

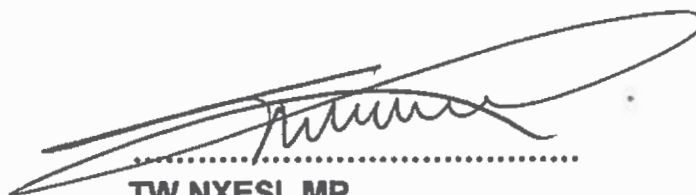
DEPARTMENT OF LABOUR

NO. R. 1072

16 AUGUST 2019

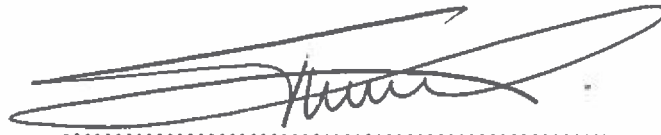
BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY (BCCEI): EXTENSION OF AMENDMENT OF CONDITIONS OF EMPLOYMENT COLLECTIVE AGREEMENT TO NON-PARTIES

I, **THEMBELANI WALTERMADE NXESI**, Minister of Employment and Labour hereby in terms of section 32(2) read with section 32(8) of the Labour Relations Act, 1995, declare that the Conditions of Employment Collective Agreement which appears in the Schedule hereto, which was concluded in the **Bargaining Council for the Civil Engineering Industry (BCCEI)** and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Conditions of Employment Collective Agreement, shall be binding on the other employers and employees in that Industry, with effect from the second Monday after date of publication of this notice and for the period ending 31 August 2021.

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TW NXESI, MP**MINISTER OF EMPLOYMENT AND LABOUR**DATE: 05/08/2019
.....

UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA-1995**UMKHANDLU WOKUXOXISANA PHAKATHI KWABAQASHI NABASEBENZI EMBONINI YONJINIYELA BEZOKWAKHIWA KWEMIGWAQO NAMABHULOHO: UKWELULWA KWESIVUMELWANO ESICHIBIYELAYO SEZIMO ZEMISEBENZI, SELULELWA KULABO ABANGEYONA INGXYENYE YESIVUMELWANO**

Mina, **THEMBELANI WALTERMADE NXESI**, onguNgqongqoshe Wezemisebenzi Nezabasebenzi, ngokwesigaba-32(2) sifundwa nesigaba 32(8) soMthetho Wobudlelwano Kwezabasebenzi, ka-1995, ngazisa ukuthi isivumelwano sabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe lapha, esenziwa uMkhandlu Wokuxoxisana phakathi Kwabaqashi Nabasebenzi Embonini Yonjiniyela Bezokwaxhiwa Kwemigwaqo Namabhuloho, futhi ngokwesigaba 31 soMthetho Wobudlelwano Kwezabasebenzi, ka-1995 esibopha labo abasenzayo, sizobopha bonke abanye abaqashi nabasebenzi kuleyomboni, kusukela ngomSombuluko wesibili emva kokushicilelwa kwalesiSaziso kuze kube mhlaka 31 kuNcwaba 2021.



.....
TW NXESI, MP

UNGGONGQOSHE WEZEMISEBENZI NEZABASEBENZI

USUKU: 05/08/2019

SCHEDULE**BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY
CONDITIONS OF EMPLOYMENT COLLECTIVE AGREEMENT****PREAMBLE**

This collective agreement was concluded between the members of the employer organisations and the members of the trade unions which concluded and signed this agreement in the Bargaining Council.

The Minister of Labour has extended this collective agreement to all the employers and employees in the industry that are not signatories of this agreement. This has the effect of making the collective agreement applicable to all employers and employees in the industry.

The following employer organisations and trade unions signed the collective agreement on behalf of their members:

Building, Construction and Allied Workers Union (BCAWU)

Consolidated Employers Organisation (CEO)

National Union of Mineworkers (NUM)

South African Forum of Civil Engineering Contractors (SAFCEC)

(hereinafter referred to as the "employers" or the "trade unions"), of the other part, being the parties to the Bargaining Council for the Civil Engineering Industry), to amend the Agreement published under Government Notice No. R.955 OF 14 September 2018.

A. J. V.
T.G.M

1. CHAPTER 1 - APPLICATION AND INTERPRETATION OF AGREEMENT

1.1 Scope of the agreement

1.1.1 This agreement binds:

- (a) All employees in the civil engineering industry that are members of the employers' organisations that are party to this agreement; and**
- (b) All employees in the bargaining unit, employed in the industry who are members of the trade unions that are party to this agreement.**

1.1.2 This Agreement must be applied in the jurisdiction of Bargaining Council for the Civil Engineering Industry throughout the Republic of South Africa.

1.1.3 Except as otherwise provided for in this Agreement, this Agreement establishes the terms and conditions of employment for scheduled employees.

1.1.4 This agreement applies to learners, only insofar as it is not inconsistent with the Skills Development Act, 1998.

1.1.5 The provisions of the Basic Conditions of Employment Act, 1997 shall apply in respect of any employer or employee in the Civil Engineering Industry in so far as a provision thereof for any matter that is not regulated by this Agreement.

1.1.6 The provisions of clause 2.8, 2.9, 2.10, 2.11 and 2.12 of this agreement shall not apply to employees whose earnings exceed the amount determined by the Minister of Labour in terms of section 6(3) read with section 59(2)(c) of the Basic Conditions of Employment Act, 1997.

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1.1.7 This agreement is binding in terms of Section 31 of the Labour Relations Act, 66 of 1995, on the parties which concluded the Conditions of Employment Collective Agreement and shall become binding on the other employers and employees in the industry upon extension by the Honourable Minister of Labour in terms of Section 32, from a date determined by the Minister.

1.2 Period of operation of agreement

1.2.1 This agreement becomes binding on the employers and employees referred to in sub-clause 1.1.1(a) and (b) once it is extended to non-parties by the Honourable Minister of Labour.

1.2.2 This agreement shall remain in force until 31 August 2021.

CHAPTER 4: REGULATIONS FOR CONTRACT OF EMPLOYMENT

Delete sub-clauses 4.7.1 to 4.7.4

Insert new sub-clauses which are as follows:

4.7A Application of section 198 of the Labour Relations Act 66/95 (LRA) to employees earning below earnings threshold. –

4.7.1(A) In this section, a "temporary service" means work for a client by an employee-

- (a) for a period not exceeding three months;
- (b) as a substitute for an employee of the client who is temporarily absent; or

4
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T. G. M

(c) in a category of work and for any period of time which is determined to be a temporary service by a collective agreement concluded in a bargaining council, a sectoral determination or a notice published by the Minister, in accordance with the provisions of subsections 4.7.6(A) to 4.9.8(A)

4.7.2(A) This section does not apply to employees earning in excess of the threshold prescribed by the Minister in terms of section 6 (3) of the Basic Conditions of Employment Act.

4.7.3(A) For the purposes of this Act, an employee-

(a) performing a temporary service as contemplated in subsection (4.7.1(A) for the client is the employee of the temporary employment services in terms of section 4.7.2(A) of the LRA; or

(b) not performing such temporary service for the client is-

(i) deemed to be the employee of that client and the client is deemed to be the employer; and

(ii) subject to the provisions of section 4.7.B, employed on an indefinite basis by the client.

4.9.4(A) The termination by the temporary employment services of an employee's service with a client, whether at the instance of the temporary employment service or the client, for the purpose of avoiding the operation of subsection (4.7.3(A) (b) or because the employee exercised a right in terms of this Act, is a dismissal.

4.7.5(A) An employee deemed to be an employee of the client in terms of subsection

J-V 4
T.G.M

(4.7.3(A) (b) must be treated on the whole not less favourably than an employee of the client performing the same or similar work, unless there is a justifiable reason for different treatment.

4.7.6(A) The Minister must by notice in the Government Gazette invite representations from the public on which categories of work should be deemed to be temporary service by notice issued by the Minister in terms of subsection (4.7.1(A) (c).

4.7.7(A) The Minister must consult with NEDLAC before publishing a notice or a provision in a sectoral determination contemplated in subsection (4.7.1(A) (c).

4.7.8(A) If there is conflict between a collective agreement concluded in a bargaining council, a sectoral determination or a notice by the Minister contemplated in subsection (4.7.1(A) (c) –

(a) the collective agreement takes precedence over a sectoral determination or notice; and

(b) the notice takes precedence over the sectoral determination.

4.7.9(A) Employees contemplated in this section, whose services were procured for or provided to a client by a temporary employment service in terms of the LRA section 198 (1) before the commencement of the LRA Amendment Act, 2014, acquire the rights contemplated in subsections (4.7.3(A), (4.7.4(A) and (4.7.5(A) with effect from three months after the commencement of the Labour Relations Amendment Act, 2014.

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4.7B Fixed term contracts with employees earning below earnings threshold.

4.7.1(B) For the purpose of this section, a "fixed term contract" means a contract of employment that terminates on-

- (a) the occurrence of a specified event;
- (b) the completion of a specified task or project; or
- (c) a fixed date, other than an employee's normal or agreed retirement age, subject to subsection (4.7.3(B)).

4.7.2(B) This section does not apply to-

- (a) employees earning in excess of the threshold prescribed by the Minister in terms of section 6 (3) of the Basic Conditions of Employment Act;
 - (b) an employer that employs less than 10 employees, or that employs less than 50 employees and whose business has been in operation for less than two years, unless-
 - (i) the employer conducts more than one business; or
 - (ii) the business was formed by the division or dissolution for any reason of an existing business;
- and
- (c) an employee employed in terms of a fixed term contract which is permitted by any statute, sectoral determination or collective agreement.

4.7.3(B) An employer may employ an employee on a fixed term contract or successive fixed term contracts for longer than three months of employment only if-

T.G.M. 6
I.V.

- (a) the nature of the work for which the employee is employed is of a limited or definite duration; or
- (b) the employer can demonstrate any other justifiable reason for fixing the term of the contract.

4.7.4(B) Without limiting the generality of subsection (4.7.3(B)), the conclusion of a fixed term contract will be justified if the employee-

- (a) is replacing another employee who is temporarily absent from work;
 - (b) is employed on account of a temporary increase in the volume of work which is not expected to endure beyond 12 months;
 - (c) is a student or recent graduate who is employed for the purpose of being trained or gaining work experience in order to enter a job or profession;
 - (d) is employed to work exclusively on a specific project that has a limited or defined duration;
 - (e) is a non-citizen who has been granted a work permit for a defined period;
 - (f) is employed to perform seasonal work;
 - (g) is employed for the purpose of an official public works scheme or similar public job creation scheme;
 - (h) is employed in a position which is funded by an external source for a limited period;
- or
- (i) has reached the normal or agreed retirement age applicable in the employer's business.

4.7.5(B) Employment in terms of a fixed term contract concluded or renewed in contravention of subsection (4.7.3(B)) is deemed to be of indefinite duration.

T. G. M. 7
J. V.

4.7.6(B) An offer to employ an employee on a fixed term contract or to renew or extend a fixed term contract,

must-

(a) be in writing; and

(b) state the reasons contemplated in subsection (4.7.3) (a) or (b).

4.7.7(B) If it is relevant in any proceedings, an employer must prove that there was a justifiable reason for fixing the term of the contract as contemplated in subsection (4.7.3(B) and that the term was agreed.

4.7.8(B) (a) An employee employed in terms of a fixed term contract for longer than three months must not be treated less favourably than an employee employed on a permanent basis performing the same or similar work, unless there is a justifiable reason for different treatment.

(b) Paragraph (a) applies, three months after the commencement of the Labour Relations Amendment Act, 2014, to fixed term contracts of employment entered into before the commencement of the Labour Relations Amendment Act, 2014.

4.7.9(B) As from the commencement of the Labour Relations Amendment Act, 2014, an employer must provide an employee employed in terms of a fixed term contract and an employee employed on a permanent basis with equal access to opportunities to apply for vacancies.

T. G. M. 8
F.V.

4.7.10(B) (a) An employer who employs an employee in terms of a fixed term contract for a reason contemplated in subsection (4.7.4(B) (d) for a period exceeding 24 months must, subject to the terms of any applicable collective agreement, pay the employee on expiry of the contract one week's remuneration for each completed year of the contract calculated in accordance with section 35 of the Basic Conditions of Employment Act.

(b) An employee employed in terms of a fixed-term contract, as contemplated in paragraph (a), before the commencement of the Labour Relations Amendment Act, 2014, is entitled to the remuneration contemplated in paragraph (a) in respect of any period worked after the commencement of the said Act.

4.7.11(B) An employee is not entitled to payment in terms of subsection (4.7.10(B) if, prior to the expiry of the fixed term contract, the employer offers the employee employment or procures employment for the employee with a different employer, which commences at the expiry of the contract and on the same or similar terms.

4.7C. Part-time employment of employees earning below earnings threshold

4.7.1(C) For the purpose of this section-

(a) a part-time employee is an employee who is remunerated wholly or partly by reference to the time that the employee works and who works less hours than a comparable full-time employee; and

(b) a comparable full-time employee -

T. G. M. 4⁹
L.V.

- (i) is an employee who is remunerated wholly or partly by reference to the time that the employee works and who is identifiable as a full-time employee in terms of the custom and practice of the employer of that employee; and
- (ii) does not include a full-time employee whose hours of work are temporarily reduced for operational requirements as a result of an agreement.

4.7.2(C) This section does not apply-

- (a) to employees earning in excess of the threshold determined by the Minister in terms of section 6 (3) of the Basic Conditions of Employment Act;
- (b) to an employer that employs less than 10 employees or that employs less than 50 employees and whose business has been in operation for less than two years, unless-
 - (i) the employer conducts more than one business; or
 - (ii) the business was formed by the division or dissolution, for any reason, of an existing business;
- (c) to an employee who ordinarily works less than 24 hours a month for an employer, and
- (d) during an employee's first three months of continuous employment with an employer.

4.7.3(C) Taking into account the working hours of a part-time employee, irrespective of when the part-time employee was employed, an employer must-

- (a) treat a part-time employee on the whole not less favourably than a comparable full-time employee doing the same or similar work, unless there is a justifiable reason for different treatment; and

T. G. M. 10
L.V.

(b) provide a part-time employee with access to training and skills development on the whole not less favourable than the access applicable to a comparable full-time employee.

4.7.4(C) Subsection (4.7.3(C)) applies, three months after the commencement of the Labour Relations Amendment Act, 2014, to part-time employees employed before the commencement of the Labour Relations Amendment Act, 2014.

4.7.5(C) After the commencement of the Labour Relations Amendment Act, 2014, an employer must provide a part-time employee with the same access to opportunities to apply for vacancies as it provides to full-time employees.

4.7.6(C) For the purposes of identifying a comparable full-time employee, regard must be had to a full-time employee employed by the employer on the same type of employment relationship who performs the same or similar work-

(a) in the same workplace as the part-time employee; or

(b) if there is no comparable full-time employee who works in the same workplace, a comparable full-time employee employed by the employer in any other workplace.

4.7D. General provisions applicable to sections 4.7A to 4.7C.-

4.7.1(D) Any dispute arising from the interpretation or application of sections 4.7A, 4.7B and 4.7C may be referred to the Commission or a bargaining council with jurisdiction for conciliation and, if not resolved, to arbitration.

T.G.M. 11
I.V.

4.7.2(D) For the purposes of sections 4.7A (4.7.5(A), 4.7B (4.7.8(B) and 4.7C (4.7.3(C)

(a), a justifiable reason includes that the different treatment is a result of the application of a system that takes into account-

(a) seniority, experience or length of service;

(b) merit;

(c) the quality or quantity of work performed; or

(d) any other criteria of a similar nature, and such reason is not prohibited by section 6 (1) of the Employment Equity Act, 1998 (Act No. 55 of 1998).

4.7.3(D) A party to a dispute contemplated in subsection (4.7.1), other than a dispute about a dismissal in terms of section 4.7(A) (4.7.4(A), may refer the dispute, in writing, to the Commission or to the bargaining council, within six months after the act or omission concerned.

4.7.4(D) The party that refers a dispute must satisfy the Commission or the bargaining council that a copy of the referral has been served on every party to the dispute.

4.7.5(D) If the dispute remains unresolved after conciliation, a party to the dispute may refer it to the Commission or to the bargaining council for arbitration within 90 days.

4.7.6(D) The Commission or the bargaining council may at any time, permit a party that shows good cause to, refer a dispute after the relevant time limit set out in subsection (4.7.3(D) or (4.7.5(D)).

12
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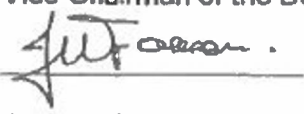
SIGNED AT Bedfordview..., for and on behalf of the parties, this day of 11/04/2019



Chairman of the BCCEI



Vice-Chairman of the BCCEI



General Secretary of the BCCEI