as the case may be, in lieu of notice, in the case of –
    - (i) a working day's notice, the wage the employee is receiving at the time of such termination;
    - (ii) a week's notice, the weekly wage the employee is receiving at the time of such termination;
    - (iii) two week's notice, two weeks' wage the employee is receiving at the time of such termination;
- Provided that this shall not affect –



(aa) the right of an employer or an employee to terminate the contract without notice for any cause recognised by law as sufficient;

(ab) any written agreement between an employer and his employee that provides for a period of notice of equal duration on both sides and for longer than that prescribed in this clause;

(ac) the operation of any forfeitures or penalties that by law may be applicable in respect of any employee who deserts or who is absent without permission from work for more than five consecutive working days or six working days during the preceding six months (such an employee shall be deemed to have terminated his contract of service: Provided that this shall not apply when absence is due to incapacity as defined in clause 14(3) (b);

(ad) an employee's failure or refusal to complete an attendance register provided to him in accordance with clause 18(4).

(2) Where there is an agreement in terms of the second proviso to subclause (1), the payment in lieu of notice shall be commensurate with the period of notice agreed upon.

(3) The notice prescribed in subclause (1) may be given on any working day: provided that –

(i) the period of notice shall not run concurrently with and notice shall not be given during an employee's absence on leave granted in terms of clause 16;

(ii) notice shall not be given during an employee's absence on sick leave granted in terms of clause 14 or owing to incapacity in the circumstances set out in clause 14, amounting in the aggregate, in respect of absences to not more than 10 weeks in any period of 12 months.

(4) Notwithstanding anything to the contrary in their agreement, where an employee terminates his contract of employment by leaving his employment without having given and served the required period of notice or without paying his employer in lieu of notice, his employer may, from

any moneys he owes such employee by virtue of any provision of this Agreement, appropriate to himself an amount of not more than that which such employee would have had to pay him in lieu of notice: Provided that where an employer has so appropriated an amount in lieu of notice, it shall be deemed for the purpose of this clause that the employee paid the employer in lieu of notice.

(5) **Guidelines for dismissal procedure:** An employee shall have the following rights in respect of an enquiry:

- (a) to be informed of the nature of the offence or misconduct,  
**PLUS** particulars of the charge;
- (b) to a hearing to take place timeously;
- (c) to be given adequate prior notice of the enquiry;
- (d) to representation to be allowed to assist him;
- (e) to call witnesses;
- (f) to challenge accusations, i.e. cross-examination;
- (g) to have an interpreter;
- (h) to a finding, i.e. found guilty, to be given reasons why and the penalty;
- (i) to have his period of service and record to be taken into consideration;
- (j) to appeal to "higher authority" when available.

**FOR FULL DETAILS**, see Annexure H. Also refer to Schedule 8 of the Act – "Code of Good Practice".

(6) **Guidelines for dismissal procedure for operational requirements (retrenchment procedure):**

- (a) Notification of intention to retrench –
  - (i) should it become necessary and an employer contemplates retrenchment, he shall, in respect of unionised employees inform the relevant trade union(s) or, in the case of non-unionised employees, of this fact;
  - (ii) a meeting shall be convened between the relevant parties by mutual agreement, following the trade union(s) or employees having received the notification of the necessity and intention to retrench;



(iii) the notification of the envisaged retrenchment must be accompanied by at least but not limited to the following information:

- (aa) the reason(s) for retrenchment;
- (ab) the number of employees involved in the proposed retrenchment;
- (ac) the proposed date of implementation of retrenchment which date shall not be sooner than four weeks after the date of notification of the envisaged retrenchment.

**(b) Consultation:**

(i) The employer and trade union or non-unionised employees shall meet as contemplated in subclause (a) above to consider the following alternatives;

- (aa) Reduction of overtime;
- (ab) transfers to other department or operations (if possible)
- (ac) working on a short time basis and/or work sharing;
- (ad) reduction of employment of casual workers;
- (ae) the granting of unpaid leave beyond normal annual leave provisions;
- (ag) any other appropriate alternative.

(ii) If retrenchment is unavoidable, the parties should apply the following guidelines in selecting employees for retrenchment.

- (aa) Employees who have reached or exceeded the normal retirement age according to the terms and conditions of employment of the employer;
- (ab) early retirement at the request of the employee or employer;
- (ac) "Lifo" – last in, first out subject to skills and organisational criteria.

**(c) Notification to individual employees:** After consultation as contemplated in subclause 2 above, individual employee's selected for retrenchment shall be informed of this fact in writing by the employer. Employers shall where possible, in order to alleviate hardship; consider the possibility of granting additional notice of termination of service due to operational requirements.

- (d) **Severance pay:** The employee shall be entitled to one week's severance pay for each completed year of continuous service with that employer subject to section 41(2) of the Basic Conditions of Employment Act, 1997.

#### 14. SICK LEAVE

(1) Subject to the provisions of subclause (2), an employer shall grant to each employee, other than a casual employee and a special-function or casual employee who is absent from work through incapacity –

- (a) in the case of an employee who works a four-day week, not less than 24 working days';
- (b) in the case of an employee who works a five-day week, not less than 30 working days'; and
- (c) in the case of every other employee, not less than 36 workings days; sick leave in the aggregate during each cycle of 36 consecutive months of employment with him, and shall pay such employee in respect of any period of absence in terms of this subclause not less than the wage he would have received had he worked during such period: Provided that –
  - (i) in the first 12 consecutive months of employment an employee shall not be entitled to sick leave on full pay at a rate of more than, in the case of an employee referred to in paragraph (a) above, one working day in respect of each completed period of six weeks of employment, in the case of an employee referred to in paragraph (b) above, one working day in respect of each completed period of five weeks of employment, and in the case of an employee referred to in paragraph (c) above, one working day in respect of each completed months of employment;
  - (ii) this clause shall not apply to an employee at whose written request an employer agrees to make contributions at least equal to those made by the employee, to any fund or organisation nominated by the employee, which fund or organisation guarantees to the employee in the event of his incapacity in the circumstances set out



in this clause the payment to him of not less than, in the aggregate the equivalent of his wages for 24, 30 or 36 working days, as the case may be, in each cycle of 36 months of employment;

(iii) where an employer is by any law required to pay fees for hospital or medical treatment in respect of an employee, and pays such fee in respect of any incapacity, the amount so paid may be set off against the payment due in respect of absence owing to incapacity in terms of this clause;

(iv) if in respect of any period of incapacity covered by this clause an employer is required by any other law to pay an employee his full wages, the provisions of this clause shall not apply.

(2) An employer may, as a condition precedent to the payment by him of any amount claimed in terms of this clause by an employee in respect of any absence from work for a period covering more than two consecutive working days, require the employee to produce a certificate signed by a registered medical practitioner stating the nature and duration of the employee's incapacity: Provided that –

(i) when an employee has during any period of up to eight weeks received payment in terms of this clause on two or more occasions without producing such certificate, his employer may during the period of eight weeks immediately succeeding the last such occasion require him to produce such certificate in respect of any absence from work;

(ii) where an employee in an establishment that normally closes on a public holiday absents him on the working day before and the working day after the public holiday, the employer may require him to produce a medical certificate in respect of such absence from work;

(iii) where an employee in an establishment that normally open on a public holiday absents himself from work on the day preceding such public holiday and on that public holiday, or on such public holiday and the day succeeding such holiday, the employer may

require the employee to produce a medical certificate in respect of such absence from work.

(3) For the purposes of this clause, the expression –

(a) “employment” shall be deemed to include –

(i) any period during which an employee is absent –

(aa) on leave in terms of clause 16;

(ab) on the instructions or at the request of his employer;

(ac) on sick leave in terms of subclause (1);

(ad) with the consent or condonation of his employer;

(ae) for any reason not being in breach of the contract of employment;

(af) amounting in the aggregate, in any year, to not more than 10 weeks;

Provided that an employee shall not be entitled to claim as employment more than four months of any one period of such service or absence or unpaid leave:

Provided further that any period of employment an employee has had with the same employer immediately before the date of coming into operation of this Agreement shall, for the purposes of this clause, be deemed to be employment under this Agreement, and any sick leave on full pay granted to such an employee during such period shall be deemed to have been granted under this Agreement;

(b) “incapacity” means inability work owing to any sickness or injury other than sickness or injury caused by an employee’s own misconduct:

Provided that any such inability to work caused by an accident for which compensation is payable under the Compensation for Occupational Injuries and Diseases Act, 1993, shall only be regarded as incapacity only during any period in respect of which no disablement payment is payable in terms of that Act.

(4) (a) For the purposes of this clause, “employer” includes –

(i) in the case of the death of an employer, the executor of his estate, or his heir or legatee; and



- (ii) in the case of the insolvency of an employer or the liquidation of his estate or sale or transfer of his business, the trustee or liquidator or the new owner of the business, if such executor, heir, legatee, trustee, liquidator or new owner continues to employ that employee.

Provided that where the previous employer gave his employee appropriate notice of termination of employment in writing, the new employer shall not be liable to pay any arrear remuneration.

- (c) Notwithstanding anything to the contrary in this subclause, when an employer sells his business and he and the purchaser make provision in written contract that the purchaser "takes over" the business with all assets and liabilities, or words to that effect, then the purchaser shall be liable to pay all arrear remuneration in terms of this clause.

## 15. MATERNITY LEAVE

- (1) An employee is entitled to at least four consecutive month's unpaid maternity leave.
- (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 still born child is entitled to maternity leave for six weeks after miscarriage or still birth whether or not the employee had commenced maternity leave at the time of the miscarriage or still birth.
- (5) An employee shall notify an employer in writing, unless the employee is unable to do so verbally, 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 practical to do so, as soon as is reasonably practical, but not less than two weeks before the commencement of maternity leave.
- (7) While an employee is on maternity leave the employer shall be entitled to employ in her stead a temporary employee in terms of clause 12, which temporary employee shall not be entitled to the status of a permanent employee (unless expressly agreed to in writing by both parties), nor will such employment be construed as to create the expectation of employment beyond such period.
- (8) Protection of employees before and after birth of a child:**
- (a) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her unborn child.
  - (b) During an employee's pregnancy, and for a period of six months after the birth of her child, her employer must offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if –
    - (i) the employee is required to perform night work that poses a danger to her health or safety or that of her child; and
    - (ii) it is practical for the employer to do so.

## **16. ANNUAL LEAVE**

- (1) Subject to the provisions of subclause (2) of this clause, an employer shall grant to each of his employees, other than a casual employee, or a special – function casual employee, in respect of each completed period of 12 months of employment with him –
- (a) (i) during the first three years of employment, 21 consecutive days' leave; and
  - (ii) thereafter thirty (30) consecutive days; leave; and



- (b) in the case of a night watchman, 28 consecutive days' leave; and shall pay such employee in respect of such leave –
  - (i) in the case of an employee referred to in paragraph (a) (i), an amount of not less than three times the weekly wage that the employee was receiving immediately prior to the date on which the leave commenced;
  - (ii) in the case of all other employees, an amount of not less than four times the weekly wage that the employee was receiving immediately prior to the date on which the leave commenced.
- (2) The leave prescribed in subclause (1) hereof shall be granted on a date to be fixed by the employer: Provided that –
  - (i) such leave shall be granted so as not to commence on a day concurrent with an employee's day off duty;
  - (ii) if such leave has not been granted earlier, it shall, save as provided in subclause (3), be granted so as to commence within four months after the completion of the 12 months of employment to which it relates or, if the employer and the employee have agreed thereto in writing before the expiration of the said period of four months, the employer shall grant such leave to the employee as from a date not later than two months after the expiration of the said period of four months;
  - (iii) the period of leave shall not be concurrent with sick leave granted in terms of clause 14.
  - (iv) an employer may set off against such period of leave any days of occasional leave granted on full pay to his employee at his employee's written request during the period of 12 months of employment to which the period of leave relates;
  - (v) when an employer requires his employee to take or consents to his employee taking his annual leave before the expiration of the 12 months of employment to which it relates, the employer, shall grant such employee the full period of leave accruable for 12 months of employment and shall pay such employee in respect of such leave an amount of not less than that which the employee would be entitled

to at the date on which the leave would normally accrue: Provided further that where an employee's employment terminates before the expiration of the 12 months in respect of which the leave was granted in terms of this proviso, the employer may set off against any remuneration due to the employee at the termination of employment, the difference between the amount paid to the employee in terms hereof and the amount to which he would have been entitled at termination in terms of subclause (5) of this clause, if the leave had not been granted to him as aforesaid.

- (3)(a) At the written request of an employee, an employer may permit the leave, or a portion thereof, to accumulate over a period of not more than 24 months of employment. Provided that –
- (i) such request is made by such employee not later than four months after the expiration of the first period of 12 months of employment to which the leave relates: and
  - (ii) the date of the receipt of such request is endorsed on the request over his signature by the employer, who shall retain such request at least until after the expiration of the period of leave so taken.
- (b) The provisions of subclause (2) shall mutatis mutandis apply to the leave referred to in paragraph (a) of this subclause.
- (c) An employee shall have the right to exercise an option to waive not more than a third of the annual leave referred to in subclause (1) (a) (i) and not more than one-half of the annual leave referred to in subclause (1) (a) (ii) or (b) and his employer shall, in respect of such period of leave not taken, pay him wages in lieu thereof.
- Provided that –
- (i) the employee's request to waive such leave is retained by the by the employer for at least 12 months from the date of receipt thereof by him; and
  - (ii) save as provided in subclause (4), the payment in lieu of leave shall be made to the employee on a date to be agreed upon between the employer and the employee, but not later than the



last working day before the commencement of the remaining period of the annual leave.

- (4) The remuneration in respect of the leave prescribed in subclause (1), read with subclause (3), shall be paid not later than the last working day before the date of commencement of the leave: Provided that at the written request of an employee, payment in respect of the annual leave taken by an employee, or a part thereof, together with payment in respect of leave converted as provided for in subclause (3) (c), may be made on the payday immediately succeeding the employee's return from leave. Provided further that such written request of an employee shall be retained by the employer for at least 12 months from date of receipt thereof by him.
- (5) An employee whose contract of employment terminates during any period of 12 months of employment before the period of leave prescribed in subclause (1) in respect of that period has accrued, shall upon termination, and in addition to any other remuneration that may be due to him, be paid in respect of each completed month of such period of employment an amount of not less than -
- (a) in the case of an employee referred to in subclause (1) (a) (i), a quarter; and
  - (b) in the case of an employee referred to in subclause (1) (a) (ii), a third, of the weekly wage he was receiving immediately before the date of such termination: Provided that an employer may make a proportionate deduction in respect of any period of leave granted to an employee in terms of subclause (2) (iv) and (v): Provided further that an employee who leaves his employment without having given and served the period of notice prescribed in clause 13, unless the employer has waived such notice, or without the employee having paid the employer in lieu of notice, unless in failing to give such notice or to work during such period the employee was acting within his legal rights, and subject to the provisions of clause 13 (4), shall not be entitled to any payment in terms of this subclause.
- (6) An employee who has become entitled to a period of annual leave prescribed in subclause (1), read with subclause (3), and whose employment terminates before such leave has been granted, shall upon

such termination be paid the amount he would have received in respect of the leave had the leave been granted to him as at the date of termination.

(7) For the purposes of this clause –

- (a) the expression, “employment” shall be deemed to include –
  - (i) any period in respect of which an employer, in terms of clause 13, pays an employee in lieu of notice;
  - (ii) any period during which an employee is absent –
    - (aa) on leave in terms of this clause;
    - (ab) on sick leave in terms of clause 14;
    - (ac) on the instructions or at the request of his employer;
    - (ad) with the consent or condonation of his employer;
    - (ae) for any other reason not being in breach of the contract of employment, amounting in the aggregate in any year to not more than 10 weeks; and
- (b) employment shall be deemed to commence –
  - (i) in the case of an employee who before the coming into operation of this Agreement has become entitled to a period of annual leave in terms of any law, on the date on which such employee last became entitled to such leave under such law;
  - (ii) in the case of an employee who was in employment before the coming into operation of this Agreement and to whom any law providing for annual leave applied in terms thereof, on the date on which such employment commenced;
  - (iii) in the case of any other employee, on the date on which such employee entered his employer’s service.

(8) (a) For the purposes of this clause, “employer” includes –

- (i) in the case of the death of an employer, the executor of his estate, or his heir or legatee; and
- (ii) in the case of the insolvency of an employer or the liquidation of his estate or sale or transfer of his business, the trustee or liquidator or the new owner of the business, if such executor, their legatee, trustee, liquidator or new owner continues to employ that employee; Provided that where the previous



employer gave his employee appropriate notice of termination of employment in writing, the new employer shall not be liable to pay any arrear remuneration.

- (b) Notwithstanding anything to the contrary in the subclause, when an employer sells his business and he and the purchaser makes provision in a written contract that the purchaser "takes over" the business with all assets and liabilities, or words to that effect, then the purchaser shall be liable to pay all arrear remuneration in terms of this clause.

**(9) Annual Closing:**

- (a) Notwithstanding anything to the contrary contained in this clause, an employer may for the purposes of annual leave at any time, but not more than once in any period of 12 months, close his establishment for 14 consecutive days and in that case shall remunerate his employee in terms of subclause (1) or in terms of paragraph (b) or (c) hereof, as the case may be;
- (b) Whenever a public holiday as defined, is observed on a day which otherwise would be a working day for an employee and falls within the closed period referred to in paragraph (a), another working day shall be added to the said closed period as a further period of leave and the employee shall be paid an amount of not less than his daily wage in respect of each such day added.
- (c) An employee who, at the date of the closing of an establishment in which he is employed, is not entitled to the full period of annual leave prescribed in subclause (1) shall, in respect of any leave due to him, be paid by his employer on the basis set out in subclause (5), and for the purposes of annual leave thereafter this employment shall be deemed to commence on the date of such closing of the establishment.
- (d) An employer and his employee may agree that any leave in excess of 21 days, plus days in lieu of public holidays accrued to the employee, may be paid out.
- (e) An employer and his employee may agree in writing to observe an annual closed period of not less than 14 consecutive days, in which case all excess leave shall be paid to the employee.

### **16(A) FAMILY RESPONSIBILITY LEAVE**

(1) An employee who has been in employment with the same employer for longer than twelve months, and who works for at least five days a week for that employer, at the request of the employee shall be entitled to four (4) days paid leave and four (4) days unpaid leave during each annual leave cycle which may be taken –

- (a) when the employee's child is born;
- (b) when the employee's child or adopted child is sick;
- (c) in the event of the death of the employee's spouse, life partner, parent, adopted parent, grandparent, child, adopted child, grandchild or sibling.

Before paying an employee for leave in terms of this clause, an employee shall submit proof of an event contemplated in subclause (1) for which the leave was taken. An employee's unused entitlement to leave in terms of this clause shall expire at the end of the leave cycle in which it accrues.

### **17. MEALS, TRANSPORT AND LATE NIGHT WORK**

#### **(1) Provision of meals:**

(a) Where an employee, other than a casual employee or a special-function casual employee, agrees to accept meals from his employer, a deduction not exceeding R40, 00 per month or R9, 23 per week in respect of part-time employees, and R70, 00 per month or R16, 15 per week in respect of full-time employees, may be deducted from the employee's wage in respect of such meals.

Provided that –

- (i) the employee is provided with such meals as fall within his working hours but not less than two meals per working day or one meal for a part-time employee;
- (ii) no deduction shall be made in respect of meals not taken by the employee while absent from work with pay, such as pay in lieu of notice, annual leave or sick leave;



- (iii) no further deductions shall be made by the employer when an employee receives additional food while on duty;
  - (iv) it shall not be construed that a deduction may not be made when an employee agrees to accept meals and does not avail himself thereof, unless notice has been given to cancel the arrangement and such notice has expired;
  - (v) the meals shall be adequate as regards the quantities of food supplied, and reasonable in respect of their content and quality.
- (b) Every employer shall provide each casual employee, and special-function casual employee, with a free meal in respect of the first five consecutive hours of work or part thereof worked by such employee and thereafter in respect of each completed period of four consecutive hours worked.
- (2) Provision of transport for night workers:**
- (a) In the event of any special-function employee or special-function casual employee, casual employee working later than 22:30, the employer shall make reasonable arrangements for the transport home of such employee: Provided that, in lieu of providing such transport home, an employer may order a taxi to take one or more of the employees home, and pay the taxi in advance or pay each employee R10.00 cash.
  - (b) In the event of an employee, other than a special-function casual employee, a casual employee or a commission worker who works after 22h30 and being authorised to work, the employer shall pay such employee R150.00 per month as "late night allowance". provided that if an employer daily provides free transport home for late night workers, he shall not be required to pay such an allowance to those employees.
- (3) Late night work:** An employer who requires an employee to perform work in an environment with hazardous substances 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 reasonably 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 paragraph (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 reasonable time if –
  - (i) the employee suffers from a health condition associated with the performance of night work; and
  - (ii) it is practical for the employer to do so.
- (4) For the purposes of sub-clause (3), 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.

## 18. RECORDS TO BE MAINTAINED

- (1) **Wages register:** every employer shall keep or cause to be kept a wages register as per Annexure D in respect of all employees in his employ, showing all the particulars provided for. This wages register shall be kept on the premises where the employees work, except as may be otherwise authorised in writing by the Council.
- (2) **Casual employees, special-function casual employees**

Every employer shall provide or cause to be kept a register in the form specified in Annexure B to this Agreement, which shall be signed by every casual employee, contract waiter and special-function casual employee at the time of commencement and finishing work or each day on which he is employed.
- (3) **Timetable:** A legibly typed or written schedule conforming as near as practical to Annexure G to this Agreement shall be posted at least seven



days in advance in a place frequented by the employees, setting forth the particulars of the daily shifts required to be worked by the employees, other than casual employees, special-function casual employees and commission waiters whose names are stated in the said schedule.

(4) **Attendance register:** Every employer shall provide each of his employees, other than a casual employee, commission waiter and a special-function casual employee, with an attendance register as required in terms of section 31 of the Basic Conditions of Employment Act 75 of 1997, as amended, and in the form prescribed under the regulations to the Act, which shall be filled in by the employee showing the actual time worked on each day of the week, the time of commencement and finishing work during the spread over of hours daily and the occupation of each such employee: Provided that in lieu of such attendance register an employer may provide a semi-automatic time recorder with the necessary cards. Provided further that, if any employee is unable to read and write, his employer shall on his behalf make and sign the necessary entries in respect of the time he commenced, the time of commencement and termination of each meal or other interval, which is not recognisable as ordinary hours of work, and the time of finishing work for the day inclusive.

(5) All registers shall remain the property of the employer and shall be retained for three calendar years subsequent to the date of the last entry therein. No employee shall remove an attendance register from the employer's premises.

(6) **Savings:** The provisions of subclause 18(4) shall not apply to an employee if and so long as such employee is in receipt of a regular wage at a rate of not less than the amounts specified in clause 9 (8).

## 19. REGISTRATION OF EMPLOYERS AND EMPLOYEES

(1) Every employer, Temporary Employment Service Agency (Labour Broker) Contractor and every new employer who enters the Sector in the Council's registered scope of registration, shall –

(a) within one month of the date on which this Agreement becomes binding upon him, or in the event of an employer commencing

- operations after that date, within one month of such commencement, register with the Council by the completing and submitting to the Council a statement in the form of Annexure C to this Agreement.
- (b) whenever change in the particulars furnished in terms of subclause (1) occurs, or in the event of the –
- (i) sequestration of the employer's estate;
  - (ii) winding up the affairs of the company;
  - (iii) transfer of abandonment of the business carried on; or
  - (iv) acquisition of commencement of any other business upon which this Agreement is binding, within 30 days furnish the Secretary of the Bargaining Council with a completed statement in the form of Annexure C to this Agreement; and receipt thereof shall be acknowledged by the Secretary of the Council.
- (2) The Secretary of the Council shall monthly furnish the secretary of the employer's organisation with particulars of establishments registered with the Council during the preceding month.
- (3) The Secretary of the Council shall forward to the trade union monthly, a list of all registrations and changes of those employees who are eligible for membership of the trade union.

## **20. CERTIFICATE OF SERVICE**

Except where a contract of employment of an employee is terminated on the grounds of desertion or where the employee is a casual employee or special-function casual employee, the employer shall, upon termination of any contract of employment, furnish the employee with a certificate of service in the form specified in Annexure E.

## **21. INCOME AND EXPENSES OF THE COUNCIL**

- (1) (a) For the purpose of meeting the administrative expenses of the Council, every employer shall deduct from the wages of each employee, a Council levy of R5.00 per month in the case of all employees who have worked in that month: Provided that, for the



purposes of this paragraph, an employee shall be deemed to have worked during any period in which he is absent from work or on paid leave or sick leave as provided in this Agreement.

(b) for the purpose of meeting the expenses of the Council in the administration of a fund to be used for the resolving of disputes, every employer shall deduct from the wages of each employee a Dispute Resolution levy of R3,00 per month in the case of all employees who have worked in that month: Provided that, for the purposes of this paragraph, an employee shall be deemed to have worked during any period in which he is absent from work on paid leave or sick leave as provided in this Agreement. A separate account shall be kept by the Council for this fund.

(2) Every employer shall contribute to the funds of the Council –

(a) an amount equal to that deducted from the employees as prescribed in subclause (1);

(b) an amount of R25,00 in respect of each establishment each month, or part thereof, during which deductions were made or were required to be made in terms of subclause (1), which shall be contributed by the employer himself.

(3) The total amounts deducted, or required to be deducted, in terms of subclause (1), from the wages of employees, together with the amounts required to be contributed by the employer in terms of subclause (2), shall be forwarded by the latter to the Secretary of the Council monthly not later than the 15<sup>th</sup> day of the month succeeding that during which the deductions and contribution were made or were required to be made, together with a completed statement in the form of Annexure F showing the number of employees from whom the deductions were made or were required to be made.

(4) The amounts owing shall either be forwarded to: P.O. Box 30822, Braamfontein, 2017, or delivered to the offices of the Council at 21 Kruis Street, Johannesburg.

(5) Notwithstanding anything to the contrary contained in this Agreement, the Council shall be entitled to a 5% collection fee on all funds

administered by the Council or collected on behalf of any third party or fund, which said amount shall accrue to the general funds of the Council. The Council, in its sole discretion, may waive the right to such entitlement.

### **21(A) DEFAULT PAYMENTS**

- (1) **Dishonoured cheques:** Whenever a employer pays any sum of money that is due to the Council in terms of this Agreement, in any manner other than in cash, and such payment is dishonoured for any reason whatsoever, then and in such event, a penalty shall be imposed on the employer, which shall be equal to 10% or R100 whichever the greater, of the amount is due. Any penalty plus the full amount originally due, shall be payable in cash on demand.
- (2) **Legal costs:** Whenever it becomes necessary or expedient for the Council to institute legal action in a court of law for the recovery of any amounts of money due to either the Council, an employee or an employer in terms of subclause (1) but not paid over to the Council after having been requested to do so, then and in such event the debtor shall be liable for all legal costs incurred by the Council in the recovery of the amount due, including costs on an attorney and client scale in the event of a legal practitioner, an arbitrator or a collections agency having been instructed by the council to collect the amount.
- (3) **Forfeiture of claimed amounts to Council:**
- (a) Whenever the Council has claimed an amount owing to an employee or an ex-employee in terms of this Agreement and the amount was paid over to the Council but the employee or ex-employee failed to collect such amount from the Council within a period of three years (36 months), such amount will accrue to the general funds of the Council. It will then be accepted that the employee or ex-employee has waived all its rights to such amount.
- (b) The employee or ex-employee will have no further-or alternate claim for the same amounts in terms of the Agreement against the employer.
- (1) **Indemnity clause:** The members of the Council, their alternates, the Executive Committee or their alternates and the Council officials shall not be



liable for any debts and/or liabilities of the Council or any of its banking accounts or funds and they are hereby indemnified against all losses and/or expenses incurred or which may be incurred by them in the bona fide lawful execution or discharge of their duties.

### **21(B) FUNERAL BENEFITS**

- (1) Membership of the Hospitality Group Funeral Insurance Scheme, as underwritten by Metropolitan Life Limited with Registration No. 1949/032491/06 as per policy Number 4151686104 is compulsory for all employees, (other than a casual employee, a special function casual employee or a commission worker) who are employed in the Scope and Sector of the Bargaining Council for the Restaurant, Catering and Allied Trades and who has not reached the age of 65 (sixty five) years.
- (2) For the purpose of providing employees with Funeral Benefits, every employer shall, in respect of each month, deduct R12-50 from the wages payable to each employee and add to such a deduction an amount of R12-50.
- (3) Every employer shall ensure that the amounts referred to in sub-clause (2) are paid monthly in advance by debit order or by electronic transfer to: Extra Dimensions (the administrator) Reg. No. 2007/000667/23 Standard Bank, Braamfontein Branch, Code 004805, Account Number 000462136.
- (4) A completed statement in the form of Annexure I showing the number of employees from whom deductions and contributions were made, or should have been made, their names and ID Numbers, shall be forwarded monthly by all employers to: P.O. Box 2363, Florida Hills 1716 or faxed to: (011) 6725803 , or fax to e-mail 086 636 9333 not later than the 15<sup>th</sup> day of the month succeeding that during which the deductions and contributions were made.

### **21(C) Provident Fund**

- (1) Membership of the Momentum "Funds at Work Benefit" Scheme with registration No's 12/08/32083/1, SARS 18/20/No 36990 is compulsory for all

employees, (other than a casual employee, a special function casual employee or a commission worker) who are employed within the scope and Sector of the Bargaining Council for the Restaurant, Catering and Allied Trades and who have not reached the age of sixty five (65) years.

- (2) For the purpose of providing employees with Provident Fund Benefits, every employer shall in respect of each month deduct 5% from the wages payable to each employee, and add to such deduction an equal amount of 5%.
- (3) Every employer shall ensure that the employees deduction as well as the employers contribution as referred in sub-clause (2) are paid to the Momentum/administrator electronically by no later than the 7<sup>th</sup> day of the month succeeding that during which the deductions and contributions were made.
- (4) Every employer shall submit the participating employer's membership particulars to the administrator in the prescribed electronic format and in such detail as required in terms of the regulations and this agreement by not later than the 25<sup>th</sup> of each month.

## **22. MEMBERSHIP OF EMPLOYERS' ORGANISATION AND TRADE UNIONS AS DEFINED IN THE PREAMBLE TO THIS AGREEMENT, AND INCIDENTAL MATTERS.**

- (1) Every employer, after prior arrangement with him, shall give reasonable facilities to the duly authorised trade union officials to enter his establishment at off-peak periods for the purpose of –
  - (a) interviewing on trade union matters;
  - (b) enrolling new members;
  - (c) distributing documents issued by the trade union.
- (2) (a) Every employer shall, for the benefit of the employers' organisation, as defined in this Agreement, forward to the Secretary of the Council the subscription and/or levy payable by him to the said organisation in terms of that organisation's constitution, by not later than the 15<sup>th</sup> day of the month following that in which such subscription and/or levy fell due.
  - (b) Where an employee requests his employer in writing to deduct trade union subscriptions, the employer shall forward such amounts to the



Secretary of the Council not later than the 15<sup>th</sup> of the following month of the amount so deducted. Provided that the employer may retain as a collection fee an amount not exceeding five percent of the amount so deducted.

- (3) **Trade union representatives to the Council:** Every employer shall give to an employee who is a representative on the Council every reasonable facility to attend to his duties in connection with the work of the Council.
- (4) The subscriptions and fees payable in terms of subclause (2) of this clause shall be included with the other amounts to be remitted together with Annexure F to this Agreement.

### **23. ADMINISTRATION OF AGREEMENT, AGENTS AND DESIGNATED AGENTS**

- (1) The council is responsible for the administration, promoting, monitoring and enforcement of this Agreement.
- (2) The Council may issue guidelines or instructions to employers and employees regarding the implementation of this Agreement.
- (3) The Council may request the Minister in terms of Section 33 (1) of the Act to appoint a person as a designated agent.
- (4) The Council shall appoint one or more specified persons as designated agents to assist in giving effect to the terms of the Agreement.
  - 1. A designated agent of the Council shall promote, monitor and enforce compliance with this agreement.
  - 2. A designated agent may:
    - (a) secure compliance with the Council's collective agreement by;
      - (i) publicising the contents of the agreement;
      - (ii) conducting inspections;
      - (iii) investigating complaints; or
      - (iv) any other means the Council may adopt; and
    - (b) perform any other functions that are conferred to imposed on the designated agent by the Council; and
    - (c) a designated agent of the Council has all the powers as set out in schedule 10 to the Act:

(d) issue a compliance order requiring any person to comply with the collective agreement within 21 days of the date of the compliance order.

(e) A compliance order may be made an arbitration award. Provided that the parties have been given fourteen (14) days' notice that application will be made to have the compliance order made an arbitration award.

(5) Deleted.

### **23(A) POWERS OF DESIGNATED AGENTS**

(1) A designated agent may without warrant or notice at any reasonable time enter any workplace or any other place where an employer carries on business or keeps employment records, that is not a home, in order to enforce compliance with a collective agreement concluded in the bargaining council.

(2) A designated agent may only enter a home or any place other than a place referred to in sub item (1)-

(a) with the consent of the owner or occupier; or

(b) if authorised to do so by the Labour Court in terms of sub clause (3);

(3) The Labour Court may issue authorisation contemplated in sub clause (2)(b)

Only on written application by a designated agent who states under oath the reasons for the need to enter a place, in order to monitor or enforce compliance with a collective agreement concluded in the bargaining council.

(4) If it is practicable to do so, the employer and a trade union representative must be notified that the designated agent is present at a workplace and the reason for the designated agent's presence.

(5) In order to monitor or enforce compliance with the collective agreement a designated agent may –

(a) require a person to disclose, either orally or in writing, and either alone or in the presence of witnesses, on a matter to which the collective agreements relates, and require that disclosure to be under oath or affirmation;

(b) inspect and question a person about any record or document to which a collective agreements relates;



- (c) copy any record or document referred to in paragraph (b) or remove these to make copies or extracts;
  - (d) require a person to produce or deliver to a place specified by the designated agent any record or document referred to in paragraph (b) for inspection;
  - (e) inspect, question a person about, and if necessary remove, an article, substance or machinery present at a place referred to in sub items (1) and (2);
  - (f) question a person about any work performed; and
  - (g) perform any other prescribed function necessary for monitoring or enforcing compliance with the collective agreement.
- (6) A designated agent may be accompanied by an interpreter and any other person reasonably required assisting in conducting an inspection.
- (7) A designate agent must –
- (a) produce on request a copy of the authorisation referred to in sub item (3);
  - (b) provide a receipt for any record or document removed in terms of sub item (5); and
  - (c) return any removed record, document or item within a reasonable time.
- (8) Any person who is questioned by a designated agent in terms of sub item (5) must answer all questions lawfully put to that person truthfully and to the best of that person's ability.
- (9) An answer by any person to a question by a designated agent in terms of this item may not be used against that person in any criminal proceedings, except proceedings in respect of a charge of perjury or making a false statement.
- (10) Every employer and each employee must provide any facility and assistance at a workplace that is reasonably required by a designated agent to effectively perform the designated agent's functions.
- (11) The bargaining council may apply to the Labour Court for an appropriate order against any person who –
- (a) Refuses or fails to answer all questions lawfully put to that person truthfully and to the best of that person's ability;
  - (b) Refuses or fails to comply with any requirement of the designated agent in terms of this item; or

- (c) Hinders the designated agent in the performance of the agent's functions in terms of this item.
- (12) For the purpose of this clause, a collective agreement is deemed to include any basic condition of employment which constitutes a term of a contract of employment in terms of section 49(1) of the Basic Conditions of Employment Act.

It is an offence to –

- (a) obstruct or attempt to improperly influence a designated agent or other person who is performing a function in terms of this Agreement;
- (b) present or submit a false or forged document;
- (c) pretend to be a designate agent of this Council performing a function in terms of this Agreement,
- (d) refuse or fail to answer fully any lawful question put by an agent, designated agent or other person in the performance of his duties in terms of this Agreement;
- (e) refuse or fail to comply with any lawful request of; or lawful order by a designated agent or person in the performance of his duties in terms of this Agreement;
- (f) hinder or obstruct a designated agent or any other person performing a function in terms of this Agreement.

Upon conviction of any of the offences mentioned in 6.1 above, a penalty similar to that prescribed section 92 and 93 of the Basic Conditions of Employment Act, No 75 of 1997, as amended, may be imposed.

#### **24. EXHIBITION OF AGREEMENT**

- (1) The parties agree that the English version of this agreement shall determine the meaning and intention of the parties and be made available by the Council for inspection by any person at the Council's office between 08:15 and 15:00 on any working day.
- (2) A legible copy of the Agreement shall at all times be exhibited in a prominent place in every establishment and made available to any employee for perusal and discussion with the employer.



## 25. RIGHTS AND OBLIGATIONS OF THE TRADE UNION

Subject to any arrangement which the individual trade unions and members of employers' organisations may agree to at plant level, the following provisions shall be applicable:

**(1) Access:**

(a) Unions officials, may hold meetings with employer representatives for the purposes of discussing this Agreement, issues that arise here from or any other matter of mutual interest: Provided that such meetings shall be held at a time and place that is mutually convenient to the employer representative and the trade union officials.

(b) The employer and the trade union shall inform the other party in writing of the names and status of their respective representatives. No other person shall act on behalf of the employer or the trade union. The employer and the trade union agree to inform the other party of any changes to their representatives in writing.

(c) In addition to the access specifically granted to the trade union officials in terms of this Agreement, a maximum of two union officials shall be entitled to have access to trade union representatives and union members during their lunch break, not more than once per calendar month. The date of such access shall be agreed upon between a union official and a representative of the employer.

(d) Trade union officials shall not have access to trade union representatives and union members during their working hours unless they have obtained the written consent of a representative of the employer beforehand.

(e) The employer shall specify the area at the premises which shall be used by trade union officials for the purposes of any meeting with trade union representatives and union officials.

(f) No meeting consisting of more than four trade union members shall be arranged either by trade union officials or trade union representatives at the premises during normal working hours, excluding lunch breaks, without the permission of a representative of the employer.

**(2) Restriction on access:**

- (a) The activities of the trade unions and in particular that of trade union representatives referred to in this clause shall not interfere with the employer's operation and productivity and shall not exceed the limits and purposes of this Agreement.
- (b) Should such interference persist, the employer may, by written notice to the union, immediately vary or withdraw the access granted.
- (c) The trade unions shall comply with the security and safety regulations of the employer.

**(3) Stop order facilities:**

- (a) The employer shall deduct union subscriptions from the wages of union members and shall account and pay to the trade union on or before the 15<sup>th</sup> of each follow month the aggregate amount deducted.
- (b) No subscription shall be deducted from the wages of a trade union member unless he signed a stop order authorising a specific deduction from his wages, and the stop order shall be lodged with the employer by the trade union until the employee has furnished proof of being a member of that union and employed in the sector.
- (c) A trade union member may authorise deductions to cease, subject to one month's notice, by addressing a written request to the employer and the trade union.
- (d) The employer shall not be responsible for the collection of any subscription which for any reason, may be in arrears.
- (e) The employer shall submit a monthly remittance to the trade union reflecting the names of members in respect of whom deductions have been made, a copy of requests to revoke membership and the amounts/period for which deductions were made.
- (f) Where there has been a change in trade union subscriptions in accordance with the constitution of the trade union, one calendar month's written notice of such change shall be given by the trade union to the employer. Such notice shall be accompanied by a stop order signed by each trade union member authorising such increased deduction. The employer shall raise the deduction accordingly.



**(4) Recognition and duties of trade union representatives**

- (a) A trade union representative shall represent the trade union at the premises of the employer in accordance with the rights and obligations applicable to them as set out in this Agreement and any other agreements entered into between the employer and the trade union.
- (b) Any trade union representative shall be entitled to assist and represent union members in recording any grievance that the union members may have or at disciplinary hearings.
- (c) A trade union representative shall consult with the employer for the purpose of promoting co-operation and understanding and preventing the occurrence of grievances and disputes.
- (d) A trade union representative shall consult with trade union members only during work breaks such as lunch intervals and without delaying the working process.
- (e) The trade union representatives shall at all times observe their terms and conditions of employment and shall be subject to the same disciplinary and performance standards as other employees.
- (f) If an employer has the facilities of a photocopier and fax machine, the employer may permit Union representatives the reasonable use of such facilities under the supervision of management provided that permission has been obtained from management prior to the use of such facilities.

**(2) Election of trade union representatives:**

- (a) Trade union representatives and their alternates shall be elected during normal working hours by union members in terms of this Agreement by secret ballot for a period of two years to represent them in terms of this Agreement, subject to the following:
  - (i) The election of trade union representatives and their alternates during working hours shall not disrupt the normal working processes and smooth running of the employer's business.
  - (ii) The election date and procedural detail for the election shall be agreed with the employer at least seven working days prior to the election date.

(iii) The number of trade union representatives in respect of each place where the employer conducts its operations shall be as follows:

	NUMBER OF TRADE UNION MEMBERS	NUMBER OF STEWARDS	SHOP
(iv) Only union in may trade	10	One	trade members in good standing may nominate union
	10-50	Two	
	50-299	Two for the first 50 plus one for each additional 50 up to a maximum of seven	
	300-600	Seven for the first 300 plus one for every 100 additional members up to a maximum of 10	

representatives and only union members in good standing in the interest group may be nominated and elected as trade union representatives or alternates. Candidates must, nevertheless, have at least one year's continuous service with the employer.

(b) A recognised trade union representative or alternate shall resign from office –

(i) on being promoted or appointed to a managerial position: Provided that he shall resign not later than the effective date of his appointment or promotion: Provided further that he shall be free to decline or accept the promotion and shall not be victimised as a result of declining the promotion;

(ii) on ceasing to be a member of the trade union;

(iv) on resigning as a trade union representative or alternate; and/or

(v) on receiving a written request for this resignation supported by the majority of trade union members in this constituency.

**(3) Leave for trade union activities:**

(a) Trade union representatives of a party to the Council may be granted five (5) days' paid and five (5) days unpaid training leave per annum by the



employer to undergo training or to attend a conference on any subject relevant to the performance of the functions of a trade union representative: provided that no days training or conference leave shall be permitted to be taken on Fridays, Saturdays, Sundays or public holidays.

(b) a request for such leave shall be accompanied by written application from the trade union, giving seven days notice and setting out the nature of such training or conference and the name of the institution which will conduct such training: Provided that no days will be permitted on Fridays, Saturdays and Sundays or Public Holidays.

**(4) Peace obligation:** Neither an employer or a trade union or its members shall cause, sanction or participate in any strike or lock-out directed against the other party:

- (i) Concerning any issue which is the subject matter of a substantive agreement during the period of such agreement and, in particular, where the issue has been negotiated at the Council and the collective agreement has been concluded in this regard; or
- (ii) Concerning issues which are not the subject matter of a substantive agreement unless such industrial action forms part of the dispute resolving procedures; or
- (iii) During an arbitration or arising out of an arbitral award whether such arbitration is conducted by a private agency, the Commission for Conciliation, Mediation and Arbitration, the Labour Court or the Council.

**(5) Internal Dispute Resolution Procedures:**

- (a) Where a dispute has been declared, the party declaring the dispute shall furnish written particulars of the dispute to the other party, this notice setting out the nature of the dispute and the proposed terms of the settlement.
- (b) The party receiving the notice of dispute shall, within five working days of receipt thereof, notify the aggrieved party in writing of its response and shall further set out its terms of settlement.

- (c) A meeting of the parties shall be convened within five working days of receipt by the aggrieved party of the other party's statement.
- (d) If agreement is not reached regarding the dispute or part thereof at the meeting held in terms of (c) above, then the parties may consider alternative methods of resolving the dispute, such as referral to conciliation or arbitration.
- (e) If the dispute remains unresolved after the exhaustion of these procedures either party may refer the dispute to the Bargaining Council for resolution in terms of the relevant method provided for in terms of the Act or, where the Act provides solely for the nature of the dispute to be resolved by the Commission for Conciliation, Mediation and Arbitration, to such Commission.

**(6) Industrial Action:**

- (a) Industrial action means strikes and lock-outs as defined in the Act and includes go-slow, pickets, overtime bans, work to rule and product boycotts.
- (b) No industrial action shall be taken by either party pending the exhaustion of relevant procedures of this Agreement and the Act.
- (c) If industrial action occurs contrary to the provisions hereof, the guilty party shall immediately take reasonable steps to end the industrial action and the parties may agree to vary any of the stipulated time limits in this agreement.

**(7) Industrial action rules:**

- (a) Any industrial action engaged in by the union members shall be conducted in a peaceful and orderly manner.
- (b) Strikers shall not interfere with the conduct of the employer's business or with the employer's suppliers or customers and shall only remain on that part of the employer's premises where they cannot interfere with the normal activities of the firm and not within less than 20m of any entrance or exit of the premises during normal hours of work, observing, at all times. The employer's normal rules and regulations.



**(8) Picketing:**

- (a) A trade union may authorise a picket by its members and supporters for the purpose of peacefully demonstrating in support of any protected strike or in opposition to any lock-out.
- (b) Such a picket may be held in any place to which the public has access outside of the premises of an employer or, with the permission of the employer, inside its premises. The employer undertakes not to unreasonably withhold consent to its employees peacefully picketing within its premises.

**(9) Replacement labour:** The employer has the right to utilize replacement labour, save and except in circumstances where such employer has implemented a lock-out or except in circumstances where the lock-out is in response to a strike.

**(10) Severance pay:** The employee shall be entitled to one week's severance pay for each completed year of continuous service with that employer in instances where that employee was dismissed for reasons based on the employer's operational requirements, subject to section 196(3) of the Act.

## **26. THE CODE OF GOOD PRACTICE**

Schedule 8 of the Act shall be adhered to. Please see Annexure H.

## **27. FREEDOM OF ASSOCIATION**

Section 4 of the Act shall apply to all employers and employees. Employees may join a trade union (subject to its constitution) and to partake in its lawful activities. Employers' may join an employers' organisation and participate in its lawful activities.

## **28(A). DISPUTE PERTAINING TO CONTRAVENTIONS OF THE AGREEMENT**

- (1) Disputes pertaining to contraventions of the Agreement must be done in the form of a sworn statement, setting out all the material fact(s) that form the basis of the complaint

- (2) On receipt of the complaint the Council shall within 14 days appoint a designated agent or official to investigate the dispute and/or may request further information, facts or data from either the employee or the employer.
- (3) The designated agent or official shall within 30 days of his appointment submit a written report to the Secretary on his investigation and the steps he had taken to ensure compliance with the Agreement and the recommendation for the finalisation of the complaint.
- (4) Should the complaint not be settled, the complainant may request the Council to set the matter down for arbitration within 30 days of being served with the outcome of the investigation.
- (5) The request for arbitration shall be served on the employer by the employee and the request together with proof of service must be served on the Council.
- (6) If the complainant shows good cause at any time, the Council may permit the complainant to refer the complaint after the 30-day limit has expired.
- (7) The Council must give the parties at least 14 days notice in writing that the complaint has been scheduled for con-arb.
- (8) If a party fails to appear or be represented at the scheduled hearing, the commissioner must proceed with the arbitration on the date specified in the notice.
- (9) In arbitration proceedings, a party to the complaint may appear in person or be represented only by:
  - (a) a director or employee of that party; or
  - (b) any member, office bearer or official of that party's registered trade union or registered employers' organisation.
- (10) An arbitrator conducting an arbitration in terms of this clause has all the powers of a commissioner as set out in the Act.
- (11) An arbitrator may, make an appropriate award including:
  - (a) ordering any person to pay any amount owing in terms of this agreement provided that any claim pertaining to clause 5,6,7,9,13,14,16 and 17, shall not exceed the period of 12 months, from date the complaint has now been lodged at the council;
  - (b) charging a party an arbitration fee;
  - (c) ordering a party to pay the costs of the arbitration;



- (d) any award contemplated in section 138(9) of the Act.
- (12) An award in terms of this clause is final and binding and may be enforced in terms of section 143 of the Act after the Secretary and or a person appointed by the Council has certified the arbitration award, unless it's an advisory award.
- (13) The council may by agreement between the parties or on application by any party may make a written settlement agreement which is duly signed by both parties in respect of any complaint referred to the council, an arbitration award.

#### **28(AA) Disputes about the interpretation or application of the Collective Agreement**

Any dispute about the interpretation or application of this Agreement shall be referred to the Council and shall be resolved as follows:-

1. The Council shall attempt to resolve the dispute through conciliation using a suitably qualified conciliator. Within fourteen (14) days of such referral, the Council shall convey the outcome of such conciliation to the disputants, or state that the dispute remains unresolved;
2. If the Council fails to resolve the dispute or if any party is aggrieved by the outcome of the conciliation referred to in paragraph (1), it may within fourteen (14) days of the decision request Council that the dispute be referred to arbitration;
3. Should the dispute be referred to arbitration, the Council shall refer the dispute to an accredited agency appointed by it in terms of section 52 of the Act, for the purpose of such arbitration. The arbitrator shall have the power to decide upon the procedure to be followed at the arbitration hearing, in terms of section 138 of the Act. The arbitrator's decision shall be final and binding.

#### **28(B) Disputes pertaining to income and expenses of the council**

- (1) Should an employer in terms of this agreement fail to comply with any provisions of clause 19, 21, 21(A) and 21(B) of the agreement, the council shall serve a letter of demand on that employer.

- (2) If the employer fails to comply with the letter of demand, the council shall set the matter down for an arbitration.
- (3) The notice contemplated in 28(A) (2) of this agreement shall be served on the employer not less than 14 days before the scheduled arbitration.
- (4) Clauses 28(8) to 28(13) of this agreement shall apply to proceedings conducted under this clause.
- (5) In addition, the arbitrator may impose a fine for failure to comply with clause 21, 21(A) and 21(B) of this Agreement.
- (6) Any person upon whom a fine has been imposed in terms of this clause, files an application to review and set aside an award in terms of 28(B) (5), any objection to pay a fine is suspended pending the outcome of the application.
- (7) The maximum fines that may be imposed by an arbitrator acting in terms of this clause shall not exceed the amounts as determined by the Minister from time to time.

**28(C). Rules for the conduct of proceedings before the Bargaining Council for the Restaurant, Catering and Allied Trades**

Rules for the conduct of proceedings before the council pertaining to the disputes in the Labour Relations Act, No 66 of 1995 as amended shall be the same as that of the Commission for Conciliation, Mediation and Arbitration as amended and, published in the Government Gazette read with the necessary changes to the context as required.

**29. EXEMPTIONS**

- (1) (a) The Council hereby confirms the status of an Exemptions Committee to consider applications for exemption from any of the provisions of this Agreement.
- (b) Any party or non-party may lodge an appeal to the Independent Exemptions Board – established by the Council in terms of section 32 of the Act – against the decision(s) taken by the Exemption Committee, or the withdrawal of such, an exemption. **Provided that;** no representative, office bearer, or official of the Council, trade union or employers' organisation party



to the Council may be a member or participate in the deliberations of the Independent Appeal Board.

- (2) All applications for exemption or appeals shall be in writing (on an application form as provided by the Council) and shall be addressed to the secretary of the Council for consideration by the Exemptions Committee or the Independent Appeal Board (as the case may be) appointed by the Council.
- (3) All applications for exemption or appeals shall be fully motivated and substantiated, and such application or appeal shall include the following details:
  - (a) the period for which the exemption is required;
  - (b) the Agreement, clause(s) or subclause(s) of the Agreement from which exemption is required;
  - (c) proof that the exemption applied for, has been discussed with the employer, the employee(s) and their respective representatives. The responses resulting from such consultation(s), either in support of or against the application, are to be included with the application.
- (4) The Secretary of the Council shall provide the Exemptions Committee with the details of all the applications for exemption.
- (5) The Exemptions Committee or the Independent Appeals Board (as the case may be) shall consider and decide on all written applications no later than thirty (30) days from the date the Council received the application or appeal, and, if deemed expedient request the applicant(s) or objector(s) to attend the meeting at which the application or appeal is considered, to facilitate the deliberations.
- (6) Once the Exemptions Committee or the Independent Appeals Board has decided to grant an exemption, it shall issue a certificate and advise the applicant(s) within 14 days of the date of the its decision.
- (7) When the Exemptions Committee or the Independent Appeals Board has decided against granting an exemption requested, it shall advise the applicant(s) within 14 days of the date of such decision and shall provide the reason(s) for not granting an exemption.

- (8) **Exemption Criteria:** The Exemptions Committee and the Independent Exemptions Board shall consider all applicants for exemption with reference to the following criteria:
- (a) The written and verbal substantiation provided by the applicant;
  - (b) the extent of consultation with and the petition for or against granting the exemption as provided by employers or employees who are to be affected by the exemption if granted;
  - (c) the scope of the exemption required;
  - (d) the infringement of basic conditions of employment rights;
  - (e) the fact that a competitive advantage is not created by the exemption;
  - (f) the viewing of the exemption from any employee benefit fund or training provision in relation to the alternative comparable bona fide benefit or provision, including the cost of the employee, transferability, administration management an cost, growth and stability;
  - (g) the extent to which the proposed exemption undermines collective bargaining and labour peace in the Tearoom, Restaurant and Catering Trades;
  - (h) any existing special economic or other circumstances which warrant the granting of the exemption;
  - (i) cognisance of the recommendation contained in the *Report of the Presidential Commission to investigate Labour Market Policy*.
- (9) Non-party applications for exemption or appeals against the decision of the Exemption Committee must be dealt with, within thirty (30) days from the date the Council received the application or appeal as the case may be.

### 30. ULTRA VIRES

Should any provisions of this Agreement be declared *ultra vires* by any competent court of law, the remaining provisions shall be regarded to be the Collective Agreement and shall remain in operation for the duration of this Agreement.

### 31. ENQUIRY BY ARBITRATOR

- (1) An employer may, in accordance with this *collective agreement*, request a



*council*, an accredited agency or the Commission to appoint an arbitrator to conduct an enquiry into allegations about the conduct or capacity of that *employee*.

(2) The request must be in the *prescribed* form.

(3) The *council*, must appoint an arbitrator on receipt of –

(a) payment by the employer of the *prescribed* fee; and

(b) an *employee* may only consent to an enquiry in terms of this clause if the *employee* has been advised of the allegation referred to in subsection (1);

(4) Despite any other provision in the *Act* (6/95), or this Agreement an *employee* earning more than the amount determined by the Minister in terms of section 6(3) of the *Basic Conditions of Employment Act* at the time, may agree in a contract of employment to the holding of an enquiry in terms of this clause.

(5) In any enquiry in terms of this clause a party to the enquiry may appear in person or be represented only by –

(a) a co-employee;

(b) a *director* or *employee*, if the party is a juristic person;

(c) an office bearer or official of that party's registered *trade union* or registered *employers' organisation*; or

(d) a legal practitioner, on agreement between the parties if permitted by the arbitrator in accordance with the rules regulating representation at an arbitration before the Council.

(6) Section 138 of the *Act*, read with the changes required by the context, applies to any enquiry in terms of this section.

(7) An arbitrator appointed in terms of this clause has all the powers conferred on a commissioner by section 142(1) (a) to (e), (2) and (7) to (9) of the *Act*, read with the changes required by the context, and any reference in that section to the *director* for the purpose of this section, must be read as a reference to –

(a) the secretary of the *council*, if the enquiry is held under the auspices of the *council*;

- (b) the *director* of the accredited agency, if the enquiry is held under the auspices of an accredited agency.
- (8) The ruling of the arbitrator in an enquiry has the same status as an arbitration award and the provisions of sections 143 to 146 of the Act apply with the changes required by the context to any such ruling.
- (9) An arbitrator conducting an enquiry in terms of this clause must, in the light of the evidence presented and by reference to the criteria of fairness in the Act, rule as to what action, if any, may be taken against the *employee*.
- (10)(a) A private agency may only appoint an arbitrator to conduct an enquiry in terms of this clause in respect of which the employer or the *employee* is not a party to the *council*, if the *council* has been accredited for arbitration by the Commission.
- (b) A *council* may only appoint an arbitrator to conduct an enquiry in terms of this clause in respect of which the employer or the *employee* is not party to the *council*, if the *council* has been accredited for arbitration by the Commission.
- (11) Despite sub clause (1), if an *employee* alleges in good faith that the holding of an enquiry contravenes the Protected Disclosures Act, 2000 (Act No. 26 of 2000), that the *employee* or the employer may require that an enquiry be conducted in terms of this clause into allegations by the employer into the conduct or capacity of the *employee*.
- (12) The holding of an enquiry by an arbitrator in terms of this clause and the suspension of an *employee* on full pay pending the outcome of such an enquiry does not constitute an occupational detriment, as contemplated by the Protected Disclosures Act, 2000 (Act No. 26 of 2000)."

Signed at Johannesburg on behalf of the parties this       day of       2015.

**Employers Organisations**

CATRA




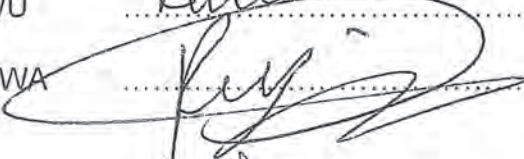
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