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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

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## DEPARTMENT OF EMPLOYMENT AND LABOUR

NO. R. 2119

27 May 2022

## LABOUR RELATIONS ACT, 1995

**BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY (BCCEI): EXTENSION OF CONDITIONS OF EMPLOYMENT CONSOLIDATED 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 Consolidated 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 date of publication of this notice and for the period ending 31 August 2024.



**MR TW NXESI, MP**  
**MINISTER OF EMPLOYMENT AND LABOUR**  
DATE: 28/03/2022

**UMNYANGO WEZEMISEBENZI NEZABASEBENZI****UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA-1995**

**UMKHANDLU WOKUXOXISANA PHAKATHI KWABAQASHI NABASEBENZI EMBONINI YONJINIYELA BEZOKWAKHIWA KWEMIGWAQO NAMABHULOHO: UKWELULWA KWESIVUMELWANO ESIHLANGANISAYO SEZIMO ZEMISEBENZI, SELULELWA KULABO ABANGEYONA INGXEYENYE 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 ngosuku lokushicilelwa kwalesiSaziso kuze kube mhlaka 31 kuNcwaba 2024.



**MNUMZANE TW NXESI, MP**  
**UNGQONGQOSHE WEZEMISEBENZI EZABASEBENZI**  
USUKU: 28/03/2022



## **CONDITIONS OF EMPLOYMENT COLLECTIVE AGREEMENT**

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

In accordance with the Labour Relations Act of 1995, made and entered into by and between the –

**Employers Organisations**

Consolidated Employers Organisation (CEO)

South African Forum of Civil Engineering Contractors (SAFCEC)

**(Hereinafter referred to as the “employer” or the “employers organisation” of the one party and the –**

**Trade Unions**

Building, Construction and Allied Workers Union (BCAWU)

National Union of Mineworkers (NUM)

**(Hereinafter referred to as the “employees” or the “trade union” of the other party, being the parties to the Bargaining Council for the Civil Engineering Industry) to amend the agreement published under Government Gazette No. R.1428 of 8 November 2019**

**PREAMBLE**

This agreement was entered into by and between the members of the employer organisations and the members of the trade unions after conclusion of the industry national wage negotiations undertaken under the auspices of the Bargaining Council for the Civil Engineering Industry.

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

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## 1. CHAPTER 1 - APPLICATION AND INTERPRETATION OF AGREEMENT

### 1.1 Scope of the agreement

#### 1.1.1. This agreement binds:

- a) All employers 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 the 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, 97 of 1998.

#### 1.1.5. The provisions of the Basic Conditions of Employment Act, 75 of 1997 shall apply in respect of any employer or employee in the Civil Engineering Industry in so far as a provision thereof provides for any matter that is not regulated by this agreement.

#### 1.1.6. The provisions of clauses 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, 75 of 1997.

#### 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.





another person or for the state and who receives, or is entitled to receive, any remuneration; and

- ii.) Any other person who in any manner assists in carrying on or conducting the business of an employer.

**'Employer'** means any person whosoever, including a temporary employment service as defined in section 198(1) of the Act, who employs or provides work for any person and remunerates or expressly or tacitly undertakes to remunerate him or who permits any person whosoever in any manner to assist him in the carrying on or conducting of his business;

**'Emergency work'** means any work which owing to unforeseen circumstances such as fire, storm, land subsidence, accident, epidemic, act of violence, theft, a breakdown of plant, motor vehicles or machinery or a breakdown or threatened breakdown of structures, or any critical operational requirement, must be done without delay;

**'Family responsibility leave cycle'** means the period of 36 consecutive months' employment with the same employer immediately following:

- i) An employee's commencement of employment: or
- ii) The completion of that employee's prior family responsibility leave cycle;

**'Hourly-rated employee'** means an employee whose remuneration is calculated on an hourly basis notwithstanding the frequency of the payment thereof, and who is not a salaried employee;

**'Industry'** means the Civil Engineering Industry in which employers (other than local authorities) and employees are associated for the purpose of carrying out work of a civil engineering character normally associated with the civil engineering sector and includes such work in connection with any one or more of the following activities:

- a. The construction of aerodrome runways or aprons; aqueducts, bins or bunkers; bridges, cable ducts, caissons; rafts or other marine structures; canals, cooling, water or other towers; dams; docks; harbours; quays or wharves; earthworks; encasements; housing or supports for plant, machinery or equipment; factory or works chimneys; filter beds; land or sea defence works; mine headgears; pipelines; piers; railways; reservoirs; river works; roads or streets;

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- sewerage works; sewers; shafts or tunnels; silos; sports fields or grounds; swimming baths; viaducts or water treatment plants; and/or
- b. Excavation and bulk earthworks; bush clearing and de-stumping; topsoil stripping; drilling and blasting; preparation of bench areas, drilling pre-split holes, blasting and/or cast blasting; secondary blasting; loading, hauling and dumping of mineralized and/or waste material to waste dumps or processing plant feed (ROM pad) stockpiles; production dozing of top soil, inter burden or waste material; pumping and dewatering of storm and/or contaminated water, construction and maintenance of; access and haul roads; ramps; waste and processing plant feed (ROM pad) areas; safety beams; high walls; benches; storm water systems, catch drains, bund walls, surge dams; trimming, scaling or chain dragging of batters, heap-leach pads, tailings dams; dust suppression of loading areas, haul roads and dumping areas; rehabilitation of earth work areas or waste dumps; topsoil spreading, hydro-seeding and watering; and/or
  - c. Excavation work or the construction of foundations, lift shafts, piling, retainings, stairwells, underground parking garages or other underground structures; and/or
  - d. The asphaltting, concreting, gravelling, levelling or paving of parking areas, pavements, roads, streets, aerodrome runways or aprons, premises or sites;
- and further includes:-
- e. Any work of a similar nature or work incidental to or consequent on any of the aforesaid activities; and/or
  - f. The making, repairing, checking or overhauling of tools, vehicles, plant, machinery or equipment in workshops which are conducted by employers engaged in any of the activities referred to in sub - clauses (a) to (f) inclusive;

but excluding:-

- i) Work in connection with any one or more of the activities specified in sub-clause (c) where such work, when undertaken in connection with the erection of structures having the general character of buildings and irrespective of whether or not such work involves problems of a civil

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engineering character, is carried out by the employers erecting such structures;

- ii) Work in connection with any one or more of the activities specified in sub-clause (c) when undertaken as an incidental operation in connection with the erection of structures having the general character of buildings or when undertaken by the employers erecting such structures;
- iii) Any work falling within the scope of any other industry, and
- iv) The Mining Industry which is defined as the industry where employers and employees are associated for the purpose, directly or indirectly, for the winning, extracting, processing and refining of a mineral in, on or under the earth or water or from any residue stockpile or residue deposit.

**'Law'** means all constitutions; statutes; regulations; by-laws; codes; ordinances, or instructions by any Governmental Body; and the common law, and 'laws' shall have a similar meaning;

**'Limited duration contracts of employment'** means a contract of employment whose duration is limited to the completion of a specified activity or the expiry of a specified period;

**'Local authority'** means a 'Municipality' as defined in the Local Government: Municipal Systems Act; 2000;

**'Minister'** means the Minister of Employment and Labour;

**'Night Work'** means work performed by an employee between 18:00 and 06:00 the following day;

**'Ordinary hours of work'** means hours worked other than overtime or time worked on Sundays or Public Holidays;

**'Overtime'** means the time that an employee works in a day or week, in excess of the hours ordinarily worked by an employee in such day or week, subject to the maximum ordinary hours prescribed in this agreement, but does not include work performed on a Sunday or a paid public holiday;

**'Paid public holiday'** means any day that is a public holiday in terms of the Public Holiday Act, 1994 (Act No. 36 of 1994);

**'Pay'** means payment of remuneration in cash, electronic transfer, by cheque or by other means;

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**'Permanent employee'** means any employee who is not an employee employed in terms of a limited duration contract;

**'Piece-work'** means any system under which an employee's remuneration is based on the quantity of work done;

**'Salaried employee'** means an employee whose remuneration is calculated on a monthly basis notwithstanding the number of hours or days actually worked, who performs work generally understood to be that of a salaried employee.

**'Self-propelled plant'** means a power-driven or pedestrian-operated self-propelled vehicle, other than a motor vehicle, which is designed or adapted principally to perform with or without a towed attachment, one or more functions while moving, and may also perform such functions while standing still;

**'Scheduled employee'** means an employee whose minimum rate of pay is scheduled in the Wage and Task Grade Collective Agreement, irrespective of whether the employee is employed in terms of an exemption from this agreement or under conditions determined by the Council;

**'Short-time'** means a temporary reduction in the number of ordinary hours of work owing to vagaries of the weather, a slackness of trade, a shortage of materials, a breakdown of plant or machinery or a breakdown or threatened breakdown of structures, or any unforeseen contingencies and/or circumstances beyond the control of the employer or a temporary reduction in the number of ordinary hours of work owing to riots, unrest or acts of terrorism or disorder, which directly affect the employer's ability to provide work;

**'Spouse'** means a life partner recognised in terms of the Marriage Act, 25 of 1961 as amended, or of a customary marriage in terms of the Recognition of Customary Marriages Act, 120 of 1998, or a civil union recognised in terms of the Civil Union Act of 2006;

**'Stationary plant'** means a power-driven device, whether or not mounted on a self-propelled or non-self-propelled vehicle, which is designed or adapted principally to perform one or more functions while standing still;

**'Wage'** means the gross hourly, daily, weekly or monthly remuneration to which a scheduled employee is entitled in terms of this agreement, in

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respect of the employee's ordinary hours of work; provided that if an employer regularly pays an employee in respect of such ordinary hours of work, an amount higher than that prescribed in the Wage and Task Grade Collective Agreement, it means such higher amount; provided further that such higher amount does not include allowances or entitlements.

## **2. CHAPTER 2 - REGULATION OF WORKING TIME**

### **2.1 Weekly hours of ordinary work**

An employee's ordinary hours of work may not exceed 45 hours in any week.

### **2.2. Daily hours of ordinary work**

An employee's ordinary hours of work may not exceed:

- 2.2.1. Nine hours in any day, if the employee works for five days or fewer in a week; or
- 2.2.2. Eight hours in any day if the employee works on more than five days in a week.

### **2.3 Overtime**

- 2.3.1. An employer may not require or permit an employee to work overtime except in accordance with an agreement.
- 2.3.2. An employer may not require an employee to work more than three hours' overtime per day or ten hours overtime in any week except by agreement with the employee and with the prior written authorisation of the Council.
- 2.3.3. Application for such authorisation must include a copy of the agreement between the employer and the employee which must provide for;
  - a) The estimated number of overtime hours to be worked;
  - b) Site where the hours will be worked;
  - c) Period of the overtime.



**2.4 Meal intervals**

- 2.4.1. An employer shall not require or permit an employee to work for more than five hours continuously without a meal interval of not less than half an hour during which interval such 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;
- a) Periods of work interrupted by such meal intervals of less than half an hour, except when the proviso in 2.4.1(d) below applies, shall be deemed to be continuous;
  - b) If such meal interval is longer than one hour, any period more than one hour shall be deemed to be time worked;
  - c) Only one meal interval during the ordinary hours of work of an employee on any day shall not form part of the ordinary hours of work;
  - d) When, on any day, by reason of overtime work, an employer is required to give an employee a second meal interval, such interval may, at the request of the employee, be reduced to not less than fifteen minutes.
  - e) A driver or an operator of self- propelled or stationary plant who during such interval does not work other than being or remaining in charge of a vehicle or such plant shall be deemed for the purposes of this sub-clause not to have worked during such interval.

**2.5 Rest period**

- 2.5.1. An employer shall allow an employee;
- a) A daily rest period of at least 12 consecutive hours between ending and recommencing work; and
  - b) A weekly rest period of at least 36 consecutive hours, which, unless otherwise agreed, must include a Sunday.
- 2.5.2. A daily rest period in terms of clause 2.5.1 (a) above may, by written agreement, be reduced to 10 hours for an employee-
- a) who lives on the premises at which the workplace is situated; and
  - b) whose meal interval lasts for at least three hours.

2.5.3. Despite sub clause 2.5.1(b) above, an agreement in writing may provide for–

- a) a rest period of at least 60 consecutive hours every two weeks, or
- b) an employee's weekly rest period to be reduced by up to eight hours in any week if the rest period in the following week is extended equivalently

**2.6 Compressed working week**

2.6.1. An agreement in writing between an employer and an employee may require an employee to work up to twelve hours in a day, inclusive of the meal intervals required in terms of clause 2.4.1 above, without receiving overtime pay.

2.6.2. An agreement in terms of clause 2.6.1 above may not require or permit an employee to work:

- a) More than 45 ordinary hours of work in any week;
- b) More than ten hours' overtime in any week; or
- c) On more than five days in any week.

**2.7 Averaging hours of work**

2.7.1. Despite clauses 2.8 and 2.9 below, the ordinary hours of work and overtime of an employee may be averaged over a period of up to four months in terms of a collective agreement.

2.7.2. An employer may not require or permit an employee who is bound by a collective agreement in terms of sub-clause 2.7.1 above to work more than:

- a) An average of 45 ordinary hours of work in a week over the agreed period;
- b) An average of five hours' overtime in a week over the agreed period.

2.7.3. A collective agreement in terms of sub-clause 2.7.1 above lapses after 12 months.

2.7.4. Sub-clause 2.7.3 above only applies to the first two collective agreements concluded in terms of sub-clause 2.7.1 above.





**2.8 Payment for overtime**

An employer shall pay an employee who works overtime at a rate of not less than one and a half times the ordinary wage in respect of the overtime referred to in this agreement; provided that any time worked on Sundays and paid public holidays shall be paid in accordance with the provisions of clauses 2.9 and 2.10 below.

**2.9 Payment for work on a Sunday**

2.9.1. Whenever an employee works on a Sunday, the employer shall either-

- a) If the employee works for a period not exceeding four hours, pay the employee not less than the daily wage, provided that if the employee works for a period exceeding four hours, the employee shall be paid at a rate of not less than double the ordinary wage in respect of the total period worked on such Sunday, or not less than double the daily wage, whichever is the greater; OR
- b) Pay the employee at a rate of not less than one and a third times the employee's ordinary wage rate in respect of the total period worked on such Sunday or, not less than one and a third times the daily wage, whichever the greater, and granting the employee within seven days of such Sunday one day's leave, which shall not constitute annual leave in terms of clause 3.1 and pay him or her in respect thereof not less than the daily wage: Provided that where such an employee is required or permitted to work for less than four hours on such Sunday the employee shall be deemed to have worked for four hours.

**2.10 Payment for public holidays**

- 2.10.1. Subclause 2.10.4 shall not apply to an employee earning a wage more than the remuneration stipulated by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act from time to time.
- 2.10.2. An employer may not require an employee to work on a public holiday except in accordance with an agreement.
- 2.10.3. If a public holiday falls on a day which would otherwise be an ordinary working day for an employee, including periods of short time and lay-offs an employer must pay the employee;

- a) who does not work on the public holiday, at least the wage rate that the employee would ordinarily have received for work on that day;
  - b) who works on the public holiday, at least double the wage rate for the ordinary working hours of that day;
- 2.10.4. If an employee works on a public holiday which falls on a day which would otherwise not be an ordinary working day for the employee, an employer must pay the employee at least –
- a) The amount paid to the employee in respect of the time that the employee ordinarily works on a working day and in addition pays the employee –
  - b) The amount earned by the employee for the work performed that day, whether calculated by reference to time worked or any other method.
- 2.10.5. If a shift worked by an employee falls on a public holiday and another day, the whole shift is deemed to have been worked on the public holiday, but if the greater portion of the shift was worked on the other day, the whole shift is deemed to have been worked on the other day.
- 2.10.6. An employer must pay an employee for a public holiday on the employee's usual payday.

## **2.11 Night work**

- 2.11.1. An employee performs night work if that employee works between 18:00 and 06:00 on the following day.
- 2.11.2. An employer may only require or permit an employee to perform night work if so agreed and if,
- a) The employee is compensated by the payment of an allowance, which may be a shift allowance, or by a reduction of working hours; and
  - b) Transportation is available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's shift.
- 2.11.3. An employer who requires an employee to work for a period of longer than one hour after 23:00 and before 06:00 the next day at least five times per month or 50 times per year; must;
- a) Inform the worker in writing, or orally if the employee is not able to understand a written communication, in a language that the employee

understands of any health and safety hazards associated with the work that the employee is required to perform; and of the employee's right to undergo a medical examination in terms of paragraph 2.11.3(b) below;

- b) At the request of the employee, enable the employee to undergo a medical examination, for the account of the employer, concerning those hazards before the employee starts, or within a reasonable period of the employee starting, such work and at appropriate intervals while the employee continues to perform such work.
  - c) Transfer the employee to suitable day work within a reasonable time if the employee suffers from a health condition associated with the performance of night work and it is practical for the employer to do so.
- 2.11.4. A night work allowance of 9% will be paid to employees who perform night work.
- 2.11.5. The calculation of the night work allowance will be based on the employee's basic rate.
- 2.11.6. Current company arrangements with regard to night work allowance, that are more favourable, will not be affected.

## **2.12 Short time**

Whenever the ordinary hours of work prescribed in Clause 2.2 are reduced on account of short-time, excluding short-time owing to inclement weather, a deduction may be made from the employee's wage not exceeding the amount of the employee's hourly wage in respect of each hour of such reduction provided that:

- 2.12.1. Such deduction shall not exceed one third of the employee's weekly wage, irrespective of the number of hours by which the ordinary hours of work were reduced;
- 2.12.2. No deduction shall be made in the case of short-time arising from slackness of trade or shortage of raw materials, unless the employer has given the employee notice on the previous working day of the employer's intention to reduce the ordinary hours of work;

- 2.12.3. No deduction shall be made in the case of short-time owing to a breakdown of plant or machinery or a breakdown or threatened breakdown of buildings or structures, in respect of the first two hours not worked, unless the employer has given the employee notice on the previous working day that no work would be available due to such breakdown.

**2.13 Inclement weather**

Whenever the ordinary hours of work prescribed in this agreement are reduced due to inclement weather then the employee will be paid the ordinary hours for the day. However, depending on circumstances, the employer may instruct the employees to remain on site until the employee is released by the employer.

**3. CHAPTER 3 - REGULATION OF LEAVE**

**3.1 Annual leave**

- 3.1.1. For the purpose of this clause the expression "employment" shall be deemed to include:
- a) Any period in respect of which an employer pays an employee in lieu of notice in terms of sub-clause 4.1.2;
  - b) Any period during which an employee is absent on sick leave in terms of clause 3.2.4 or owing to incapacity as defined in clause 3.2.9;
  - c) Any period during which an employee is absent at the instruction of the employer;
  - d) Any time during which an employee is required by the employer not to work because of the vagaries of the weather, slackness of trade or a breakdown of machinery or plant.
- 3.1.2. An employer shall grant to an employee who has completed less than five continuous years' service and who has been in employment for longer than four months, fifteen working days leave on full pay in respect of each completed period of twelve months of employment accumulated at 1.25 days per month.



- 3.1.3. An employer shall grant an employee who has completed five or more continuous years of service with that employer eighteen working days leave on full pay in respect of each completed period of twelve months of employment, accumulated at 1.5 days per month.
- 3.1.4. Subject to sub-clauses 3.1.2 and 3.1.3 above, a minimum of 10 days shall be taken consecutively by an employee normally during the Civil Engineering Industry shutdown period and the remaining days shall be granted, subject to sub-clause 3.1.7 below, at a time agreed by the employee and the employer.
- 3.1.5. An employer shall grant an employee an additional day of paid leave for any public holiday that falls on a day during an employee's annual leave on which the employee would ordinarily have worked.
- 3.1.6. If the leave prescribed in sub-clauses 3.1.2 and 3.1.3 above has not been granted and taken earlier, it shall, save as provided in sub-clause 3.1.8, be granted and be taken 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 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 and the employee shall take the leave from a date not later than two months after the expiration of the said period of four months, provided that the period of leave shall not be concurrent with:
- a) Sick leave granted in terms of clause 3.2 or with absence from work owing to incapacity in circumstances where the employee is entitled to his/her full wages in terms of any other law or in terms of any fund of which the employee is a member, amounting in the aggregate to not more than 12 days in any one period of 12 months;
  - b) Any period during which the employee is under notice of termination of employment in terms of clause 4.1.
- 3.1.7. At the written request of the employee, an employer may permit the leave to accumulate over a period of not more than 24 months of employment, provided that the 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 the date of receipt of the request is endorsed

over the employee's signature by the employer, who shall retain the request at least until after the expiration of the period of leave.

- 3.1.8. The leave referred to in sub-clause 3.1.7 shall be granted and be taken at a time to be fixed by the employer, and the provisos to sub-clause 3.1.6 shall apply to such leave.
- 3.1.9. The remuneration in respect of leave granted in terms of this clause shall be paid not later than the last workday before the date of commencement of such leave and shall be calculated at the employee's wage rate on the days that the leave is taken.
- 3.1.10. Upon termination of employment the employer shall pay the employee in lieu of any accrued leave owing to the employee, at the wage rate applicable on the last day of employment.
- 3.1.11. 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 the establishment, or a portion of the establishment, for 14 consecutive days, plus an additional day for each paid public holiday which falls on a day during such period on which the employee would ordinarily have worked.
- 3.1.12. An employee who as at the date of the closing of an establishment or the portion thereof in which he or she is employed, is not entitled to the full period of annual leave prescribed in terms of sub-clauses 3.1.2 and 3.1.3 above shall be paid the leave accrued as at the date of such closure, and for the purposes of annual leave thereafter the employee's employment anniversary shall be the date of such closing of the establishment or portion of the establishment, as the case may be.

### 3.2 Sick leave

The following definitions apply to this clause:

- 3.2.1 "Employment" shall be deemed to include any period during which an employee is absent on leave in terms of clause 3.1 or on the instructions or at the request of his/her employer or on sick leave in terms of this clause amounting in the aggregate in any period of 12 months to not more than 10 weeks, or due to the employee not being required to work

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because of the vagaries of the weather, slackness of trade or a breakdown of machinery or plant;

- 3.2.2 "Incapacity" means inability to 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 or a scheduled disease for which compensation is payable under the Compensation for Occupational Injuries and Diseases Act, 1993, shall only be regarded as incapacity during any period in respect of which no disablement payment is payable in terms of that Act.
- 3.2.3 "Sick leave cycle" means the period of 36 consecutive months' employment with the same employer immediately following:
- a) An employee's commencement of employment; or
  - b) The completion of that employee's prior sick leave cycle.
- 3.2.4 During every sick leave cycle, an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.
- 3.2.5 Despite sub-clause 3.2.4, during the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked.
- 3.2.6 During an employee's first sick leave cycle, an employer may reduce the employee's entitlement to sick leave in terms of sub-clause 3.2.4 by the number of days sick leave taken in terms of sub-clause 3.2.5.
- 3.2.7 Subject to sub-clause 3.2.14 below, an employer must pay an employee for each day's sick leave the wage the employee would ordinarily have received for work on such days, payable on the employee's usual payday.
- 3.2.8 An agreement may reduce the pay to which an employee is entitled in respect of any day's absence in terms of this clause if-
- a) The number of days of paid sick leave is increased at least commensurately with any reduction in the daily amount of sick pay; and
  - b) The employee's entitlement to pay for any day's sick leave is at least 75 percent of the wage payable to the employee for the ordinary hours the employee would have worked on that day; and;

- c) for sick leave over the sick leave cycle, the employee's entitlement for sick leave is at least equivalent to the employee's entitlement in terms of sub-clause 3.2.4.
- 3.2.9 If, in the first 36 months of employment, an employee is absent owing to incapacity for a period more than the sick leave accrued in terms of sub-clause 3.2.4 the employer shall not, at that stage, be required to affect any payment in respect of the excess sick leave taken.
- 3.2.10 However, if the employer has not previously done so, he or she shall at the end of the first cycle of 36 months of employment pay the employee an amount equal to not less than the difference between the sick leave payment made earlier and the employee's wages for the full period of incapacity, up to the maximum of 36 work days. Such compensation shall be affected at the employee's wage rate as at the commencement of the unpaid period of incapacity.
- 3.2.11 Provided further that where the contract of employment terminates before the end of the said first cycle the employee shall be entitled to claim payment from the employer of an amount equal to the difference between the sick leave pay already received and the wage for the full period of incapacity, but not exceeding payment at a rate of more than one work-day's wage for each completed 26 days worked, and for the purposes of this proviso the expression "wage" shall mean the wage the employee was receiving as at the commencement of incapacity.
- 3.2.12 Where an employer is by any law required to pay fees for hospital or medical treatment in respect of an employee, and pays such fees, the amount so paid may be set off against the payment due in respect of absence owing to incapacity in terms of this clause.
- 3.2.13 No unused sick leave may be accrued from one cycle to another.
- 3.2.14 An employer may, as a condition precedent to the payment of any amount claimed in terms of this clause by an employee in respect of any absence from work for more than three consecutive work-days or on the work-day immediately preceding or the work-day immediately succeeding a Sunday or a paid holiday, 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, if an employee has, during any period

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of up to eight weeks, received payment in terms of this clause on two or more occasions without producing such a certificate, the employer may, during the period of eight weeks immediately succeeding the last such occasion, require the production of such certificate in respect of any absence. Furthermore, an employer may require an employee to obtain a certificate issued by a medical practitioner nominated by the employer but at the employer's expense in order to satisfy the requirements of this clause.

### **3.3 Maternity leave**

- 3.3.1 An employee is entitled to at least four consecutive months' maternity leave. During the maternity leave period, the benefit payable by the employer will be in the form of a top-up amount which equates to the difference between the UIF maternity benefit and what the employee would normally have earned in the equivalent pay period for a period of 4 months, provided she has been continuously in service for two years before the expected date of birth and must remain in service for 1 year after birth. The employer shall assist an employee on early application of UIF.
- 3.3.2 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.
- 3.3.3 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.
- 3.3.4 An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.
- 3.3.5 An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to:
- a) Commence maternity leave, and
  - b) Return to work after maternity leave.



- 3.3.6 Notification in terms of sub-clause 3.3.5 must be given-
- a) At least four weeks before the employee intends to commence maternity leave;
  - b) If it is not reasonably practicable to do so, as soon as is reasonably practicable.
- 3.3.7 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 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 it is practical for the employer to do so.
- 3.4 Family responsibility leave**
- 3.4.1 This clause applies to an employee:
- a) who has been in employment with an employer for longer than four months; and
  - b) who works for at least four days a week for that employer.
- 3.4.2 Subject to sub-clause 3.4.1 an employee is entitled to 12 (twelve) days paid family responsibility leave in the employee's Family Responsibility Leave Cycle. However, an employee may not take more than 4 (four) days family responsibility leave in the first 12 (twelve) months of employment. An employee is entitled to take family responsibility leave at the request of the employee-
- a) When the employee's child or spouse is sick; or
  - b) In the event of the death of –
    - i) the employee's spouse or life partner; or
    - ii) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.
- 3.4.3 Subject to sub-clause 3.4.5, an employer must pay an employee for a day's family responsibility leave;

- a) the wage the employee would ordinarily have received for work on that day; and
  - b) on the employee's usual payday.
- 3.4.4 An employee may take family responsibility leave in respect of the whole or part of a day.
- 3.4.5 Before paying an employee for leave in terms of this clause, an employer may require reasonable proof of an event contemplated in sub-clause 3.4.2 for which the leave was required.
- 3.4.6 An employee's unused entitlement to leave in terms of this clause lapses at the end of the employee's Family Responsibility Leave cycle in which it accrues.
- 3.5 Parental leave**
- 3.5.1 An employee, who is a parent of a child, is entitled to at least ten consecutive days parental leave.
- 3.5.2 An employee may commence parental leave on –
  - a) the day that the employee's child is born; or
  - b) the date –
    - i) that the adoption order is granted; or
    - ii) that a child is placed in the care of a prospective adoptive parent by a competent court, pending the finalization of an adoption order in respect of that child, whichever date occurs first.
- 3.5.3 An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to –
  - a) commence parental leave; and
  - b) return to work after parental leave.
- 3.5.4 Notification in terms of subsection 3.5.3 must be given –
  - a) at least one month before the –
    - i) employee's child is expected to be born; or
    - ii) date referred to in subsection 3.5.2(b); or
  - b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.

- 3.5.5 The payment of parental benefits will be determined by the Minister, subject to the provisions of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001).

#### 4 CHAPTER 4 - REGULATIONS FOR CONTRACT OF EMPLOYMENT

##### 4.1 Termination of contract of employment

- 4.1.1 An employer or an employee, who wishes to terminate the contract of employment, shall give notice of termination of not less than:
- a) One week, if the employee has been employed for six months or less;
  - b) Two weeks, if the employee has been employed for more than six months but not more than one year;
  - c) Four weeks, if the employee has been employed for more than one year.
- 4.1.2 An employer may terminate a contract without notice by paying the employee, in lieu of such notice, not less than the remuneration the employee would have received, in terms of sub-clause 4.1.1 above, if the employee had worked during the notice period,
- 4.1.3 The provisions of sub-clause 4.1.2 above shall not affect the operation of any forfeitures or penalties that by law may be applicable in respect of an employee who is absent without leave or has absconded or deserted.
- 4.1.4 Where the wage of an employee at the date of termination has been reduced by deductions in respect of short-time, the employer is obliged to pay the employee in lieu of notice as if no reduction has been made in respect of short-time.
- 4.1.5 The notice prescribed in sub-clause 4.1.1 may be given on any work-day: Provided that the period of notice shall not run concurrently with nor shall notice be given during an employee's absence-
- a) on leave in terms of clause 3.1
  - b) on sick leave in terms of clause 3.2
  - c) owing to incapacity as defined in 3.2 above amounting in the aggregate to not more than 10 weeks in any period of 12 months.



**4.2 Certificate of service**

4.2.1 On termination of employment, an employee is entitled to a certificate of service substantially in the form of APPENDIX "A" stating;

- a) The employee's full name;
- b) The name and address of the employer;
- c) The date of commencement and date of termination of employment;
- d) The title of the job or a brief description of the work for which the employee was employed at date of termination;
- e) The remuneration at date of termination; and
- f) If the employee so requests, the reason for termination of employment.

**4.3 Piece work**

4.3.1 An employer may, after giving at least one week's notice to an employee, introduce a piece work system and, save as provided for in clause 6.4.1 of this agreement, such employer shall pay such employee at the rate applicable under such system: Provided that, irrespective of the quantity of work done, the employer shall pay such employee not less than, in respect of each week in which such piece-work is performed, the amount which the employer would have been required to pay such employee for that week had the employee been remunerated on the basis of time worked.

4.3.2 An employer shall keep a schedule of the rates referred to in sub-clause 4.3.1 above in a conspicuous place in the establishment.

4.3.3 An employer who intends to cancel or amend the piece-work system in operation, or the rates applicable there under, shall give the employee employed on such system not less than one week's notice of such intention: Provided that an employer and the employee may agree on a longer period of notice, in which case the employer shall give notice for a period not shorter than that agreed upon.

**4.4 Prohibition of employment**

4.4.1 An employer shall not employ any person under the age of 15 years or a person aged 15 years or older who is under the minimum school leaving age in terms of any law.

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- 4.4.2 An employer shall not employ a such person in employment that is inappropriate for a person of that age or that places at risk the child's such person well-being, education, physical or mental health or spiritual, moral or social development.
- 4.4.3 All forced labour is prohibited.
- 4.5 Severance Pay**
- 4.5.1 For the purpose of this clause, "operational requirements" means requirements based on the economic, technological, structural or similar needs of any employer.
- 4.5.2 An employer must pay an employee who is dismissed for reasons based on the employer's operational requirements severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer for the first eight years of service, and, two weeks remuneration for every completed year of continuous service from year nine onwards by that employee, calculated in accordance with clause 6.1 of this agreement. Current company arrangements in regard to severance pay, that are more favourable, will not be affected by this sub-clause.
- 4.5.3 An employee who unreasonably refuses to accept the employer's offer of alternate employment with that employer or any other employer is not entitled to severance pay in terms of sub-clause 4.5.2 above.
- 4.5.4 The payment of severance pay in compliance with this clause does not affect an employee's right to any other amount payable according to law.
- 4.5.5 Notification to the Council:
- a) An employer must notify the Council when contemplating termination of employment of one or more employees for reasons related to its operational requirements.
  - b) Once the affected employee/s services have been terminated, the employer must, within 30 days of such termination, inform the bargaining council, in writing, of the number and occupational categories of the employee/s that have been retrenched
- 4.5.6 On completion of a limited duration contract the employer shall pay the employee a completion gratuity of one week's basic wages per completed year of service.



**4.6 Funeral cover for limited duration contract employees**

- 4.6.1 All employers must, whether independently or with other employers, provide funeral benefit cover through an approved and registered policy or scheme in favour of their limited duration employees and implement such benefit at the date of coming into operation of this agreement
- 4.6.2 The rules for the funeral benefit policy or scheme shall compel both employers and employees to contribute equally in respect of the monthly premiums of the policy or scheme.
- 4.6.3 In the event of the death of a limited duration employee, his or her spouse, or, his or her children, a benefit in the form of a lump sum cash payment must be provided, the value of which must be not less than in accordance with the table below or as determined by the council from time to time:
- a) Member and spouse R 15 000.00;
  - b) Children 14 years to 21 years: R 15 000.00;
  - c) Children 6 years and older but younger than 14 years: R 11 250.00;
  - d) Children 1 year and older but younger than 6 years: R 7 500.00; and
  - e) Children younger than 1 year or stillborn: R 1 500.00
- 4.6.4 In the event of the limited duration contract of employment of an individual employee coming to an end, the funeral benefit cover will automatically lapse, and the employee will have no claim against the policy or scheme in the event of a subsequent death as is provided herein above.

**4.7 Temporary employment, limited duration contract of employment ("LDC") and part-time employment****4.7A Application of section 198 of the Labour Relations Act 66 of 1995 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

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- (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 sub-clauses 4.7.6(A) to 4.7.8(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 agreement, an employee-
- (a) performing a temporary service as contemplated in sub-clause 4.7.1(A) for the client is the employee of the temporary employment services in terms of section 198(2) of the Act; 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 clause 4.7B, employed on an indefinite basis by the client.
- 4.7.4 (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 sub-clause 4.7.3(A) (b) or because the employee exercised a right in terms of the Act, is a dismissal.
- 4.7.5 (A) An employee deemed to be an employee of the client in terms of sub-clause 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 sub-clause 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 sub-clause 4.7.1(A) (c).

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- 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 sub-clause 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 section 198 (1) of the Act before the commencement of the Labour Relations Amendment Act, 2014, acquire the rights contemplated in sub-clauses 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.

**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 sub-clause 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

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- (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-
- (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 sub-clause 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 sub-clause 4.7.3(B) is deemed to be of indefinite duration.

- 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 sub-clause 4.7.3(B) (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 sub-clause 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.
- 4.7.10(B) An employer who employs an employee in terms of a fixed-term contract for a reason contemplated in sub-clause 4.7.4(B) (d) would be required to pay the employee on expiry of the contract a completion gratuity of one week's basic wages per completed year of service as referred to in clause 4.5.6.
- 4.7.11(B) An employee is not entitled to payment in terms of sub-clause 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 clause-**

- (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 -
  - (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 clause 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

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(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) Sub-clause 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 clauses 4.7A to 4.7C.-**

4.7.1(D) Any dispute arising from the interpretation or application of clauses 4.7A, 4.7B and 4.7C may be referred to the Council for conciliation and, if not resolved, to arbitration.

4.7.2(D) For the purposes of clauses 4.7.5(A), 4.7.8(B) and 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).

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- 4.7.3(D) A party to a dispute contemplated in sub-clause 4.7.1(D), other than a dispute about a dismissal in terms of clause 4.7.4(A), may refer the dispute, in writing, to the Council, within six months after the act or omission concerned.
- 4.7.4(D) The party that refers a dispute must satisfy the 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 Council for arbitration within 90 days.
- 4.7.6(D) The Council may at any time, permit a party that shows good cause to, refer a dispute after the relevant time limit set out in sub-clauses 4.7.3(D) or 4.7.5(D).

#### 4.8 Medical aid

- 4.8.1 Every employer shall ensure that adequate measures are in operation to facilitate voluntary membership of BCIMA ("Building and Construction Industry Medial Aid") to all their permanent employees, provided:
- 4.8.2 Where an employee elects to become a member the employer contribution will be compulsory.
- 4.8.3 The employer and employees shall contribute equally, and the contributions shall be as per the "Contribution Schedule for all Hourly Paid Employee Members" issued annually by BCIMA,
- 4.8.4 Employees who decide not to join the BCIMA will not be entitled to the cash value of the company contribution,
- 4.8.5 Employees who want to join the BCIMA may do so only from 1 January of any particular year and must remain a member of BCIMA at least until 31 December of that particular year,
- 4.8.6 Employees who leave the employ of his/her employer, or whose employment is terminated for whatsoever reason (including dismissal for misconduct), or whose contract comes to completion (for instance at retirement), may decide to continue his/her membership with BCIMA at his/her own cost,

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- 4.8.7 The dependents of a deceased member may decide to continue their membership with BCIMA at their own cost and subject to the rules of the fund,
- 4.8.8 The submission of an account, statement or claim to the fund is the sole responsibility of the member employee,
- 4.8.9 The lodging of complaints with -, disputes against or any correspondence with BCIMA is the sole responsibility of the member employee,
- 4.8.10 Where the contribution for an individual is higher than the set contribution as per the "Contribution Schedule for all Hourly Paid Employee Members" issued annually by BCIMA, irrespective of the reason for the increased contribution, then the employer will only contribute 50% of the set contribution,
- 4.8.11 Any increase in contributions will not result in an increase in remuneration,
- 4.8.12 The provisions of this clause shall not apply to employees employed in companies where a medical aid scheme is in place for them.

## **5 CHAPTER 5 - REGULATION REGARDING REGISTERS AND THE CONDITIONS OF EMPLOYMENT AGREEMENT**

### **5.1 Attendance register**

- 5.1.1 Every employer must keep a record containing at least the following information:
  - a) The employee's name and occupation
  - b) The time worked by each employee
  - c) The wage rate paid to each employee
  - d) The date of birth of any employee under the age of 18 years of age; and
  - e) Any other prescribed information
- 5.1.2 A record in terms of sub-clause 5.1.1 above must be kept by the employer for a period of three years from the date of the last entry in the record.
- 5.1.3 An employer who keeps a record in terms of this section is not required to keep any other record of time worked and remuneration paid as required by any other employment law.



**5.2 Written particulars of employment**

5.2.1 An employer must supply an employee with a contract of employment when the employee commences employment, in which with the following particulars are included;

- a) The full name and address of the employer;
- b) The name and occupation of the employee, or a brief description of the work for which the employee is employed;
- c) The place of work, and, where the employee is required or permitted to work at various places, an indication of this;
- d) The date of employment;
- e) The employee's ordinary hours of work and days of work;
- f) The employee's wage rate and method of calculating wages;
- g) The rate of pay for overtime work;
- h) Any other remuneration that the employee is entitled to and the value of the payment in kind;
- i) Any payment in kind that the employee is entitled to and the value of the payment in kind;
- j) How frequently remuneration will be paid;
- k) Any deductions to be made from the employee's remuneration;
- l) The leave to which the employee is entitled;
- m) The period of notice required to terminate employment, or if employment is on an LDC, the date on which employment will be terminated or the specific event that will result in the termination of employment.
- n) Any period of employment with a previous employer that is to be included in the employee's period of employment;
- o) A list of any other documents that form part of the contract of employment, indicating a place that is reasonably accessible to the employee where a copy of each may be obtained.

5.2.2 When any matter listed in sub-clause 5.2.1 above changes-

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- a) the contract of employment must be revised to reflect the change; and
- b) the employee must be supplied with a copy of the document reflecting the change.

5.2.3 If an employee is not able to understand the contract of employment, the employer must ensure that it is explained to the employee in a language and in a manner that the employee understands.

5.2.4 The employer must keep the contract of employment in terms of this clause for a period of 3 years after termination of employment.

### **5.3 Displaying this agreement in the workplace**

5.3.1 Every employer must –

- a) Display a notice in a prominent position in the workplace informing employees of the availability of this agreement for their perusal.
- b) Make a copy of this agreement available to any employee for inspection.
- c) On request, a copy of this agreement is to be made available to the trade union representative.

## **6 CHAPTER 6 - REMUNERATION AND RECORD KEEPING**

### **6.1 Calculation of wages**

6.1.1 The hourly wage of an employee shall be the weekly wage divided by the number of ordinary hours of work for such employee in any week;

6.1.2 The daily wage of an employee shall be the hourly wage multiplied by –

- a) Nine, in the case of an employee who works a five-day week;
- b) Seven and half, in the case of any other employee;

6.1.3 The weekly wage of an employee shall be the hourly wage multiplied by the number of ordinary hours of work for such employee in any week;

6.1.4 The monthly wage of an employee shall be four and one third times the weekly wage.

6.1.5 Remuneration shall be paid;

- a) in South African currency;

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- b) daily, weekly, fortnightly or monthly;
  - c) in cash, by cheque or by direct deposit into an account designated by the employee.
- 6.1.6 Any remuneration paid in cash or by cheque must be given to each employee-
  - a) at the workplace or at a place agreed to by the employee;
  - b) during the employees working hours or within 15 minutes of the commencement or the conclusion of those hours; and
  - c) in a sealed envelope which then becomes property of the employee.
- 6.1.7 An employer must pay remuneration not later than seven days after –
  - a) the completion of the period for which the remuneration is payable; or
  - b) the termination of the contract of employment.
- 6.1.8 Sub-clause 6.1.7(b) above does not apply to any amount due to an employee by the CIRBF.

## 6.2 Information about remuneration

- 6.2.1 An employer must give an employee the following information in writing on each day the employee is paid:
  - a) The employer's name and address;
  - b) The employee's name and occupation;
  - c) The period for which the payment is made;
  - d) The employee's remuneration in money;
  - e) The amount and purpose of any deduction made from the remuneration;
  - f) The actual amount paid to the employee; and
  - g) If relevant to the calculation of that employee's remuneration –
    - (i) the employee's rate of remuneration and overtime rate;
    - (ii) the number of ordinary and overtime hours worked by the employee during the period for which the payment is made;
    - (iii) the number of hours worked by the employee on a Sunday or public holiday during that period; and
    - (iv) if an agreement to average working time has been concluded in terms of section 12, the total number of ordinary and overtime

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hours worked by the employee in the period of averaging.

6.2.2 The written information required in terms of sub-clause (1) must be given to each employee —

- a) at the workplace or at a place agreed to by the employee; and
- b) during the employee's ordinary working hours or within 15 minutes of the commencement or conclusion of those hours.

### 6.3 Payment of remuneration upon termination of employment

6.3.1 If the employment of an employee terminates on a date before the ordinary pay day, all remuneration owing in terms of this agreement must be paid to the employee —

- a) within seven days of the date that employment terminates; or
- b) if the employer and an employee have agreed to a notice period longer than the period contemplated in this agreement, within seven days of the last day of the notice period.

### 6.4 Deductions from wages - general;

6.4.1 An employer may not make any deduction from an employee's remuneration, unless-

- a) Subject to sub-clause 6.4.2 below, the employee, by written agreement, consents to the deduction in respect of a debt which must be specified in the agreement; or
- b) The deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.

6.4.2 A deduction in terms of sub-clause 6.4.1(a) above may be made to reimburse an employer for loss or damage only if:

- a) The loss or damage only occurred in the course of employment and was due to the fault of the employee
- b) The employer has followed fair procedure and has given the employee a reasonable opportunity to show why the deductions should not be made

- c) The total amount of debt does not exceed the actual amount of the loss or damage, and;
  - d) The total deductions from the employee's remuneration in terms of this subsection do not exceed one quarter of the employees' remuneration in money.
- 6.4.3 An agreement in terms of sub-clause 6.4.1(a) in respect of any goods purchased by the employee must specify the nature and quantities of the goods
- 6.4.3 An employer who deducts an amount from an employee's remuneration in terms of sub-clause 6.4.1 for payment to another person must pay the amount to the person in accordance with the time period and other requirements specified in the agreement, law, court order or arbitration award.
- 6.4.4 An employer may not require or permit an employee to –
  - a) Repay any remuneration except for any amount paid in error for overpayments previously made by the employer resulting from an error in calculating the employees' remuneration; or –
  - b) Acknowledge receipt of an amount greater than the remuneration actually received.
- 6.5 Deductions from wages - trade union subscriptions**
- 6.5.1 An employer must deduct subscriptions for membership of a trade union party to the Council from the wages of an employee that consents in writing to the deduction.
- 6.5.2 The subscriptions deducted must be paid to the trade union concerned by the 15<sup>th</sup> of the month following the month to which the subscriptions relate. The payment to the relevant trade union must include the following details in respect of each employee that is a member of that trade union:
  - a) Name of employer and division or site at which the employee is employed
  - b) Full name;
  - c) Identity number, if available;
  - d) Amount deducted; and
  - e) The period to which the subscriptions relate.

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**6.6 Deductions from wages – training**

An employer may not accept or charge a premium for the training of employees.

**6.7 Year-end bonus**

Subject to the provisions of this sub-clause, an employer must pay an employee an annual bonus as follows:

**6.7.1** 20 working days' pay**6.7.2** Where existing agreements provide for bonuses in excess of that provided for in sub-clause 6.7.1 above, such existing agreements shall prevail.**6.7.3** An employee who is employed in a year in which a bonus amount is to be paid and who has been continuously so employed for at least 3 months, but for less than one full year, shall be entitled to a pro rata bonus payment.**6.7.4** An employee whose employment is terminated through no fault of his or her own, through retrenchment, retirement, disability, or death, shall be entitled to a pro rata bonus payment.**6.7.5** No bonus payment shall be made to employees whose employment was terminated by reason of misconduct.**6.7.6** Year-end (annual) bonus will not accrue to an employee for any unauthorised absence.**6.7.7** Calculation of accrual reduction upon unauthorised absenteeism –

(Example: an employee is absent without authorisation for 5 days and works 9 ordinary hours on 5 days per week:

- a) 5 days x 9 hours = 45 hours
- b) bonus: (235 working days x 9 hours) = 2115 total hours
- c) bonus accrual factor: 180 hours / 2155 total hours = 0.085 (bonus accrual per hour worked)
- d) 45 hours (see clause 6.7.7(a)) x 0.085 (accrual factor) = 3.825 hours
- e) task grade 1: R39.81 x 3.825 hours = R152.27 (bonus reduction amount)

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**6.8 Cross border work allowance**

- 6.8.1** An employer may only require or permit an employee to perform cross border work if so agreed in writing, provided that;
- a) The employer pays the employee an allowance as provided for in clause 6.9.2 below.
  - b) The employer must ensure that the terms of the agreement are not less favourable than the conditions of employment as regulated by the provisions of this agreement or any law that is applicable in the Republic of South Africa; and
  - c) The employer must ensure that the terms of the agreement and conditions of work are not less favourable than the same employee would enjoy if working in South Africa.
  - d) In the event where an employee is employed for a period of more than 12 months in another country, the employer must have an agreement with the Compensation Commissioner in terms of section 23(1)(c) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993.
- 6.8.2** An employer who requires an employee to perform work outside the borders of the Republic of South Africa must 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-
- a) of any health and safety hazards associated with that country that the employee is expected to be deployed to; and
  - b) of the employee's right to undergo a medical examination in terms of sub-clause 6.8.3;
- 6.8.3** At the request of the employee, enable the employee to undergo a medical examination, at the expense of the employer, concerning those hazards-
- a) Before the employee departs, or within a reasonable period;
  - b) At appropriate intervals while the employee continues to perform such work.
- 6.8.4** Transfer the employee to a suitable country within a reasonable time if-

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- a) The employee suffers from a health condition associated with the country in which the employee is working; and
- b) It is practicable for the employer to do so.

## 6.9 Allowances

### 6.9.1 Living out allowance

- a) A living out allowance whilst on the assignment, will be paid as set out below to employees who are required to work and live away from their usual place of residence and where no accommodation is provided by the employer. These amounts are set out as follows:

Year 1	Year 2	Year 3
Living out allowance from date determined by the Minister, up to 31 August 2022	Living out allowance as from 01 September 2022 to 31 August 2023	Living out allowance as from 01 September 2023 to 31 August 2024
R1 000	R1 100-00	R1 200-00

- b) A living out allowance is not payable to employees recruited at the site or who present themselves for employment at that specific site.
- c) Any other allowance paid for the same purpose is deemed to be a Living Out allowance as defined.

### 6.9.2 Cross border allowance

- a) A cross border allowance of 7% will be paid to employees assigned to cross border projects calculated on the basic rate of pay for ordinary hours worked.

### 6.9.3 Sleep out allowance

- a) A sleep out allowance will be paid to employees who spend at least a night away from their usual site on authorised company business and only in the event that the employer is not providing accommodation

during this period away from their usual site. These amounts are set out as follows:

Year 1	Year 2	Year 3
Sleep Out Allowance from the date determined by the Minister, up to 31 August 2022	Sleep Out Allowance as from 01 September 2022 to 31 August 2023	Sleep Out Allowance from 01 September 2023 to 31 August 2024
R180	R180 + CPI	Year 2 amount + CPI

#### 6.9.4 Transport

Transport is to be provided by the employer to employees between the office of the employer where the employee was employed and the project during pay and/or long weekends where applicable.

#### 6.9.5 Acting allowance

An acting allowance of 5% of the employee's current basic rate must be paid to an employee while the employee is acting in a position higher than the employee's current job grade.

#### 6.9.6 General

- None of the above-mentioned issues, or allowances of a similar nature, may be the subject of company level negotiations.
- Current company arrangements that are more favourable will not be affected.



## 7 CHAPTER 7 - GENERAL

### 7.1 Exemptions

- 7.1.1 Any person bound by this agreement may apply to the Council's Independent Exemptions Committee for an exemption from any provision of this agreement in the manner provided for in the Exemptions Collective Agreement.
- 7.1.2 Any person may lodge an appeal against the decision of the Independent Exemptions Committee to the Independent Appeal Board in the manner provided for in the Exemptions Collective Agreement.

### 7.2 Protective clothing

- 7.2.1 An employer shall supply and maintain in serviceable condition, free of charge, any protective clothing that the employer requires the employee to wear, or that by any law the employer is compelled to provide to the employee, and any such protective clothing shall remain the property of the employer.

### 7.3 Designated agents

- 7.3.1 The Council must appoint one or more persons as designated agents to enforce and monitor compliance with this agreement, in any manner that is reasonably required for compliance with this agreement, by-
- a) Entering and inspecting premises;
  - b) Examining records; and
  - c) Interviewing an employer or employees of the employer in an appropriate manner.
- 7.3.2 After each inspection of an employer's records and operations, a designated agent must prepare a report for the attention of the employer, worker representatives or in the case of an individual complainant, the complainant, stating-
- a) The date and time of the inspection;
  - b) If any contraventions of the agreement were identified, a summary of the contraventions; and

c) The action that management is required to take to rectify the contraventions.

7.3.3 A designated agent may not make any disclosure of information in circumstances which are not permitted in terms of section 201 of the Labour Relations Act, 1995.

7.3.4 The Minister, on request of the Council, shall appoint one or more persons to be designated agents to assist in giving effect to the terms of this agreement, including the issuing of compliance orders requiring any person bound by this agreement to comply within 14 days.

7.3.5 A designated agent shall have all the powers provided for in section 33, 33A and Schedule 10 of the Act.

**7.4 Levels of bargaining in the Industry and peace obligation**

Subject to sub-clause 7.4.4 below —

7.4.1 The Council shall be the sole forum for negotiating matters contained in this agreement.

7.4.2 During the currency of this agreement, no matter contained within this agreement may be an issue in dispute for the purposes of a strike or lock-out or any conduct in contemplation of a strike or lock-out;

7.4.3 Any provision in a collective agreement binding an employer and employees covered by the Council, other than a collective agreement concluded by the Council, that requires an employer or a trade union to bargain collectively in respect of any matter contained in this agreement, is of no force and effect.

7.4.4 Where bargaining arrangements at plant and company level, excluding agreements entered into under the auspices of the Council, are in existence, the parties to such arrangements may, by mutual agreement, modify or suspend or terminate such bargaining arrangements in order to comply with sub-clauses 7.4.1 to 7.4.3 above. The provisions of these clauses shall apply equally to any trade unions not party to this agreement.

**7.5 Administration of agreement**

7.5.1 The Council is the body responsible for the administration of this agreement.

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**7.6 Attendance of worker representatives on bargaining council committee meetings**

- 7.6.1 The employer and trade union parties agree that it is important that worker representatives be appointed by the unions, to attend Council meetings and should participate at that level.
- 7.6.2 To this end the trade unions will by **31 January of each year** notify the companies involved, in writing, of the names and contact details of the trade union worker representatives appointed to serve on Council committees.
- 7.6.3 Where the company is unable, for operational or other valid reasons to accept the absence of the employee on the dates concerned it shall immediately communicate with the union in order that the problem is addressed.
- 7.6.4 Absence from the workplace to attend each scheduled meeting must be based on reasonable prior notice of the meeting to the employer supported by the presentation of the agenda of the meeting by the worker representative.

**7.7 Resolution of disputes**

- 7.7.1 Disputes about the interpretation or application of the Council's Collective Agreements will be dealt with in terms of the Council's Dispute Resolution Collective Agreement.

## APPENDIX A - Certificate of Service

Certificate of Service in the Civil Engineering Industry	
<p><b>CIVIL ENGINEERING INDUSTRY, SOUTH AFRICA READ THIS FIRST</b></p> <p><b>WHAT IS THE PURPOSE OF THIS FORM?</b></p> <p>This form is proof of employment with an employer.</p> <p><b>WHO FILLS IN THIS FORM?</b></p> <p>Authorised staff member</p> <p><b>WHERE DOES THIS FORM GO?</b></p> <p>To the employee.</p> <p><b>INSTRUCTIONS</b></p> <p>This form must be issued upon termination of employment.</p> <p><b>NOTE</b></p> <p>The reason for termination of employment must only be given if requested by the employee.</p> <p>This is only a model and not a prescribed form. Completing a document in another format containing the same information is sufficient compliance with Clause 2 in Chapter III of this agreement.</p>	<p>I, ..... (Full name and position of authorised staff member)</p> <p>of ..... (Full name of employer)</p> <p>Employer's Address: .....</p> <p>.....</p> <p>.....</p> <p>declare that</p> <p>..... (Full name of employee)</p> <p>..... (I.D no.)</p> <p>Was in employment from .....</p> <p>Until.....</p> <p>as ..... (Type of work/occupation)</p> <p>Any other information.....</p> <p>On termination of service this employee was earning: R..... ..... (Amount in words)</p> <p>[per hour] [per day] [per week] [per fortnight] [per month] [per year]</p> <p>.....</p> <p>Staff member' signature Date</p>

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