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GOVERNMENT NOTICE

DEPARTMENT OF LABOUR

No. R. 437
2007

15 May

BASIC CONDITIONS OF EMPLOYMENT ACT, NO 75 OF 1997

SECTORAL DETERMINATION 14: HOSPITALITY SECTOR, SOUTH AFRICA

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby 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 wages for employers and employees in the Hospitality Sector, South Africa, in the schedule hereto and determine 1 July 2007 as the date from which the provisions of the said Sectoral Determination shall become binding.

MMS MDLADLANA, MP
MINISTER OF LABOUR

SCHEDULE**PART A: APPLICATION 1. Scope****of application**

- (1) The determination applies to employers and employees engaged in the Hospitality Sector activities in the Republic of South Africa.
- (2) Hospitality Sector means any commercial business or part of a commercial business in which employers and employees are associated for the purpose of carrying on or conducting one or more of the following activities for reward:
 - (a) providing accommodation in a hotel, motel, inn, resort, game lodge, hostel, guest house, guest farm or bed and breakfast establishment, including short stay accommodation, self-catering, timeshares, camps, caravan parks;
 - (b) restaurants, pubs, taverns, cafes, tearooms, coffee shops, fast food outlets, snack bars, industrial or commercial caterers, function caterers, contract caterers that prepare, serve or provide prepared food or liquid refreshments, other than drinks in sealed bottles or cans whether indoors or outdoors or in the open air, for consumption on or off the premises; and
 - (c) includes all activities or operations incidental to or arising from any of the activities mentioned in paragraphs (a) and (b).
- (3) This determination does not apply to employers and employees who are:
 - (a) involved in the trade of letting of flats, rooms or houses;
 - (b) covered by another sectoral determination in terms of the Basic Conditions of Employment Act, 75 of 1997; or
 - (c) covered by a collective agreement of a bargaining council in terms of the Labour Relations Act; of 1995.
- (4) 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 that is not regulated by this sectoral determination.

- (5) The provisions of the Ministerial Determination for Small Business apply to those employers employing less than 10 employees in respect of overtime, averaging of working hours, and family responsibility leave.**

PART B: MINIMUM WAGES

2. Minimum **wage** levels

- (1) With effect from 1 July 2007, an employer must pay an employee at least the minimum wage, excluding any gratuity or tips, prescribed in this clause.**
- (2) An employer must pay an employee who works 45 ordinary hours of work per week-**
- (a) at least the weekly or monthly wage set out in table 1 or 2; or**
- (b) by written agreement between the employer and the employee, at least the hourly rate set out in Table 1 or 2 for every hour or part of an hour that the employee works**
- (3) An employee who works for less than four hours on any day must be paid at least for four hours work on that day.**

Table 1: Minimum wages for employers with 10 or less employees								
Minimum rate for the period			Minimum rate for the period			Minimum rate for the period		
1 July 2007 to 30 June 2008			1 July 2008 to 30 June 2009			1 July 2009 to 30 June 2010		
R.p.m	HR.p.w	R.p.h	R.p.m	R.p.w	fe.p.h	R.p.m	R.p.w	R.p.h
R1480-00	R.341-60	R7-59	Previous Minimum Wage + CPIX + 2%			Previous Minimum Wage + CPIX + 2%		

Table 2: Minimum wages for employers with more than 10 employees								
Minimum rate for the period			Minimum rate for the period			Minimum rate for the period		
1 July 2007 to 30 June 2008			1 July 2008 to 30 June 2009			1 July 2009 to 30 June 2010		
R.p.m	R.p.w	R.p.h	R.p.m	R.p.w	R.p.h	R.p.m	R.p.w	R.p.h
RI 650-00	R3 80-80	R8-46	Previous Minimum Wage + CPIX + 2%			Previous Minimum Wage + CPIX + 2%		

3. Commission work

- (1) An employer and employee may agree in writing that the employee will perform commission work on a regular basis.
- (2) An employer must pay an employee the rates applicable for commission work as agreed to, provided that irrespective of the commissioned earned; the employer shall pay such employee not less than the prescribed minimum wage for the period worked.
- (3) An agreement to perform commission work in terms of this clause must be concluded before the work commences and must include-
 - (a) the employee's wage and rate;
 - (b) the basis for calculating commission;
 - (c) the period over which the payment is calculated which may not be longer than one month;
 - (d) when the employer must pay the commission to the employee which may not be longer than seven days after the end of the period in which the commission is earned; and

- (e) the type, description, number, quantity, 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, excluding any gratuity or gift received from a customer for service rendered, because of any act or omission by or on behalf of the employer or the employer has restricted the employee's ability to earn commission in terms of the agreement, the employer must pay the employee at least the applicable minimum wage as prescribed.
- (6) An employer who intends to cancel or amend the agreement entered into relating to commission work which is in operation or the rates applicable thereunder, shall give the affected employee not less than four weeks notice of such intention.

4. Calculation of wages or remuneration

- (1) The wage or remuneration of an employee is 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 wage or remuneration of a worker is obtained by-
 - (i) dividing the weekly wage or remuneration by the ordinary number of hours worked in a week;
 - (b) the daily wage or remuneration of an employee is obtained by-
 - (ii) multiplying the hourly wage or remuneration by the number of ordinary hours worked in a day; or

- (ii) dividing the weekly wage or remuneration by the number of days worked in a week.
- (c) the weekly wage or remuneration of an employee is obtained by -
 - (i) multiplying the hourly wage or remuneration by the number of ordinary hours worked in a day multiplied by the number of days worked in a week; or
 - (ii) multiplying the daily wage or remuneration by the number of days worked in a week; or
 - (iii) dividing the monthly wage or remuneration by four and one-third.
- (d) the monthly wage or remuneration of an employee is obtained by multiplying the weekly wage or remuneration by four and a third

5. Payment of remuneration

- (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 payment in cash or by cheque must be given to each employee-
 - (a) at the workplace;
 - (b) during the employee's working hours; and
 - (c) in a sealed envelope which becomes the property of the employee.
- (3) An employer must pay an employee on the normal pay day agreed to in writing by the employee.

6. Information concerning pay

- (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 an 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 paid holiday or on a Sunday;
 - (h) the employee's wage;
 - (i) details of any other pay arising out of the employee's employment;
 - (j) details of any deductions made;
 - (k) the employer's registration number with the Unemployment Insurance Fund and the employer's contribution to the Fund; and (1) the actual amount paid to the employee.
- (2) An employer must retain a copy or record of each statement for three years.

7. Deductions and other acts concerning remuneration

- (1) An employer may not make any deduction from an employee's remuneration unless—
 - (a) subject to subsection (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 subsection (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 subsection do not exceed one-quarter of the employee's remuneration in money.
- (3) A deduction in terms of subsection (1)(a) in respect of any goods purchased by the employee must specify the nature and quantity of the goods.
- (4) An employer who deducts an amount from an employee's remuneration in terms of subsection (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.
 - (c) pay the employer or any other person in respect of—
 - (i) the employment or training of that employee; (ii) the supply of any work equipment or tools; or (iii) the supply of any work clothing.^{11]}
- (6) An employer may not require an employee to purchase any goods from the employer or from any person, shop or other business nominated by the employer.

^{11]} An employer may not make any deduction from remuneration or require or permit an employee to make any payment to the employer or any other person in respect of anything that the employer is required to do in the interests of the health and safety of an employee (section 23 of the Occupational Health and Safety Act, 85 of 1993).

- (6) An employer may not levy a fine against an employee.

7A. Payment of contributions to benefit funds

- (1) For the purposes of this section, a benefit fund is a pension, provident, retirement, medical aid or similar fund.
- (2) An employer that deducts from an employee's remuneration any amount for payment to a benefit fund must pay the amount to the fund within seven days of the deduction being made.
- (3) Any contribution that an employer is required to make to a benefit fund on behalf of an employee, that is not deducted from the employee's remuneration, must be paid to the fund within seven days of the end of the period in respect of which the payment is made.
- (4) This section does not affect any obligation on an employer in terms of the rules of a benefit fund to make any payment within a shorter period than that required by subsections (2) or (3).

PART C: PARTICULARS OF EMPLOYMENT 8. Written

particulars of employment

- (1) An employer must supply an employee, when the employee commences 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 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 food or accommodation that the employee is entitled to and the value of the food or accommodation;

 - (j) any other payment in kind received by the employee;

 - (k) how frequently wages will be paid;

 - (l) any deductions to be made from the employee's wages;

 - (m) the leave to which the employee is entitled to;

 - (n) the period of notice required to terminate employment, or if employment is for a specific period, the date when employment is to terminate.
- (2) 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.
- (3) The employer must revise the written particulars if there is any change in the employee's terms of employment.
- (4) An employer must retain a copy of the written particulars of employment while the employee is employed and for three years thereafter.

PART D: HOURS OF WORK**9. Ordinary hours of work**

- (1) An employer may not require or permit a employee to work more than -
 - (a) 45 hours in any week; and
 - (b) nine hours on any day if the employee works for five days or less in a week; or
 - (c) eight hours in any day if the employee works for more than five days in any week.

10. Overtime

- (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) An agreement concluded in terms of sub-clause (1) (a) with an employee when the employee commences employment, or during the first three months of employment, is only valid for one year.

11. Payment of overtime

- (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 an employee not less than the employee's ordinary wage for overtime worked and grant the employee at least 30 minutes' time off on full pay for every hour of overtime worked; or
 - (b) grant an employee at least 90 minutes' paid time off for each hour of overtime worked.
- (3) An employer must grant an employee paid time off in terms of sub-clause (2) within one month of the employee becoming entitled to it.
 - (4) An agreement in writing may increase the period contemplated by sub-clause (3) to twelve months.

12. Compressed working week

- (1) An agreement in writing 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 16, 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.

13. Averaging of hours of work

- (1) Despite clause 9(1) and (2) and 10(l)(b), 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 permit an employee who is bound by a written 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;
 - (b) An average of 5 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).

14. Work on Sundays

- (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 times 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 the Sunday and the pay that the employee is entitled to in terms of subclauses (1) and (2).
- (4) Any time worked on a Sunday by an employee who does not ordinarily work on a Sunday is not taken into account in calculating the ordinary hours of work of the employee in terms of clause 9.
- (5) If a shift worked by an employee 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.

(6) (a) An employer must grant paid time off in terms of sub-clause (3) within one month of the employee becoming entitled to it.

(b) An agreement in writing may increase the period contemplated by paragraph (a) to 12 months.

15. Night work

(1) In this clause, "night work" means work performed after 18:00 and before 06:00 the next day.

(2) An employer may only require or permit an employee to perform night work if so agreed and if-

(a) an 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.

(c) if the transport cost is more than the daily cost to the employee, an employer who requires such an employee to perform night work must subsidize such employee for transport expenses.

(3) An employer who requires an employee to perform work on a regular basis after 23:00 and before 06:00 the next day must -

(a) inform the employee in writing, or orally if the employee is not able to understand a written communication, in a language that the employee reasonably understands-

- (iv) of any health and safety hazards associated with the work that the employee is required to perform; and
 - (v) 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;
 - (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.
- (4) Sub-clause (3) applies to an employee who works after 23:00 and before 06:00 at least five times per month or 50 times per year.

16. Meal intervals

- (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.

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, unless the employee lives on the premises at which the workplace is situated.
- (4) For the purpose of sub-clause (1), work is continuous unless it is interrupted by a meal interval of at least 60 minutes.
- (5) An agreement in writing 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.

17. Daily and weekly rest period

- (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 thirty-six 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) who lives where the workplace is situated; and
 - (b) whose meal interval lasts for at least three hours.
- (3) Despite sub-clause (1)(b), an agreement in writing may provide for a rest period of at least sixty consecutive hours every second week.

18. Public Holidays

- (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 work, an employer must pay-
 - (a) an employee who does not work on the public holiday, at least the wage that the employee would ordinarily have received for work on that day,
 - (b) an employee who does work on the public holiday at least double the employee's daily wage.
- (3) If an employee works on a public holiday on which the employee would not normally work, the employer must pay the 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 pay day.
- (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.
- (6) In accordance with section 2 (2) of the Public Holidays Act, 1994 the parties may exchange a public holiday for any other day.

PART E: LEAVE**19. Annual leave**

- (1) An employer must grant an employee -
 - (a) at least three weeks (21 consecutive days) leave on full pay in respect of each twelve months of employment (the 'annual leave cycle'); or
 - (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, 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 -
 - (a) the annual leave not later than six months after the end of the annual leave cycle in which leave was earned;
 - (b) the leave earned in one year over a continuous period, if requested by the employee.

- (5) Annual leave must be taken -
- (a) in accordance with an agreement between the employer and the employee;
or
 - (b) if there is no agreement in terms of paragraph (a), at a time determined by the employer in accordance with this section.
- (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 E; 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 in terms of clause 26.
- (9) An employer must pay an employee leave pay at least equivalent to the remuneration the employee would have received for working for a period equal to the period of leave, calculated at the employee's wage immediately before the beginning of the period of leave.
- (10) An employer must pay an employee leave pay before the beginning of the period of leave or, by agreement, on the employee's usual pay day.

20. Sick leave

- (1) For the purpose of this clause "sick leave cycle" means the period of 36 months employment with the same employer immediately following –

- (a) when the employee commenced work; or
 - (b) the end of the employee's prior sick leave cycle.
- (2) During every sick leave cycle, the 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, the 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) Where an employer, at the request of the employee, pays fees for an employee's hospital or medical treatment, the fees paid may be set off against the employee's pay.
- (6) An employer is not required to pay the employee in terms of this clause if the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury.
- (7) The medical certificate in terms of sub-clause (6) must 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.
- (8) If it is not reasonably practicable for an employee who lives on the employer's premises to obtain a medical certificate, the employer may not withhold

payment in terms of sub-clause (6) unless the employer provides reasonable assistance to the employee to obtain the certificate.

21. Family responsibility leave

(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' paid 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 pay day.

(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.

22. Maternity leave¹²¹

- (1) An employee is entitled to at least four consecutive month's 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 she 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 -

¹²¹ In terms of section 187(l)(e) of the Labour Relations Act, 1995, the dismissal of a 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. An employee may claim maternity benefits in terms of the Unemployment Insurance Act, 2001.

- (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) 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, including operating dangerous machinery or handling and/or using spray chemicals.
- (8) During a 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-
- (a) the employee is required to perform night work, as defined in clause 15 or her work poses a danger to her health or safety or that of her child; and
 - (b) it is practicable for the employer to do so

PART F: PROHIBITION OF CHILD LABOUR

AND FORCED LABOUR

23. Prohibition of child labour and forced labour

- (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.^[3]

^[3] Section 31(1) of the South African Schools Act (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 day of the year in which the learner reaches the age of 15 or the ninth grade, whichever is the first.

- (2) No person may employ a child 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 his/her 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-clause (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

24. Notice of termination of employment

- (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;
 - (c) four weeks, if the employee has been employed for one year or more.
- (2) The employer and employee may agree to a longer notice period, but the agreement may not require or permit an employee to give a period of notice longer than that required of the employer.

- (3) Notice of termination of contract of employment must be given in writing except when it is given by an illiterate employee.
- (4) 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 to in terms of this determination
 - (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 -
 - (a) of 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) of an employer or an employee to terminate a contract of employment without notice for any cause recognized by law.

25. **Payment instead of notice**

- (1) Instead of giving an employee notice in terms of this clause, an employer may pay the employee the wages 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 wages referred to in sub-clause (1), unless the employer and the employee agree otherwise.

26. **Payments on termination**

- (1) On termination of employment, an employer must pay an employee all monies due to the employee including -

- (a) any remuneration that has not been paid;
- (b) any paid time off that the employee is entitled to in terms of clause 11(2) or 14(3) that the employee has not taken;
- (c) remuneration calculated in accordance with clause 19(9) for any period of annual leave due in terms of clause 19(1) that the employee has not taken; and
- (d) if the employee has been in employment longer than four months, in respect of the employee's annual leave entitlement during an incomplete annual leave cycle as defined in section 19(1) -
 - (i) one day's remuneration in respect of every 17 days on which the employee worked or was entitled to be paid; or
 - (ii) remuneration calculated on any basis that is at least as favourable to the employee as that calculated in terms of subparagraph (i).

27. Severance pay

- (1) For the purpose 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 remuneration 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.

28. Certificate of service

- (1) 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 so requests, the reason for termination of employment.

29. Keeping of sectoral determination

- (1) 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.

30. Temporary employment services

- (1) In this clause, "temporary employment service" means any person who, for reward, procures for or provides employees to a client if that person remunerates the employees.
- (2) For the purpose of this Determination, an employee whose services have been procured for, or provided to, a client by a temporary employment service is employed by that temporary employment service, and the temporary employment service is that person's employer.
- (3) The temporary employment service and the client are jointly and severally liable to comply with this determination in respect of its employees.

- (4) If the temporary employment service is in default of its obligation to make any payment in terms of this determination to an employee for a period of thirty days, the client concerned becomes liable to make payment.
- (5) A client that in terms of this clause makes any payment that is owing to a employee is entitled to recover such amount from the employment service.

31. Cancellation of wage determinations

- (1) Wage determination 457: Hotel Trade, Certain Areas; Wage determination 461: Catering Trade, Certain Areas; and Wage determination 479: Accommodation Establishment Trade, Certain Areas, is cancelled with effect from the date that this determination becomes binding.

32. What words mean in this determination

- (1) Any expression in this determination, which is defined in the Basic Conditions of Employment Act (the Act) and is not defined in this clause, has the same meaning as in the Act and-

"agreement" includes a collective agreement;

"Basic Conditions of Employment Act" means the Basic Conditions of Employment Act, 1997 (Act 75 of 1997)

"child" means a person who is under 15 years of age;

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

"dispute" includes an alleged dispute;

"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, and (b) any other person who in any manner assists in carrying on or conducting the business of an employer;

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

"Minister" means the Minister of Labour;

"month" means a calendar month;

"monthly wage" means an employee's weekly wage multiplied by four and a third;

"night work" means work performed after 18:00 and before 06:00 the next day,

"ordinary hours of work" means the hours of work permitted in terms of clause 9

"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 a 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 excluding any gratuity or gift received from a customer for service rendered, made or owing to any person in return for that person working for any other person, including the State;

"trade of letting of flats, rooms or houses" means the trade carried on by persons who carry on the business of letting flats, rooms or houses and includes the agents to who such persons entrust the letting of flats, rooms or houses and the employees of such agents who are employed exclusively in connection with such flats, rooms or houses.

"wage" means the amount of money paid or payable to a employee in respect of ordinary hours of work or, if they are shorter, the hours a employee normally works in a day or week, excluding any gratuity or gift received from a customer for service rendered;

"week" in relation to a employee, means the period of seven days within which the working week of that employee falls;

"workplace" means any place where a employee works.

"worker" has a corresponding meaning as **"employee"**.