

DEPARTMENT OF LABOUR

No R.....

Date:.....

BASIC CONDITIONS OF EMPLOYMENT ACT, NO 75 OF 1997

**SECTORAL DETERMINATION 10: CHILDREN IN THE PERFORMANCE OF
ADVERTISING, ARTISTIC AND CULTURAL ACTIVITIES, SOUTH AFRICA**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, in terms of section 55(1) read with section 55(6)(b) of the Basic Conditions of Employment Act, No 75 of 1997, make a Sectoral Determination establishing conditions of employment for children engaged in the performance of advertising, artistic and cultural activities in South Africa, which appears in the schedule hereto and fix the second Monday after the date of publication of this notice as the date from which the provisions of the said Sectoral Determination shall be binding.

**M M S MDLADLANA
MINISTER OF LABOUR**

DEPARTMENT VAN ARBEID

No R.....

Datum:.....

WET OP BASIESE DIENSVORWAARDES, NO 75 OF 1997

**SEKTORALE VASSTELLING 10: KINDERS IN DIE VERRIGTING VAN
ADVERTERING, ARTISTIESE OF KULTURELE AKTIWITEITE, SUID AFRIKA**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, maak ingevolge artikel 55(1) gelees met 55(6)(b) van die Wet op Basiese Diensvoorwaardes, 1997 'n sektorale vasstelling met diensvoorwaardes ten opsigte van kinders in die verrigting van adverterings, artistiese en kulturele aktiwiteite, Suid Afrika wat in die bylae hierna verskyn en bepaal die tweede Maandag na die datum van die publikasie van hierdie kennisgewing as die datum waarop die bepaling van die genoemde sektorale vastelling bindend word.

**M M S MDLADLANA
MINISTER VAN ARBEID**

SCHEDULE

SECTORAL DETERMINATION 10: CHILDREN IN THE PERFORMANCE OF ADVERTISING, ARTISTIC AND CULTURAL ACTIVITIES, SOUTH AFRICA

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PART A: SCOPE OF APPLICATION

1 SCOPE OF APPLICATION

- (1) This Determination applies to the employment of children under 15 years of age in the performance of advertising, artistic and cultural activities.
- (2) An employer that has been granted a permit in terms of this Determination allowing it to employ children under 15 years of age in advertising, artistic and cultural activities must comply with this Determination.
- (3) An employer that has not been granted a permit in terms of this Determination is prohibited by section 43 of the Basic Conditions of Employment Act from employing children.
- (4) This Determination does not apply to a child's participation in activities that are not for profit-making purposes performed under the auspices of one of the following organizations:
 - (a) a school attended by the child; or
 - (b) a youth organization, amateur dramatic society, church or other religious institution to which the child belongs.
- (5) The provisions of the Basic Conditions of Employment Act apply to children and employers covered by this Determination in respect of any matter not regulated by this Determination.

2 GRANTING OF PERMIT

- (1) With effect from 16 August 2004, no person may employ a child in advertising, artistic and cultural activities, except in terms of a permit granted in terms of this Determination.
- (2) Despite clause 2(1), within three months of the date on which the Sectoral Determination comes into effect, an employer must apply for a permit for children who are in employment on that date as required by clause 2(4).
- (3) The following persons may not employ a child in advertising, artistic and cultural activities:
 - (a) a person under 18 years at the date of applying for a permit; and

- (b) anyone convicted of any offence under any law protecting children, any employment law or any law regulating advertising, artistic and cultural activities within the five years preceding the application for a permit.
- (4) A person who is not disqualified in terms of sub-clause (3) must apply to the Minister for a permit in the Form of SD 10.1 to this Determination. A permit must be issued in the Form of SD 10.2 to this Determination.
- (5) The Minister may require an applicant to submit further information in support of an application.
- (6) The Minister –
 - (a) must determine the period for which a permit is granted;
 - (b) may impose conditions on the granting of any permit;
 - (c) must issue a permit granted in writing; and
 - (d) must notify any applicant who has been refused a permit in writing.

PART B: EMPLOYMENT

3 CONTRACT OF EMPLOYMENT

- (1) Before a child starts work, an employer must conclude a written contract of employment with either –
 - (a) the parent or legal guardian of the child; or
 - (b) an agent, if authorized in writing by the child's parent or legal guardian.
- (2) A contract of employment concluded in terms of sub-clause (1) must contain at least the following information:
 - (a) the full name and address of the employer;
 - (b) the full name of the child, and a description of the work for which the child is employed;
 - (c) date of birth of the child;
 - (d) the place of work, and where the child is required or permitted to work at various places, details of each of the places;
 - (e) the date on which employment commences;

- (f) the child's hours and days of work;
 - (g) the child's remuneration or the rate and method of calculating payment;
 - (h) any other cash payments that the child is entitled to;
 - (i) any food or accommodation payment that the child is entitled to and the value of the food or accommodation;
 - (j) any other payment in kind that the child is entitled to and the value of that payment;
 - (k) how frequently remuneration will be paid;
 - (l) any deductions to be made from the child's wages;
 - (m) the leave to which the child is entitled;
 - (n) the period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate.
- (3) The parent, legal guardian or agent of the child must sign the contract of employment on behalf of the child, specifying the capacity in which they are signing.
 - (4) Any change in the child's terms of employment, must be recorded in writing and signed by the employer and the parent, legal guardian or authorised agent.
 - (5) An employer must retain a copy of the contract of employment while the child is employed by the employer and for three years thereafter.

PART C: REMUNERATION

4 PAYMENT OF REMUNERATION

- (1) Any remuneration due to a child must be paid to the parent or legal guardian of the child-
 - 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 child's parent or legal guardian.
- (2) Any payment in cash or by cheque must be given to the parent or legal guardian of the child-
- a) at the workplace;
 - b) during the child's working hours; and
 - c) in a sealed envelope which becomes the property of the child, and which the child or the parent or legal guardian of the child is entitled to retain.

5 INFORMATION CONCERNING PAY

- (1) On every pay day, the employer must give to the parent, legal guardian or agent of the child a statement showing –
- a) the employer's name and address;
 - b) the child's name and type of work done;
 - c) the period in respect of which payment is made;
 - d) the number of hours worked by the child in that period;
 - e) the number of hours worked by the child on a public holiday or on a Sunday, calculated in accordance with sections 16 and 18 respectively of the Basic Conditions of Employment Act;
 - f) the child's remuneration;
 - g) details of any other pay arising out of the child's employment;
 - h) details of any deductions made; and
 - i) the actual amount paid to the child.
- (2) An employer must retain a copy or record of each statement in terms of sub-clause (1) for three years.

6 DEDUCTIONS

- (1) An employer may not make any deduction from a child's remuneration unless

- (a) the parent or legal guardian of the child agrees in writing 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, agreement, court order or arbitration award.
- (2) A deduction in terms of sub-clause (1)(a) in respect of any goods purchased on behalf of the child must specify the nature and quantity of the goods.
- (3) An employer who deducts an amount from a child'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.

7 PROHIBITED ACTS CONCERNING PAY

- (1) An employer may not receive any payment directly or indirectly, or withhold any payment from a child in respect of –
- a) the employment or training of that child;
 - b) the supply of any work equipment or tools;
 - c) the supply of any work clothing;
 - d) any food supplied to the child or the child's parent, legal guardian, agent or child-minder while the child is working or is at the workplace;
 - e) any accommodation provided for the child or the child's parent, legal guardian, agent or child-minder.
- (2) An employer may not require a child or a child's parent, legal guardian or agent to purchase any goods from the employer or from any person, shop or other business nominated by the employer.
- (3) An employer may not levy a fine against a child.
- (4) An employer may not require or permit a child or the child's parent, legal guardian or agent to-
- a) repay any amount paid except for overpayments previously made by the employer resulting from an error in calculating the child's pay; or

- b) acknowledge receipt of an amount greater than the pay actually received.

PART D: HOURS OF WORK

8 HOURS OF WORK

- (1) For purposes of this Determination the maximum permissible hours of work are –
 - a) in respect of a child aged over ten years, four hours a day;
 - b) in respect of a child of ten years or younger, three hours a day.
- (2) An employer may not require or permit a child to work for longer than the maximum permissible hours of work.
- (3) An employer may not require or permit a child to be present at the workplace on any day for more than-
 - a) ten hours, in the case of a child aged over ten years;
 - b) eight hours, in the case of a child aged older than five years but not older than ten years;
 - c) six hours, in the case of a child aged younger than five years.
- (4) No employer may force a child to perform when the child is not ready or fit to do so.

9 REST PERIODS

- (1) An employer must give a child a rest break of at least 30 minutes -
 - a) after two hours of continuous work, in the case of children over ten years; and
 - b) after one and a half hours of continuous work, in the case of children aged ten years or younger.
- (2) If, due to the nature of a performance, it is not practicable for a child to be granted a rest break in accordance with sub-clause (1), the employer must give the child a rest break as soon as this is practicable.

10 FOOD AND REFRESHMENTS

- (1) An employer must ensure that the child is provided with nutritious food and drinks appropriate to the age of the child at all times, unless this is impracticable due to the nature of the performance.
- (2) An employer must ensure that a child has a separate meal area away from adults, other than the child's parent, legal guardian or child minder.

11 NIGHT WORK

- (1) For the purposes of this clause "night work" means work performed after 22h00 and before 05h00 the next day.
- (2) A child may not be required or permitted to perform night work on more than three occasions per week.
- (3) No employer may require or permit a child to perform night work unless the parent or legal guardian of the child has given permission in writing, and-
 - a) the employer has submitted to the parent or legal guardian written reasons why the work must be performed at night;
 - b) the child is compensated by payment of an allowance that is agreed to by the child's parent or legal guardian; and
 - c) at the request of the parent or legal guardian of the child, the employer has enabled the child to undergo a medical examination, for the account of the employer.

PART E: PROTECTIONS

12 RECREATIONAL AREAS

During a call the employer must provide safe areas for a child to rest and play.

13 ACCOMMODATION

- (1) No child may be required to work away from home unless the full details of the accommodation arrangements are supplied to, and approved by, the parent or legal guardian of the child, and the accommodation-
 - a) is supplied free of charge to the child;
 - b) is clean, comfortable, suitable and safe for the child;

- c) is not occupied by any adult other than the parent, legal guardian or child minder of the child; and
 - d) has sufficient bedding, lavatories and washing facilities for the child.
- (2) If a child is required to stay overnight on location, the employer must ensure that the child is accompanied by the parent, legal guardian or child minder of the child.

14 TRANSPORT

- (1) Unless otherwise agreed with the parent or legal guardian of the child, an employer must provide safe transport between the child's home or accommodation and the workplace for the child and the child's parent, legal guardian or child minder—
- a) whenever the child is required to travel;
 - b) at the end of any workday; and
 - c) at the beginning and end of the child's performance, if the child is performing night work or working away from home.
- (2) The employer must ensure that transport to the child's home or accommodation is available at the end of a performance without delay.

15 REASONABLE ACCESS

Subject to reasonable production requirements, an employer must ensure that a parent, legal guardian, agent or child minder has reasonable access to a child during a call, and that the parent, legal guardian, or child minder may-

- a) accompany the child to wardrobe, make-up, hairdressing and dressing room facilities; and
- b) if the child is working on a film, television or advertising production be within the sight and sound of the child.

16 DANGEROUS AND HAZARDOUS PERFORMANCES

- (1) An employer must ensure that a child is not exposed to unhealthy practices, physical danger, emotional harm, excessive strain or stress at any time while on call.

- (2) An employer may not require or permit the child to perform if the parent or legal guardian of the child believes that the child will be exposed to danger of any kind.

17 KEEPING OF SECTORAL DETERMINATION

Every employer on whom this sectoral determination is binding must keep a copy of the sectoral determination or an official summary, available at the workplace in a place to which the parent, legal guardian or agent of the child has access.

PART F: OFFENCES AND LEGAL PROCEEDINGS

18 OFFENCES

It is an offence to –

- (a) employ a child in contravention of this Determination;
- (b) assist in the employment of a child in contravention of this Determination;
- (c) discriminate against an employer who refuses to permit a child to be employed in contravention of this Determination.

19 EVIDENCE OF AGE

In any proceedings in terms of this Determination, if the age of a child is a relevant factor for which insufficient evidence is available, it is for the party who alleges that the employment complied with the provisions of this Determination to prove that it was reasonable for that party to believe, after investigation, that the child was not below the permitted age of employment of children.

20 PENALTIES

- (1) Any magistrate's court has jurisdiction to impose a penalty for an offence provided for in this Determination.
- (2) Any person convicted of an offence in terms of any provisions of this Determination may be sentenced to a fine or imprisonment for a period not longer than three years.

PART G: MISCELLANEOUS

21 DELEGATION

- (1) The Minister may in writing delegate or assign to the Director-General or any employee in the public service of the rank of Assistant Manager or of a higher rank, any power or duty conferred or imposed upon the Minister in terms of this Determination.
- (2) A delegation or assignment in terms of sub-clause (1) does not limit or restrict the Minister's authority to exercise or perform the delegated or assigned power or duty.
- (3) Any person to whom a power or duty is delegated or assigned in terms of sub-clause (1) must exercise or perform that power or duty subject to the direction of the Minister.
- (4) The Minister may at any time –
 - (a) withdraw a delegation or assignment made in terms of sub-clause (1); and
 - (b) withdraw or amend any decision made by a person exercising or performing a power or duty delegated or assigned in terms of sub-clause (1).

22 DEFINITIONS

In this Determination, unless the context indicates otherwise –

“agent” means a person who is authorised to act for, or on behalf of, a child in contractual relations with an employer;

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

“call” means the time spent by a child under the supervision of, or on the premises of the employer, including time spent outside a performance;

“child” means any person younger than 15 years of age;

“child minder” means a person appointed to attend to the child's needs during call;

“Determination” means the Sectoral Determination for children in the performance of advertising, artistic and cultural activities;

“Director-General” means the Director-General of Labour;

“employment” means the engagement of a child by a natural or legal person to perform any work, regardless of whether the child—

- (a) is remunerated or not;
- (b) is contracted for a specific period of time or to perform a specific task, or for an indefinite period of time; or
- (c) is engaged as an independent contractor.

“legal guardian” means –

- (a) a person other than a parent, with parental authority over a child; or
- (b) a person responsible for the administration of a child’s estate and who has the capacity to assist or represent the child in legal proceedings or in the performance of juristic acts, and includes a manager of an institution at which the child resides.

“Minister” means the Minister of Labour;

“parent” means a parent with parental authority over a child, including guardianship and custody;

“school” includes any institution for educating, training or giving instruction in any discipline.