

DEPARTMENT OF LABOUR

No. R

Date

BASIC CONDITIONS OF EMPLOYMENT ACT, NO 75 OF 1997

SECTORAL DETERMINATION 9: WHOLESALE AND RETAIL SECTOR,

SOUTH AFRICA

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, in terms of section 51 (1) of the Basic Conditions of Employment Act, No. 75 of 1997, make a Sectoral Determination establishing conditions of employment and minimum wages for employees in the Wholesale and Retail Sector, South Africa, which appears in the schedule hereto and determine 1 February 2003 as the date from which the provisions of this Sectoral Determination shall be binding.

**M M S MDLADLANA, MP
MINISTER OF LABOUR**

DEPARTEMENT VAN ARBEID

No. R.

Date

WET OP BASIESE DIENSVOORWAARDES, NO 75 VAN 1997

**SEKTORALE VASSTELLING 9: GROOT- EN KLEINHANDELSEKTOR, SUID
AFRIKA**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, maak ingevolge artikel 51 (1) van die Wet op Basiese Diensvoorwaardes, No. 75 van 1997, 'n Sektorale Vasstelling met diensvoorwaardes en minimum lone vir werknemers ten opsigte van die Groot- en Kleinhandelsektor, Suid Afrika, wat in die bylae hier verskyn en bepaal 1 Februarie 2003 as die datum waarop die bepalings van hierdie Sektorale Vasstelling bindend word.

**M M S MDLADLANA, LP
MINISTER VAN ARBEID**

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PART A : APPLICATION

APPLICATION

1. (1) This determination applies to the employment of employees in the wholesale and retail sector in the Republic of South Africa.
- (2) In this determination, the “**wholesale and retail sector**” means the sector in which employers and employees are mainly or wholly associated for the purpose of procuring products from any supplier or manufacturer for the purpose of sale to any person, whether on a wholesale or retail basis; and, in addition, includes –
 - (a) any other activities engaged in by an employer in the wholesale and retail sector including, but not limited to, merchandising, warehousing or distribution operations that are incidental to, or supportive of, the employer’s enterprise; and
 - (b) any other activity conducted by an employer whose core business falls within in the wholesale and retail sector on or at the premises where that business is conducted.
- (3) This determination does not apply to employees –
 - (a) employed in activities covered by another sectoral determination in terms of the Basic Conditions of Employment Act; or
 - (b) covered by an agreement of a bargaining council in terms of the Labour Relations Act.
- (4) Employees who work for an employer for 24 or less hours in a month –
 - a) must be paid at least the hourly rate set out in Tables 1 – 6 of this determination.
 - b) except as provided in paragraph (a), this determination does not apply to an employee who works for an employer for 24 hours or less in a month.
- (5) The provisions of the Basic Conditions of Employment Act apply to all employees covered by this determination and their employers in respect of any matter not dealt with in this sectoral determination.

PART B : WAGES

WAGES

2. (1) **With effect from 1 February 2003, an employer must pay an employee at least the minimum wage prescribed in this part of the sectoral determination.**
- (2) An employer must pay an employee who works for the employer for more than 27 hours per week –
 - (a) at least the weekly or monthly wage set out in Tables 1 to 6; or
 - (b) by agreement between the employer and the employee, at least the hourly rate set out in Tables 1 to 6 for every hour or part of an hour that the employee works.

- (3) An employer must pay an employee who works 27 hours or less per week –
 - (a) if an agreement has been concluded in terms of clause 11, at least the hourly rate as set out in Tables 1 to 6 for every hour or part of an hour that the employee works, plus 25%; or
 - (b) if no agreement has been concluded in terms of clause 11, at least the hourly rate as set out in Tables 1 to 6 for every hour or part of an hour that the employee works.
- (4) An employer must pay an employee employed in a job category not listed in Tables 1 to 6 at least the minimum wage prescribed for a job category requiring an equivalent level of training, skill or experience.
- (5) Tables 1, 2 and 3 apply to employers in the wholesale and retail sector in Areas A, B and C respectively.
- (6) Tables 4, 5 and 6 apply to employers in Areas A, B and C respectively who –
 - (a) employ less than five employees; or
 - (b) are in an area that fell within the former Republics of Transkei, Bophuthatswana, Venda or Ciskei or that was excluded by Wage Determination 478.
- (7) An employee who works for less than four hours on any day must be paid for four hours work on that day.
- (8) An employer who requires or permits an employee to perform work for longer than one hour on any day and that work is normally performed by a higher paid category of employee, must –
 - (a) pay the employee in respect of that day not less than the daily wage calculated at the higher rate; and
 - (b) paragraph (a) applies whether the work is performed in addition to, or in substitution for the employer's normal work.
- (9) Unless otherwise agreed in writing, nothing in this determination precludes an employer from requiring an employee to perform work of another category of employee for which the same or a lower wage is prescribed.

APPLICATION OF MINIMUM WAGES TO NEW EMPLOYERS

- 3. (1) Despite clause 2, for two years after the commencement of this determination, a newly established employer must pay employees a minimum wage of at least 90% of the applicable minimum wage in Tables 1 to 3.
- (2) For the purposes of this clause, a 'newly established employer'
 - (a) means any employer that –
 - (i) commenced business after 1 February 2001, and
 - (ii) has not been in operation for longer than two years; and
 - (b) does not include any employer established as a result of –
 - (i) the division, sale or transfer of the whole or part of any existing employer;
 - (ii) the outsourcing or sub-contracting of the whole or part of any existing business or service.
- (3) This clause does not apply to employers covered by clause 2 (6).

COMMISSION WORK

4. (1) An employer and employee employed as a sales person may agree in writing that the employee will perform commission work on a regular basis.
- (2) An employee who performs commission work must receive a wage that is at least two-thirds of the applicable minimum wage that the employee is entitled to in terms of clause 2.
- (3) An agreement to perform commission work in terms of this clause must be concluded before the work is commenced and must include –
 - (a) the employee's wage;
 - (b) the basis for calculating commission payments;
 - (c) the period over which commission payments are calculated which may not be longer than one month;
 - (d) when the employer must pay commission payments to the employee which may not be longer than one month after the end of the period in which the commission is earned; and
 - (e) the type, description, number, quantity or value of sales, margin, profit, or orders (individual, weekly, monthly or otherwise) for which the employee is entitled to earn commission.
- (4) The employer must supply the employee with a copy of the agreement to perform commission work.
- (5) If during any calculation period the employee does not earn an amount equivalent to at least the prescribed minimum wage because any act or omission by or on behalf of the employer has restricted the employee's ability to earn commission, the employer must pay the employee at least the applicable minimum wage as set out in Tables 1 to 6.

CALCULATION OF REMUNERATION OR WAGES

5. (1) The remuneration or wages of an employee must be calculated by reference to the employee's **ordinary hours of work**.
- (2) For the purposes of any calculation in terms of this determination –
 - (a) the hourly remuneration or wages of a employee is obtained by –
 - (i) dividing the daily remuneration or wages by the number of ordinary hours worked in a day; or
 - (ii) dividing the weekly remuneration or wages by the number of ordinary hours worked in a week.
 - (b) the daily remuneration or wages of a employee is obtained by –
 - (i) multiplying the hourly remuneration or wages by the number of ordinary hours worked in a day; or
 - (ii) dividing the weekly remuneration or wages by the number of days worked in a week.
 - (c) the weekly remuneration or wages of a employee is obtained by –
 - (i) multiplying the hourly remuneration or wages by the number of ordinary hours worked in a week; or
 - (ii) multiplying the daily remuneration or wages by the number of days worked in a week; or

- (iii) dividing the monthly remuneration or wages by four and one-third.
- (d) the monthly remuneration or wages of an employee is obtained by multiplying the weekly remuneration or wages by four and a third.
- (e) If an employee's remuneration or wages is calculated, either wholly or in part, on a basis other than time, or if an employee's remuneration or wages fluctuates significantly from period to period, any payment to that employee in terms of this clause must be calculated by reference to the employee's remuneration –
 - (i) during the preceding 13 weeks;
 - (ii) if the employee has been in employment for a shorter period, that period; or
 - (iii) by agreement, the average earned over a period of time of not more than the previous 12 months.

PAYMENT OF REMUNERATION

- 6. (1) An employer must pay an employee –
 - (a) in South African currency;
 - (b) daily, weekly, fortnightly or monthly; and
 - (c) in cash, by cheque or by direct deposit into an account designated by the employee.
- (2) 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 employee's working hours or within fifteen minutes of the commencement or conclusion of those hours; and
 - (c) in a sealed envelope which becomes the property of the employee.
- (3) An employer must pay an employee –
 - (a) on the normal pay day as agreed; or
 - (b) on the termination of the contract of employment.
- (4) Sub-clause (3) does not apply to any pension or provident fund payment to an employee that is made in terms of the rules of the fund.

INFORMATION CONCERNING REMUNERATION

- 7. (1) On every pay day, the employer must give the employee a statement showing –
 - (a) the employer's name and address;
 - (b) the employee's name and occupation;
 - (c) the period in respect of which payment is made;
 - (d) the employee's wage rate and overtime rate;
 - (e) the number of ordinary hours worked by the employee during that period;
 - (f) the number of overtime hours worked by the employee during that period;

- (g) the number of hours worked by the employee on a public holiday or on a Sunday;
 - (h) the employee's wage;
 - (i) details of any other pay, including commission payments, arising out of the employee's employment;
 - (j) details of any deductions made; and
 - (k) the actual amount paid to the employee.
- (2) An employer must retain a copy or record of each statement for at least three years.

DEDUCTIONS AND OTHER ACTS CONCERNING REMUNERATION

8. (1) An employer may not make any deduction from an employee's remuneration unless –
- (a) subject to sub-clause (2), the employee in writing agrees to the deduction in respect of a debt specified in the agreement; or
 - (b) the deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.
- (2) A deduction in terms of sub-clause (1)(a) may be made to reimburse an employer for loss or damage only if –
- (a) the loss or damage occurred in the course of employment and was due to the fault of the employee;
 - (b) the employer has followed a fair procedure and has given the employee a reasonable opportunity to show why the deductions should not be made;
 - (c) the total amount of the 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 sub-clause do not exceed one-quarter of the employee's remuneration in money.
- (3) A deduction in terms of sub-clause (1)(a) in respect of any goods purchased by the employee must specify the nature and quantity of goods.
- (4) An employer who deducts an amount from an employee's remuneration in terms of sub-clause (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.
- (5) An employer may not require or permit an employee to –
- (a) repay any remuneration except for overpayments previously made by the employer resulting from an error in calculating the employee's remuneration; or
 - (b) acknowledge receipt of an amount greater than the remuneration actually received.

PART C : PARTICULARS OF EMPLOYMENT

WRITTEN PARTICULARS OF EMPLOYMENT

9. (1) An employer must supply an employee, when the employee starts work, with the following particulars in writing –
 - (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 on which the employment began;
 - (e) the employee's ordinary hours of work and days of work;
 - (f) the employee's wage or the rate and method of payment;
 - (g) the rate of pay for overtime work;
 - (h) any other cash payments that the employee is entitled to;
 - (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 to; and
 - (m) the period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate.
- (2) When any matter listed in sub-clause (1) changes –
 - (a) the written particulars must be revised to reflect the change; and
 - (b) the employee must be supplied with a copy of the document reflecting the change.
- (3) If an employee is not able to understand the written particulars, the employer must ensure that they are explained to the employee in a language and in a manner that the employee understands.
- (4) The employer must sign the written particulars and any change in terms of sub-clause (2).
- (5) The employer may require the employee to –
 - (a) acknowledge receipt of the written particulars and any change in terms of sub-clause (2) in writing on a copy of the particulars; or
 - (b) if the employee is unable to or refuses to acknowledge receipt, record that the employee has received a copy of the written particulars.
- (6) An employer must retain a copy of the written particulars while the employee is employed and for three years thereafter.

PART D : HOURS OF WORK

APPLICATION OF THIS PART

10. (1) This part does not apply to –
- (a) senior managerial employees; (*“senior managerial employee” means an employee who has the authority to hire, discipline and dismiss employees and to represent the employer internally and externally*)
 - (b) employees engaged as sales staff who travel to the premises of customers and who regulate their own hours of work.
 - (c) to an employee earning in excess of –
 - (i) during the first nine months after the sectoral determination becomes effective, a wage of R56 000 per annum; and
 - (ii) thereafter, the amount determined by the Minister in terms of section 6(3)¹ of the Basic Conditions of Employment Act. (*R 15 250 pm or R 183008 pa*)
- (2) Clauses 12, 13(1)², 17(1)³, 18(1)⁴ and 20(2)⁵ and 21⁶ do not apply while an employee is engaged in emergency work.
- (3) For the purposes of this clause –
- (a) ‘senior managerial employee’ means an employee who has the authority to hire, discipline and dismiss employees and to represent the employer internally and externally;
 - (b) ‘emergency work’ means work which is required to be done without delay owing to circumstances for which the employer could not reasonably have been expected to make provision and which cannot be performed by employees during their ordinary hours of work.

APPLICATION OF PARTS D AND E TO EMPLOYEES WORKING 27 HOURS OR LESS PER WEEK

11. (1) A written agreement may provide that an employee who works 27 hours or less per week is employed on the following terms and conditions –
- (a) the employee is paid the relevant hourly wage rate in terms of Tables 1 to 6, plus 25% for any ordinary hours of work worked by the employee, including ordinary hours of work performed on Sundays;
 - (b) the employee is granted at least two days off during every week;
 - (c) the employer is not required to pay the employee an allowance for performing night work;

¹ The minimum earning threshold determined by the Minister since December 1998 is R89 455,00.

² Working of overtime

³ Granting of meal intervals

⁴ Granting of rest periods

⁵ Night work

⁶ Public holidays

- (d) the right to paid sick-leave in terms of clause 23 and family responsibility leave in terms of clause 24 do not apply to the employee;
 - (e) the employer must grant the employee at least two weeks paid annual leave in accordance with the provisions of clauses 22(2), (3), (5) – (10) and, on request by the employee, at least one week's unpaid leave each year; and
 - (f) in all other respects, Parts D and E of this determination, apply to the employee.
- (2) An employee who works for 27 hours or less per week who has not concluded an agreement in terms of sub-clause (1) is entitled to all basic conditions of employment established by this determination, where appropriate on a proportionate basis.

ORDINARY HOURS OF WORK

12. (1) An employer may not require or permit an employee to work more than –
- (a) 45 ordinary hours in any week; or
 - (b) if an agreement has been concluded in terms of sub-clause (3), 40 ordinary hours in any week.
- (2) An employer may not require or permit an employee to work more than –
- (a) nine ordinary hours on any day if the employee works for five days or less in a week; or
 - (b) eight ordinary hours in any day if the employee works on more than five days in any week.
- (3) A written agreement may provide that an employee who works 40 or less ordinary hours of work per week including a Sunday is employed on the following terms and conditions –
- (a) the employer must grant the employee at least –
 - (i) two full days off during every week; and
 - (ii) one Sunday off during every four consecutive weeks;
 - (b) the employer may only require or permit an employee to work on a day off granted in terms of paragraph (a) in terms of an agreement in respect of a particular day;
 - (c) the employer must pay the employee for work on a day off granted in terms of paragraph (a) at least –
 - (i) double the employee's wage for each hour worked; or
 - (ii) if it is greater, the employee's daily wage;
 - (d) clause 18(1)(b) regulating the weekly rest period and clause (19) regulating payment for work on Sunday do not apply to the employee.
- (4) An employee's ordinary hours of work in terms of sub-clause (1) may by agreement be extended by up to 15 minutes in a day but no more than 60 minutes in a week to enable an employee whose duties include serving members of the public to continue performing those duties after the completion of ordinary hours of work.

OVERTIME

13. (1) An employer may not require or permit an employee –
- (a) to work overtime except in accordance with an agreement concluded by the employer and the employee;
 - (b) to work more than 10 hours' overtime a week; or
 - (c) to work more than 12 hours, including overtime, on any day.
- (2) A written agreement –
- (a) may increase the maximum permitted overtime to 15 hours a week; and
 - (b) an agreement contemplated in paragraph (a) may not apply for more than two months in any period of 12 months.

PAYMENT OF OVERTIME

14. (1) An employer must pay an employee at least one and one-half times the employee's wage for overtime worked.
- (2) Despite sub-clause (1), an agreement may provide for an employer to –
- (a) pay a employee not less than the employee's ordinary wage for overtime worked and grant the employee at least 30 minutes' time off on full pay for every hour of overtime worked; or
 - (b) grant an employee at least 90 minutes' paid time off for each hour of overtime worked.
- (3) An employer must grant paid time off in terms of sub-clause (2) within one month of the employee becoming entitled to it, alternatively –
- (a) a written agreement may increase the period contemplated by sub-clause (3) to twelve months; and
 - (b) an agreement concluded in terms of paragraph (a) with an employee when the employee commences employment, or during the first three months of employment, is only valid for one year.

COMPRESSED WORKING WEEK

15. (1) A written agreement may require or permit an employee to work up to twelve hours in a day, inclusive of the meal intervals required in terms of clause 17, without receiving overtime pay.
- (2) An agreement in terms of sub-clause (1) 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.

AVERAGING OF HOURS OF WORK

16. (1) Despite clauses 12(1)(a), 12(2) and 13, 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 written agreement.
- (2) An employer may not require or permit an employee who is bound by an agreement in terms of sub-clause (1) to work more than –
 - (a) an average of 45 ordinary hours of work in a week over the agreed period; or
 - (b) an average of five hours' overtime in a week over the agreed period;
- (3) An agreement in terms of sub-clause (1) lapses after 12 months.
- (4) Sub-clause (3) only applies to the first two agreements concluded in terms of sub-clause (1).

MEAL INTERVALS

17. (1) An employer must give an employee who works continuously for more than five hours a meal interval of at least one continuous hour.
- (2) During a meal interval, an employee may be required or permitted to perform only duties that cannot be left unattended and cannot be performed by another employee.
- (3) An employee must be paid –
 - (a) for a meal interval in which the employee is required to be available for work;
 - (b) for any portion of a meal interval that is in excess of 75 minutes.
- (4) For the purpose of sub-clause (1), work is continuous unless it is interrupted by a meal interval in accordance with this clause.
- (5) A written agreement may-
 - (a) reduce the meal interval to not less than 30 minutes;
 - (b) dispense with a meal interval for an employee who works fewer than six hours on a day.
- (6) Whenever an employer is required to give an employee a second meal interval because of overtime worked, that interval may by agreement be reduced to not less than 15 minutes.
- (7) An employer shall grant to each of his or her employees a rest interval of not less than 15 minutes as nearly as practicable in the middle of each first work period and second work period of the day, and during such interval such employee shall not be required or permitted to perform any work, and such interval shall be deemed to be part of the ordinary hours of work of such employee. A written agreement may extend the morning rest interval to not more than half an hour.

REST PERIODS

18. (1) An employer must grant an employee –
 - (a) a daily rest period of at least twelve consecutive hours between ending work and starting work the next day;
 - (b) weekly rest period of at least 36 consecutive hours which, unless otherwise agreed, must include a Sunday.

- (2) A daily rest period in terms of sub-clause (1)(a) may, by written agreement, be reduced to 10 hours for an employee –
 - (a) whose meal interval lasts for at least three hours.
- (3) Despite sub-clause (1)(b), a written agreement may provide for a rest period of at least 60 consecutive hours every second week.

PAYMENT FOR WORK ON SUNDAYS

- 19. (1) An employer must pay an employee who works on a Sunday at double the employee's wage for each hour worked, unless the employee ordinarily works on a Sunday, in which case the employer must pay the employee at one and one-half the employee's wage for each hour worked.
- (2) If the payment calculated in terms of sub-clause (1) is less than the employee's daily wage, the employer must pay the employee, for the time worked on that Sunday, the employee's daily wage.
- (3) Despite sub-clauses (1) and (2), an agreement may permit an employer to grant an employee who works on a Sunday paid time off equivalent to the difference in value between the pay received by the employee for working on a Sunday and the pay the employee is entitled to receive in terms of sub-clauses (1) and (2).
- (4) An employer must grant paid time off in terms of sub-clause (3) within one month of the employee becoming entitled to it, alternatively –
 - (a) a written agreement may increase the period contemplated by sub-clause (4) for up to 12 months.
- (5) Any time worked on a Sunday by employee who does not normally work on a Sunday is not taken into account in calculating a employee's ordinary hours of work in terms of clause 12, but is taken into account in calculating the overtime worked by the employee in terms of clause 13(1)(b).
- (6) If a shift worked by an employee, who does not ordinarily work on a Sunday, falls on a Sunday and another day, the whole shift is deemed to have been worked on the Sunday, unless the greater portion of the shift was worked on the other day, in which case the whole shift is deemed to have been worked on the other day.

NIGHT WORK

- 20. (1) For the purposes of this clause, "night work" means work performed after 19:00 and before 07:00 the next day.
- (2) An employer may only require or permit an employee to perform night work, if so agreed and if –
 - (a) the employee is compensated by the payment of an allowance at a rate of at least 10% of the hourly wage for every hour or part of an hour that the employee works; and
 - (b) transport is available between the employee's place of residence and the workplace at the beginning and end of the employee's shift.

- (3) An employer who requires a employee to perform work on a regular basis 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 employee in writing, or orally if the employee is not able to understand a written communication, in a language that the employee understands –
 - (i) of any health and safety hazards associated with the work that the employee is required to perform; and
 - (ii) of the employee’s right to undergo a medical examination in terms of paragraph (b);
 - (b) at the request of the employee, enable the employee to undergo a medical examination, for the account of the employer, concerning those hazards –
 - (i) before the employee starts, or within a reasonable period of the employee starting, such work; and
 - (ii) at appropriate intervals while the employee continues to perform such work; and
 - (c) transfer the employee to suitable day work within a reasonable time if –
 - (i) the employee suffers from a health condition associated with the performance of night work; and
 - (ii) it is practicable for the employer to do so.

PUBLIC HOLIDAYS

- 21. (1) An employer may not require an employee to work on a public holiday, except in accordance with an agreement.
- (2) If a public holiday falls on a day on which an employee would ordinarily have worked, an employer must pay an employee –
 - (a) who does not work on the public holiday the employee’s daily wage;
 - (b) who does work on the public holiday at least double the daily wage.
- (3) If an employee who works on a public holiday on which the employee would not ordinarily have worked, the employer must pay that employee an amount equal to –
 - (a) the employee’s daily wage; plus
 - (b) the employee’s hourly wage for each hour worked on the public holiday.
- (4) An employer must pay an employee for a public holiday on the employee’s normal payday.
- (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.

PART E : LEAVE

ANNUAL LEAVE

22. (1) An employer must grant an employee –
- (a) at least three calendar weeks annual leave on full pay in respect of each 12 months of employment (the ‘annual leave cycle’);
 - (b) by agreement, at least one day of annual leave on full pay for every 17 days on which the employee worked or was entitled to be paid; or
 - (c) by agreement, at least one hour of annual leave on full pay for every 17 hours on which the employee worked or was entitled to be paid.
- (2) An employer must grant an employee an additional day of paid leave if a public holiday falls on a day during an employee’s annual leave on which the employee would otherwise have worked.
- (3) An employer may reduce an employee’s entitlement to annual leave by the number of days of occasional leave on full pay granted to the employee at the employee’s request in that annual leave cycle.
- (4) An employer must grant at least three calendar weeks annual leave on full pay in respect of each 12 months of employment (the ‘annual leave cycle’) not later than six months after the end of the annual leave cycle or the year in which the leave was earned.
- (5) Annual leave must be taken –
- (a) in accordance with an agreement between the employer and employee; or
 - (b) if there is no agreement in terms of paragraph (a), at a time determined by the employer in accordance with this clause.
- (6) An employer may not require or permit an employee to take annual leave during –
- (a) any other period of leave to which the employee is entitled in terms of this part of the sectoral determination; or
 - (b) any period of notice of termination of employment.
- (7) An employer may not require or permit an employee to work for the employer during any period of annual leave.
- (8) An employer may not pay an employee instead of granting paid leave in terms of this clause except on termination of employment.
- (9) An employer must pay an employee leave pay at least equivalent to the remuneration that the employee would have received for working for a period equal to the period of annual leave, calculated on the basis of the employee’s rate of remuneration immediately before the period of leave.
- (10) An employer must pay an employee leave pay –
- (a) before the beginning of the period of leave; or
 - (b) by agreement, on the employee’s normal payday.

SICK LEAVE

23. (1) For purposes of this clause “sick leave cycle” means the period of 36 months employment with the same employer immediately following –
- (a) the employee’s commencement of work; or
 - (b) the end of the employee’s previous sick leave cycle.
- (2) During every sick leave cycle, an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.
- (3) Despite sub-clause (2) during the first six months of work, an employee is entitled to one day’s sick leave for every 26 days worked.
- (4) An employer may, during the employee’s first leave cycle, reduce the employee’s entitlement to sick leave in terms of sub-clause (2) by the number of days’ sick leave taken in terms of sub-clause (3).
- (5) An employer may require an employee who has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period to produce a medical certificate before paying the employee in terms of this clause.
- (6) The medical certificate in terms of sub-clause (5) must –
- (a) be issued and signed by a medical practitioner, or any other person who is certified to diagnose and treat patients and who is registered with a professional council, established by an Act of Parliament; and
 - (b) state that the employee was unable to work for the duration of the employee’s incapacity.

FAMILY RESPONSIBILITY LEAVE

24. (1) This clause applies to an employee –
- (a) who has been employed by an employer for longer than four months; and
 - (b) who works on at least four days a week for that employer.
- (2) An employer must grant an employee, during each 12 months of employment, at the request of the employee, three days’ leave, which the employee is entitled to take –
- (a) when the employee’s child is born;
 - (b) when the employee’s child is sick; or
 - (c) in the event of the death of –
 - (i) the employee’s spouse or life partner; or
 - (ii) the employee’s parent, adoptive parent, grandparent, child, adopted child, grandchildren or sibling.
- (3) An employee may take family responsibility leave in respect of the whole or part of the day.
- (4) Subject to sub-clause (5), an employer must pay an employee for a day’s family responsibility leave –
- (a) the wage the employee would normally have received for work on that day; and
 - (b) on the employee’s usual payday.

- (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 (2) for which the leave was required.
- (6) An employee's unused entitlement to leave in terms of this clause lapses at the end of the annual leave cycle in which it accrues.
- (7) A collective agreement may vary the number of days and the circumstances under which leave is to be granted in terms of this clause.

MATERNITY LEAVE⁷

- 25. (1) An employee is entitled to at least four consecutive months' maternity leave.
- (2) An employee may commence maternity leave –
 - (a) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
 - (b) on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.
- (3) An employee may not work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
- (4) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.
- (5) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to –
 - (a) commence maternity leave; and
 - (b) return to work after maternity leave.
- (6) Notification in terms of sub-clause (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.
- (7) During an employee's pregnancy, and for a period of six months after the birth of her child, her employer must offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if –
 - (i) the employee is required to perform night work, as defined in clause 20 or her work poses a danger to her health or safety or that of her child; and
 - (ii) it is practicable for the employer to do so.

⁷In terms of section 187(1)(e) of the Labour Relations Act, 1995, the dismissal of an employee on account of her pregnancy, intended pregnancy, or any reason related to her pregnancy, is automatically unfair. The definition of dismissal in section 186 of the Labour Relations Act, 1995, includes the refusal to allow an employee to resume work after she has taken maternity leave in terms of any law, collective agreement or her contract.

PART F : PROHIBITION OF CHILD LABOUR AND FORCED LABOUR

PROHIBITION OF CHILD LABOUR AND FORCED LABOUR

26. (1) No person may employ a child –
- (a) who is under 15 years of age; or
 - (b) who is under the minimum school leaving age in terms of any law, if this is 15 or older.⁸
- (2) No person may employ a child⁹ in employment –
- (a) that is inappropriate for a person of that age;
 - (b) that places at risk the child's well being, education, physical or mental health, or spiritual, moral or social development.
- (3) An employer must maintain for three years a record of the name, date of birth and address of every employee under the age of 18 years employed by them.
- (4) Subject to the Constitution of the Republic of South Africa, all forced labour is prohibited.
- (5) No person may, for their own benefit or for the benefit of someone else cause, demand or impose forced labour in contravention of sub-clause (4).
- (6) A person who employs a child in contravention of sub-clauses (1) and (2) or engages in any form of forced labour in contravention of sub-clauses (4) and (5) commits an offence in terms of sections 46 and 48 of the Basic Conditions of Employment Act respectively, read with section 93 of that Act.

PART G : TERMINATION OF EMPLOYMENT

TERMINATION OF EMPLOYMENT

27. (1) A contract of employment terminable at the instance of a party to the contract may be terminated only on notice of not less than –
- (a) one week, if the employee has been employed for six months or less;
 - (b) two weeks, if the employee has been employed for more than six months but **not more than one year**; and
 - (c) four weeks, if the employee has been employed for **one year** or more.

⁸ Section 31(1) of the South African Schools Act, 1996 (Act 84 of 1996), requires every parent to cause every learner for whom he or she is responsible to attend a school until the last school day of the year in which the learner reaches the age of 15 or the ninth grade, whichever is the first.

⁹ This applies to children under 18 years of age.

- (2) A written agreement may –
 - (a) not permit a notice period shorter than that required by sub-clause (1);
 - (b) despite paragraph (a), an agreement may permit the notice period of four weeks required by sub-clause (1)(c) to be reduced to not less than two weeks.
- (3) No agreement may require or permit an employee to give a period of notice longer than that required of the employer.
- (4) Notice of termination of a contract of employment must –
 - (a) be given in writing except when it is given by an illiterate employee; or
 - (b) if an employee who receives notice of termination is not able to understand it, the notice must be explained orally by, or on behalf of, the employer to the employee in an official language the employee reasonably understands.
- (5) Notice of termination of a contract of employment given by an employer must –
 - (a) not be given during any period of leave to which the employee is entitled in terms of clause 22(1);
 - (b) not run concurrently with any period of leave to which the employee is entitled in terms of this determination, except sick leave.
- (6) Nothing in this clause affects the right of –
 - (a) a dismissed employee to dispute the lawfulness or fairness of the dismissal in terms of Chapter VIII of the Labour Relations Act, 1995, or any other law; and
 - (b) an employer or an employee to terminate a contract of employment without notice for any cause recognized by law.

PAYMENT INSTEAD OF NOTICE

- 28. (1) Instead of giving an employee notice in terms of this clause, an employer may pay the employee the full pay the employee would have received if the employee had worked during the notice period.
- (2) If an employee gives notice of termination of employment, and the employer waives any part of the notice, the employer must pay the full pay referred to in sub-clause (1), unless the employer and employee agree otherwise.

PAYMENT ON TERMINATION

- 29. (1) On termination of employment, an employer must pay an employee all monies due to the employee for any –
 - (a) wages, allowances or other payments that have not been paid;
 - (b) paid time-off that the employee is entitled to in terms of clause 14 or 19 that the employee has not taken;

- (c) leave in terms of clause 22 that the employee has not taken, irrespective of whether the employee has completed an annual leave cycle or year of service, unless the employee has not been employed longer than four months.
- (2) For the purposes of sub-clause (1)(c), an employee is entitled to be paid in respect of any period for which leave was not granted –
 - (a) one week’s wages for every four months worked; or
 - (b) one day’s wages in respect of every 17 days on which the employee worked or was entitled to be paid.

SEVERANCE PAY

- 30. (1) For the purposes of this clause, “operational requirements” means requirements based on the economic, technological, structural or similar needs of an employer.
- (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 wage for each completed year of continuous service with that employer.
- (3) An employee who unreasonably refuses to accept the employer’s offer of alternative employment with that employer or any other employer, is not entitled to severance pay in terms of sub-clause (2).
- (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.
- (5) If there is a dispute only about the entitlement to severance pay in terms of this clause, the employee may refer the dispute in writing to the CCMA.
- (6) An employee who refers a dispute to the CCMA as provided in sub-clause (5) must satisfy the body that a copy of the referral has been served on all other parties to the dispute.
- (7) The CCMA must attempt to resolve the dispute through conciliation.
- (8) If the dispute remains unresolved the employee may refer the dispute to arbitration.
- (9) If the Labour Court is adjudicating a dispute about a dismissal on the employer’s operational requirements, the Court may enquire into and determine the amount of any severance pay to which a dismissed employee may be entitled and the Court may make an order directing the employer to pay such amount.

CERTIFICATE OF SERVICE

- 31. On termination of employment, an employee is entitled to a certificate of service 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 brief description of the work for which the employee was employed at the date of termination;
- (e) any relevant training received by the employee;
- (f) the pay at date of termination; and
- (g) if the employee requests, the reason for termination of employment.

PART H : GENERAL

UNIFORMS, OVERALLS AND PROTECTIVE CLOTHING

32. (1) An employer must provide free of charge –
- (a) at least two overalls or washing coats per year to an employee who is directly engaged in the selling or handling of foodstuffs, confectionery or groceries not pre-packed in sealed containers;
 - (b) rain gear to employees who in the performance of his or her duties is regularly exposed to wet weather;
 - (c) kneepads to an employee who scrubs or washes floors by hand.
- (2) Subject to sub-clause (3), an employer must maintain clothing supplied in terms of sub-clause (1) in a clean and serviceable condition at no cost to the employee.
- (3) If an employer who requires an employee to wear clothing in terms of sub-clause (1) pays the employee an allowance of at least R2.60 per week per item, the employee is responsible for the maintaining, laundering and cleaning of the clothing.
- (4) Any clothing provided to an employee in terms of sub-clause (1) remains the property of the employer.
- (5) An employer may offer to supply an employee with one or more outfits of specified colour shade design or style on conditions not less favourable to the employee than the following –
- (a) the price paid by the employee may not exceed the cost to the employer, and
 - (b) the employer may require the employee to wear the outfit at all times while on duty. If only one outfit has been supplied, this requirement does not apply while the outfit is being cleaned or repaired;
 - (c) the employer may not prohibit the employee from wearing the outfit while off duty;
 - (d) the employer must permit the employee to pay for each outfit supplied by means of at least four equal monthly deductions from the employee's remuneration. If the contract of employment is terminated before the full amount due by the employee for any outfit has been paid, the employer may deduct the balance due in one sum from any remuneration due to the employee on termination.
- (6) The offer referred to in sub-clause (5) must be in writing and must set out the conditions of the offer. Unless the employee accepts the offer in

writing within seven days after receiving it, the employee is deemed to have rejected the offer.

- (7) An outfit referred to in sub-clause (6) becomes the property of the employee.

ATTENDANCE REGISTER

33. (1) This clause does not apply to –
- (a) a driver or an employee employed to accompany a driver; or
 - (b) an employee earning in excess of the amount determined by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act.
- (2) An employer must –
- (a) provide in its establishment a manual or automated attendance register;
 - (b) record the name of each employee in the register;
 - (c) ensure that the employee records for each day worked –
 - (i) the day of the week;
 - (ii) the time the employee commenced work;
 - (iii) the time of the starting and finishing of all meal or other intervals which are not part of ordinary hours of work;
 - (iv) the time of finishing work on the day;
 - (v) the amount of overtime worked for the day;
 - (vi) the total number of hours worked for the day; and
 - (vii) the employee's signature.
- (3) An employer must retain the records of attendance referred to in sub-clause (2), for a period of not less than three years.

TEMPORARY EMPLOYMENT SERVICES

34. (1) For the purposes of this sectoral determination, a person whose services have been procured for, or provided to, a client by a temporary employment service is the employee of that temporary employment service, and the temporary employment service is that person's employer.
- (2) Despite sub-clause (1), a person who is an independent contractor is not an employee of a temporary employment service, nor is the temporary employment service the employer of that person.
- (3) The temporary employment service and the client are jointly and severally liable if the temporary employment service, in respect of any employee who provides services to that client, does not comply with this sectoral determination.

DURATION OF EMPLOYMENT

35. (1) For the purposes of determining the length of an employee's employment with an employer for any provision of this sectoral determination, previous employment with the same employer must be taken into account if the break between the periods of employment is less than one year.
- (2) Any payment made or any leave granted in terms of this sectoral determination to an employee contemplated in sub-clause (1) during a previous period of employment must be taken into account in determining the employee's entitlement to leave or to a payment in terms of this sectoral determination.

KEEPING OF SECTORAL DETERMINATION

36. Every employer on whom this sectoral determination is binding must keep a copy of the sectoral determination or an official summary available in the workplace in a place to which the employee has access.

WHAT WORDS MEAN IN THIS DETERMINATION

37. Any expression in this determination, which is defined in the Basic Conditions of Employment Act and is not defined in this clause, has the same meaning as in that Act and –

“agreement” includes a collective agreement;

“assistant manager” means an employee who is required to support the Manager in managing the activities of the business and who is authorised by the employer, in the Manager's absence, to assume the responsibilities of the Manager;

“Basic Conditions of Employment Act” means the Basic Conditions of Employment Act, 1997 (Act 75 of 1997);

“cashier” means an employee who receives payments on behalf of the employer for products or services, issues receipts for payments, deposits payments into the employer's elected bank account or performs any other activities relating to payments;

“child” means a person under 18 years of age;

“clerk” means an employee employed in any form of administrative work, including, but not limited to, writing, filing, recording information, reconciling documents;

“commission work” means any system under which an employee receives additional pay calculated on the value or volume of sales, margin, profit, or on the value or number of orders submitted to and accepted by an employer;

"day" means, for the purposes of measuring hours of work, a period of 24 hours measured from the time when the employee normally commences work;

"displayer" means an employee who prepares window, promotional or sale display material, whether internally or externally;

"dispute" includes an alleged dispute;

"driver" means an employee who drives a motor vehicle for purposes of deliveries or to perform other activities on behalf of an employer and who holds the requisite licence;

"employee" means –

- (a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and
- (b) any other person who in any manner assists in carrying on or conducting the business of an employer;

"fork-lift operator" means an employee who operates a mobile power-driven hoist used in the loading, unloading, moving or stacking of products and who holds the requisite license;

"general assistant" means an employee who is engaged in any one or more of the following duties –

- a) accompanying or assisting a driver or other employee who drives a vehicle, but not driving the vehicle;
- b) accompanying any employee who uses tools, but not using tools independently;
- c) affixing postage stamps or labels;
- d) assembling boxes by hand;
- e) breaking up scrap metal;
- f) carrying or moving goods, by means other than a power-driven device;
- g) changing wheels or repairing punctures;
- h) cleaning machinery, premises, vehicles, furniture, implements, tools, utensils or goods on the employer's premises;
- i) cleaning or plucking poultry;
- j) cleaning, cutting, filleting, scaling or slicing raw fish;
- k) collecting cash in the case of c.o.d. sales or accepting written orders;
- l) cutting by hand, paper, samples, linoleum, mats, curtain rods, netting wire, wire or other articles or commodities;
- m) cutting up scrap metal;
- n) delivering or conveying letters, parcels, messages or goods by means other than by a motor vehicle with an engine capacity exceeding 100 cm²;
- o) driving an animal-drawn vehicle;

- p) feeding into or drawing off from vats, tanks or other containers;
- q) feeding or taking off from automatic or semi-automatic machines, moving belts or platforms;
- r) filling bins or dump baskets with goods;
- s) filling, capping, corking or labeling bottles or other containers;
- t) folding or enveloping mail;
- u) grading eggs according to size;
- v) hanging clothing, packages or other goods on rails or hooks or in gondolas, racks or shelves;
- w) ironing;
- x) loading or unloading vehicles;
- y) making or maintaining fires or removing refuse or ash;
- z) making tea or similar beverages for, or serving tea or similar beverages to employees, the employer or guests;
- aa) marking, branding or stenciling goods by hand;
- bb) melting scrap lead
- cc) mending bags or sacks by hand or machine;
- dd) mending or altering second-hand clothing for sale;
- ee) mixing by hand the ingredients of animal or poultry foods the mass of which has been measured beforehand or otherwise predetermined;
- ff) nailing or repairing boxes or crates;
- gg) oiling or greasing machinery of vehicles, other than motor vehicles;
- hh) opening or closing doors, windows, bales boxes or other packages;
- ii) operating an addressograph, photostat, or a duplicating machine;
- jj) operating any power-driven machine not specifically mentioned elsewhere in this clause;
- kk) operating a portable pump;
- ll) packing goods for dispatch or delivery, including packing goods at point of payment;
- mm) packing, placing or stacking goods in cabinets or on counters, gondolas, racks or shelves;
- nn) repetitive marking of prices on goods by means of a rubber stamp or other marking device, under supervision;
- oo) repetitive mass-measuring or repetitive measuring; or mass measuring for stock;
- pp) setting up or dismantling corrugated or fibre board boxes or similar containers;
- qq) sorting goods;
- rr) strapping or wiring boxes;
- ss) tending, cleaning or feeding animals;
- tt) unpacking goods;
- uu) using rubber or other stamps, involving no discretion;
- vv) washing uniforms, overalls or protective clothing;
- ww) wrapping parcels;

“gross vehicle mass” means the maximum mass of a vehicle and its load as specified by the manufacturer, or if there is no such specification, the relevant registering authority;

"incapacity" means inability to work owing to sickness or injury;

“manager” means an employee who is authorised by an employer to manage the activities of a business or part of a business or to manage the employees in a business or part of a business;

“merchandise” means an employee who draws goods from a storage area, cleans shelving, unpacks and prices products and removes damaged or expired goods;

“night work” means work performed after 19h00 and before 07h00 the next day;

“ordinary hours of work” means the hours of work permitted in terms of clause 12;

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

“paid leave” means any annual leave, paid sick leave or family responsibility leave that an employee is entitled to in terms of Part E of this determination;

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

“remuneration” means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State;

“sales assistant” means an employee who prepares products and services for sale, attends to customers’ enquiries, assembles products for customers and, with the authority of an employer, accepts payment for products or services sold;

“sales person” means an employee employed to perform the tasks of a sales assistant and who receives, in addition to the minimum wage mentioned in clause 3, commission payments in terms of clause 4;

“security guard” means an employee who guards, protects or patrols an employer’s establishment, buildings, property and goods;

“shop assistant” means an employee who packs, replenishes, marks, assembles or assists in the dispatching of products on instruction from a more senior employee;

“supervisor” means an employee who is authorised by an employer or manager to be responsible for the efficient performance and behaviour of other employees;

“temporary employment service” means any person who, for reward, procures for, or provides to, a client, other persons –

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

“trainee manager” means an employee who receives training on an ongoing basis in the duties and responsibilities of a manager;

“wage” means the amount of money paid or payable to an employee in respect of ordinary hours of work or, if they are shorter, the hours an employee normally works in a day or week;

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

“workplace” means any place where employees work.

ANNEXURE "A"

WHOLESALE AND RETAIL SECTOR

READ THIS FIRST



WHAT IS THE PURPOSE OF THIS FORM?

This form is proof of employment With an employer.

WHO FILLS IN THIS FORM?

The employer.

WHERE DOES THIS FORM GO?

To the employee.

INSTRUCTIONS

This form may be issued upon termination of employment.

NOTE

In terms of clause 31(g) the reason for termination of employment must only be given if requested by the employee.

This is only a model and not a prescribed form. Completing a document in another format containing the same information is sufficient compliance with the regulation.

CERTIFICATE OF SERVICE

1..... (name and designation of person) of

..... (full name of employer) address:

..... in the.....(trade) declare that

..... (full name of employee)

..... (I.D. no.) was in employment from.....until.....

as (type of work/occupation)

any other information.....

On termination of service this employee was earning: R..... (amount in words)

- per hour per day per week per fortnight per month per year

..... Employer's signature Date

ANNEXURE "B"

ATTENDANCE REGISTER

Note – Employees must make entries only in the section of the register reserved for their use

.....
Name of employee

.....
Employee number

Entries to be made by employees or if the employee is unable, the employer																					
WHOLESALE AND RETAIL SECTOR	Year:..... Month:.....		Signature	Starting time		Meal Intervals		Finishing time	Total number of hours worked		Overtime worked			Sundays worked			Public Holidays worked			Re- marks	
	Date	Day of week		Off	On	Each day	Each week		From	To	Total hours worked	From	To	Total hours worked	From	To	Total hours worked				
<p>READ THIS FIRST</p> <p style="text-align: center;">⇓</p> <p>PURPOSE OF THIS FORM?</p> <p>This form is a record of attendance.</p> <p>WHO FILLS IN THIS FORM?</p> <p>The employee or if the employee is unable, the employer.</p> <p>WHERE DOES THIS FORM GO?</p> <p>Must be kept in employer's possession.</p>																					

DEDUCTIONS: P.A.Y.E	
.....
.....
UNION
OTHER (Full detail)
.....
.....
.....
.....
.....	R
SUB TOTAL	
TOTAL AMOUNT DUE	R