

**STATUTORY COUNCIL FOR THE FAST  
FOOD, RESTAURANT, CATERING AND  
ALLIED TRADES**

**COLLECTIVE AGREEMENT**

**COLLECTIVE AGREEMENT INDEX**

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## **SCHEDULE**

### **STATUTORY COUNCIL FOR THE FAST FOOD, RESTAURANT, CATERING AND ALLIED TRADES COLLECTIVE AGREEMENT**

Concluded in accordance with the provisions of the Labour Relations Act, No 66 of 1995, made and entered into by and between

**CATRA**

and

**PROFESSIONAL CATERERS ASSOCIATION (PCA)**

(Hereinafter referred to as “the employers” or “the employers organisation”) of the one part,

and

**SOUTH AFRICAN COMMERCIAL CATERING AND ALLIED WORKERS UNION (SACCAWU)**

and

**HOTEL, LIQUOR, CATERING, COMMERCIAL AND ALLIED WORKERS UNION (HOTELICCA)**

and

**INDUSTRIAL COMMERCIAL & ALLIED WORKERS UNION (ICAWU)**

and

**DEMOCRATICAL UNION OF SECURITY WORKERS (DUSWO)**

(Hereinafter referred to as the “trade unions” of the other part), being the parties to the Statutory Council for the Fast Food, Restaurant, Catering and Allied Trades.

## **1. SCOPE OF APPLICATION**

- (1) The terms of this agreement shall be observed in the Fast Food, Restaurant, Catering and Allied Trades –
- (a) By all employers who are members of the employers organisation and by all employees who are members of the trade unions
- (b) In the following areas:
- (a) The Province of Western Cape
  - (b) The Province of Eastern Cape
  - (c) The Province of Northern Cape
  - (d) The Province of Free State
  - (e) The Province of Kwazulu Natal
  - (f) The Province of North West, excluding the Magisterial Districts of Brits and Rustenburg.
  - (g) The Province of Mpumalanga, excluding the Magisterial District of Witbank.
  - (h) The Limpopo Province, excluding the Magisterial District of Warmbaths, and
  - (i) The Magisterial Districts of Heidelberg, Nigel, Vereeniging, Vanderbijlpark, Oberholzer, Meyerton and Carltonville.

## **2. PERIOD OF OPERATION OF AGREEMENT**

- (1) This Agreement shall come into operation on the date fixed by the Minister of Labour to be the effective date from which the Agreement shall be extended to become binding on non-parties or the date on which the Minister of Labour declines to extend the Agreement to non-parties, and the Agreement shall remain in force for the period ending 31<sup>st</sup> . . . . .
- (2) The provisions contained in this Agreement (as further extended, renewed, amended and re-enacted from time to time), shall apply to employers and employees.

## **3. INDUSTRIAL ACTION**

- (1) No person bound by the provisions of this Agreement entered into by the parties shall engage in or participate in a strike or lock-out or any conduct in furtherance of a strike or a lock-out in respect of any matter regulated by this Agreement for its duration.
- (2) The forum for negotiation and conclusion of substantive agreements on wages, benefits and other conditions of employment between the members of the employer's organisation party to this Agreement, on the one hand and employees and trade unions on the other hand, shall be the Council and not at shop floor level.
- (3) No trade union or employer's organisation may attempt to induce or compel or be induced or compelled by any natural or juristic person or other organisation, by any form of strike or lock-out, to negotiate the issues referred to in paragraph 1 above, at any level other than this Council.
- (4) Any inconsistent provisions of collective procedural agreements between employers and trade unions and their members shall be regarded by such parties as amended to accommodate the provisions of paragraph 2, and 3, above and shall not be binding on the parties to the extent that the provisions of such agreements conflict with those of paragraph 2 and 3 above.

#### 4. DEFINITIONS

Unless otherwise indicated, the singular will include the plural and the masculine the feminine, and for the purpose of this Agreement an employee shall be deemed to be in that class in which he is wholly or mainly engaged: furthermore unless inconsistent with the context –

**“agent”** means any person employed by the Council and appointed in terms of its Constitution and who collects contributions on behalf of the Council or a third party and who may be delegated to investigate a complaint or carry out any other tasks which may be allocated to such person;

**“agreement”** means this Agreement, and **“Collective Agreement”** has a corresponding meaning;

**“act”** means the Labour Relations Act, 1995 (Act No 66 of 1995) as amended from time to time;

**“actual wage”** means the wage rate per hour which an employer actually pays an employee in respect of the ordinary hours of work and **“Wage”** and **“Prescribed Wage”** have a corresponding meaning

**“assistant bartender”** means an employee who, under the supervision of a bartender, does the work of a bartender, but who is not responsible for stock in a bar;

**“assistant clerk/cashier”** means an employee who, under the supervision of a clerk/cashier, does the work of a clerk/cashier, and has less than one year’s experience;

**“assistant manager”** means an employee who is specifically charged by his employer to assist the manager in his duties and who may act on behalf of the manager in his absence;

**“baker”** means an employee who prepares, makes and bakes wheaten products and confectionary;

**“bartender”** means an employee who is engaged in supplying liquor to customers over a counter and receiving payment for it, and who is responsible for the balancing of the liquor stock and cash receipts for the liquor sales;

**“bread”** without limiting the ordinary meaning of the term, includes buns, rolls, or any similar wheaten, rye or maize products;

**“café”** without limiting the ordinary meaning of the term, means a business licensed or required to be licensed, under item 20 “cafe keeper” of the Transvaal Licence Ordinance, 1974 (Ordinance No 19 of 1974 as amended from time to time);

**“cashier”** means an employee who does anyone or more of the following duties:

- a) any administrative work.
- b) operates, and is responsible for the takings of a cash register.
- c) receives, removes, assembles, packs stores or delivers goods.
- d) operates a switchboard.
- e) stock control.
- f) welcoming and greeting customers.

**“casual employee”** means an employee who is not a special function casual employee, but is employed by the same employer on not more than three days in any week: Provided that he/she may work for not more than four days in any week:

- a) in which a public holiday falls.
- b) the period between 6 December and 15 January.
- c) during shows and exhibitions.
- d) the easter weekend.

**“catering”** means the provisions of meals and/or refreshments;

**“catering assistant”** means an employee who: -

- a) prepares food and any one or more of the following: Sandwiches, fruit, salads, vegetables, hamburgers, hot dogs, waffles, pancakes, pizzas, pies, curry and rice, common pan foods, grills, popcorn, fish and chips, vetkoek and grilled chicken, and / or assists with the preparation of the menu of the establishment;
- b) execute orders and places such items of food mentioned in paragraph (a), and cold prepared foods, prepared salad dressings, stews, boiled meats and/or vegetables either on plates or in containers ready for conveyance to the customer or take away;
- c) operates an ice-cream dispenser and/or soda fountain and/or semi-automatic machine;
- d) receives verbal or written orders from customers, waiter, wine steward for the supply/handling over to him of bottles of alcoholic or non-alcoholic drinks;

**“chef”** means an employee in a managerial position who is in position of a chef’s certificate and is in charge of the preparation of the food;

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

**“clerk/packer/store man”** means an employee engaged in any one or more of the following duties:

- a) clerical work, i.e. writing, typing and filing;
- b) operating office equipment, greeting and assisting customers to their tables, checking and controlling of dining rooms;
- c) operating a cash register, and being responsible for balancing receipts and disbursements;
- d) being in charge of stores and responsible for receiving, storing, assembling, packing and/or unpacking goods in a store or warehouse, and for the delivery of such goods;
- e) operating a telephone switchboard, but does not include any other class of employee elsewhere defined in this clause, notwithstanding the fact that clerical work as herein defined may form part of such employee’s work;

**“commission worker”** means a person who agrees in writing with the owner of an establishment to work odd shifts when required by the owner on which a commission will be paid at the end of each shift, week/month. Provided that the commission worker shall not work more than 36 hours in any week and shall not be entitled to a status of an employee.

**“cook”** means an employee, who prepares cooks and presents food in an establishment and who may be responsible for the organisation of the kitchen and the control of stock in a kitchen;

**“Council”** means the Statutory Council for the Fast Food, Restaurant Catering and Allied Trades.

**“counter assistant”** means an employee who serves customers at a counter and who may receive payment but excludes a bartender and assistant bartender;

**“day”** means a period of 24 hours calculated from the time an employee starts work;

**“delivery employee”** means an employee who delivers or collects messages, letters, documents or goods;

**“designated agent”** means any person appointed by the Minister at the request of the council to promote, monitor and enforce compliance with the Agreement;

**“dispute”** includes an alleged dispute;

**“driver”** means a person employed to drive a motor vehicle and includes any time spent on work connected to the vehicle or the load and all periods during which he is obliged to remain at his post in readiness to drive;

**“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 and any work in connection with the supply of meals to an aircraft;

**“employee”** means;

- a) any person excluding an independent contractor, who works for another person 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; and further includes an employee who is employed by a labour broker or temporary employment service in the Sector, as defined and “employed and employment have meanings corresponding to that of employee” ;

**“employer”** means any person whomsoever who employs or provides work for any person or who permits such person whomsoever in any manner to assist him in the carrying on or conducting of a business in the Sector, as defined, and who remunerates or expressly or tacitly undertakes to remunerate such person; and “employ” or “employment” have corresponding meanings.

**“establishment”** means any place in or in connection with which one or more persons are employed in the Fast Food, Restaurant, Catering and Allied Trades sector and scope;

**“exemptions committee”** means a committee established to consider applications for exemption from the provisions of this Agreement;

**“extra-heavy motor vehicle”** means a motor vehicle, the gross vehicle mass or the gross combination mass of which exceeds 16 000kg;

**“fixed-term contract”** means a contract in writing which stipulates the period of the employment contract and termination date;

**“functions supervisor”** means an employee who is personally in charge of and responsible for the activities at a particular special function;

**“general assistant”** means an employee engaged in any one or more of the following duties:

- a) making porridge and preparing meals for the exclusive consumption of the employees of the establishment;
- b) packing or wrapping edibles for sale or delivery;
- c) assisting with the checking of stores under supervision;
- d) checking crockery, glassware, napery and other pantry requirements and checking dining equipment and tables;
- e) cleaning premises, the work place or any article;
- f) cleaning, plucking or cutting raw poultry, raw fish or raw meat as part of the cleaning process, cleaning or peeling of fruit and vegetables, cutting of fruit and vegetables and cutting bread;
- g) checking, stacking, moving goods, moving or setting tables, assisting with orders and with the serving of customers;
- h) making or maintaining a fire and removing ashes and refuse;
- i) vending, collecting and/or delivering orders off the premises and accepting payment therefore;
- j) making tea, coffee, cocoa or similar beverages;
- k) loading and offloading;
- l) repetitive mass-measuring to a set mass-meter;
- m) opening or closing packets, containers or parcels;

- n) heat closing of polythene or similar pre-filled containers;
- o) gardening;
- p) sharpening knives;
- q) decanting into other containers, except for table use;
- r) guarding premises or other movable or immovable property by day, but excluding a watchman;

**“head cook”** means an employee who does the work of a cook and is in charge of a kitchen where three or more cooks are employed;

**“heavy motor vehicle”** means a motor vehicle, the gross vehicle mass or gross combination mass of which exceeds 9 000kg but does not exceed 16 000kg;

**“incapacity”** means inability to work owing to sickness or injury;

**“independent exemptions board”** means a body as referred to in Section 44(3) of the LR Act;

**“kitchen supervisor”** means an employee who under the direction of the employer/manager or assistant manager, supervises the work of the employees in an establishment and is in charge of stock;

**“light motor vehicle”** means a motor vehicle, the gross vehicle mass or gross combination mass of which does not exceed 3 500kg;

**“manager”** means an employee who is charged by his employer with the overall supervision over, responsibility for and direction of the activities carried on, in or in connection with that section of the establishment that has been placed under his authority, and who is directly responsible to the employer, and further includes the provision of attendance registers to all employees and the daily completion thereof as well as of the wage register when so instructed by his employer. Provided that where fewer than six employees are employed, this employee shall be deemed to be a supervisor;

**“management trainee”** means an employee who is employed for a period of 18 months in various departments of an establishment, for the purpose of being trained as a manager;

**“meals”** without limiting the ordinary meaning of the term includes pies, pastries, pizza, vetoes, confectionary, snacks, take away meals, savouries, pastries, schwarmas, pancakes or any edible or drinkables fit for human consumption;

**“medical practitioner”** means a person entitled to practise as a medical practitioner in terms of section 17 of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974), as amended, from time to time;

**“medium motor vehicle”** means a motor vehicle, the gross vehicle mass or the gross combination mass of which exceeds 3 500kg but does not exceed 9 000kg;

**“midwife”** means a person registered or enrolled to practise as a midwife in terms of section 16 of the Nursing Act, 1978 (Act No. 50 of 1978), as amended, from time to time;

**“minister”** means the Minister of Labour;

**“month”** means a calendar month, the period extending from a day in any month up to and including the preceeding day corresponding numerically to the first-mentioned day in the following month, e.g. 7 April to 6 May;

**“monthly wage”** means an employee’s weekly wage multiplied by four and a third;

**“new employer”** means the owner of a business newly established in the trade, during the first 12 months of its existence in the trade, who at no time employs more than ten employees in the aggregate: Provided that if the existing business undergoes a change of name or ownership (including a change of directors, members or partners) while largely retaining the same employees and/or clients, it shall not be regarded as a new employer;

**“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;

**“operational requirements”** means requirements based on the economic, technological, structural or similar needs of an employer;

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

**“part-time employee”** means employee (other than a part-time driver) employed by the establishment for not more than 24 ordinary hours of work in any week;

**“premises”** includes any land, structure, vehicle or vessel;

**“paid holiday”** means a paid public holiday as defined in the Public Holidays Act No. 36 of 1994;

**“paid leave”** means any annual, leave, paid sick leave, paid union representative leave or paid family responsibility leave that the employee is entitled to in terms of this agreement;

**“probation”** means, the period determined in advance by an employer requiring a newly hired employee to work, to give an employer an opportunity to evaluate the employee’s performance before the appointment of the employee is confirmed;

**“receptionist/head waiter/head wine steward”** means an employee who is engaged in making reservations in respect of tables, allocating seats and showing customers to their seats and is specifically charged by the employer or manager with supervisory responsibility over general assistants;

**“refreshments”** without limiting the ordinary meaning of the term shall include all edibles and drinkables fit for human consumption;

**“remuneration”** means any payment in money or in kind, or both in money and in kind, excluding any gratuity or tips received from a customer for service rendered, made or owing to any person in return for that person working for any other person, and remunerate has a corresponding meaning;

**“secretary”** means Secretary of the Council and includes any official nominated or delegated by the Council to act on behalf of or perform the duties of the Secretary;

**“security guard”** means an employee who is engaged in any one of the following duties:

- a) authorised searching of goods, vehicles and persons;
- b) supervising or controlling one or more watchmen; and
- c) controlling or reporting on the movement of persons or vehicles through check-points or gates, and who may be required to perform any or all duties prescribed for a watchman;

**“sector”** Fast Food, Restaurant, Catering and Allied Industries means the industries concerned with the Tearoom, Restaurant, Catering, Coffee Shop, Pub, Tavern, Roadhouse, Café, Snack Bar, Fast Food Outlet, Convenience Store, Industrial or Commercial Caterer, Function Caterer, Contract Caterer, Catering and associated activities, without in any way limiting the ordinary meaning of the expression, include(s) the sector or sectors and or establishment(s) in which person(s) carry on the business or in which employers and employees are associated, for the purpose(s) of preparing, baking, providing, supplying, serving, selling, processing, producing meals. These shall include the provision of meals in bulk, edibles and beverages on any premises. Included would be all operations incidental to or in support of the employer’s enterprise in relation to any of the above-mentioned activities and would further include:

- a) all franchisor(s) where such franchisor or their employee(s) are associated for the activities prescribed above; and

- b) the baking of wheaten products which includes pies, snacks, confectionaries and pizzas for sale directly to customers for consumption whether on or off the premises where such products are baked.

Provided further that, for the purposes of this definition, the following business activities are specifically excluded from the ambit thereof:

- (1) Any casino and hotel industry and all activities that is ancillary and incidental to carrying on the primary activities of such industries. For the purpose of this exclusion, such primary activities are to be carried on, managed and operated solely and exclusively by the hotel or casino, as the case may be, at which these activities are undertaken and such activities must form an integral part of the business and operations of the hotel and casino in question.
- (2) Any catering facility of whatever nature which is owned, managed or operated by sports and recreation clubs on its own premises and which, in turn, provides food and beverages to its members and patrons from the premises from which its sports and recreation facilities are undertaken.
- (3) The business conducted by filling and/or service stations, including ancillary activities forming part of a filling station linked to the convenience store environment inclusive of the preparing, serving and selling of food/beverages to customers, but excluding activities of separately registered establishments whose sole activities relates to the restaurant, tea room and catering environment.
- (4) Any outlet which prepares and sells food and beverages and is operated as part of a supermarket undertaking and which, in turn, is owned, managed and operated by the supermarket undertaking in question and conducted from the premises of such supermarket undertaking.

**“serve”** means to send by registered post, telegram, telex, telefax or to deliver by hand;

**“small employer”** means employer who does not employ more than ten (10) employees at any time;

**“special function”** means any event or occasion, including a dance, dinner, reception, seminar, functions, sports gathering or agricultural, animal, horticultural or industrial show where meals and/or refreshments are provided;

**“special function casual employee”** means an employee who is employed on hourly or daily basis for not more than three days in any week: Provided that he/she may work for not more than four days in any week:

- a) in which a public holiday falls;
- b) the period between 6 December and 15 January;
- c) during shows and exhibitions;
- d) the easter weekend;

**“special function supervisor”** means an employee who supervises staff at a special function under the direction of the employer or manager;

**“supervisor”** means an employee who under the direction of the employer, manager or assistant manager supervises the work of the employees in an establishment;

**“trade union representative”** means a trade union representative who is entitled to exercise the rights contemplated in section 14 of the Labour Relations Act, 1995;

“**uniforms**” means an apparel that includes an overall, coat, dress, skirt, blouse, pinafore, cap, apron or footwear;

“**waiter/wine steward**” means an employee other than a contract waiter, bartender, clerk/cashier or counter assistant, who performs any one or more of the following duties:

- a) serving meals and/or refreshments( whether alcoholic or non-alcoholic) to customers at tables or counters;
- b) receiving payment for any order taken or executed and being responsible for payment;
- c) setting and/or clearing tables;
- d) checking and/or controlling dining-room and/or other pantry equipment;
- e) filling butter and/or jam dishes and/or cruets, and may make salads;

“**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 ordinarily works in a day or week, excluding any gratuity or tips received from a customer for service rendered;

“**watchman**” means an employee who is engaged, mostly at night, in any one or more of the following duties:

- a) guarding, protecting or patrolling premises, buildings, structures or fixed or movable property;
- b) handling dogs in the performance of any or all of the duties referred to in (a);

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

“**workplace**” means any place where employee’s work;

## 5. WAGES

### Exemptions

Where a small employer or his employee can satisfy the council that any provisions of the agreement are restricting entrepreneurial initiative and/or employment opportunities, such an employer or employee may apply to the Council for exemption from the specific provisions and the Council may grant such an exemption. Please see clause 29.

Prescribed wages for an employee on probation may be reduced by not more than 10% for a period not exceeding three months.

- (1) The minimum hourly wage, excluding any gratuity or tips, which shall be paid in respect of the ordinary hours of work by an employer to each of the undermentioned category of employee for the hours that the employee works shall be set out hereunder, and no employer shall pay, and no employee shall accept wages lower than the following for the under mentioned groups. Provided that the wages so prescribed may be reduced by not more than 10 percent by a new employer and by a small employer as defined in clause 4.

- (a) **Employees, other than part time, casual, special function and commission worker(s) employed in the following areas:**

- (a) The Province of Western Cape
- (b) The Province of Eastern Cape
- (c) The Province of Northern Cape
- (d) The Province of Free State
- (e) The Province of Kwazulu Natal
- (f) The Province of North West, excluding the Magisterial Districts of Brits and Rustenburg.
- (g) The Province of Mpumalanga, excluding the Magisterial District of Witbank.
- (h) The Limpopo Province, excluding the Magisterial District of Warmbaths, and
- (i) The Magisterial Districts of Heidelberg, Nigel, Vereeniging, Vanderbijlpark, Oberholzer, Meyerton and Carletonville.

Minimum prescribed rate per hour in Rand for the period(s):

CATEGORY/CLASS	CURRENT	From 01/09/2014 Until 31/08/2015	From 1/9/2015 - Thereafter
	H/RATE	H/RATE	H/RATE
CHEF/MANAGER	R27.10		
ASSISTANT MANAGER	R19.00		
BARTENDER, CASHIER CLERK SECURITY GUARD, SUPERVISOR	R16.58		
ASST BARTENDER/CASHIER	R14.66		
H.COOK/WAITER/HWINE STEWARD/ MAN.TRAINEE/RECEPTIONIST	R14.28		
KITCHEN SUPERVISOR	R13.00		
COUNTER ASST/PART-TIME DRIVER/ WAITER/WINE STEWARD	R12.69		
EMP. NOT SPECIFIED ELSEWHERE	R12.60		
MOTOR VEHICLE DRIVER - EXTRA HEAVY	R15.18		
MOTOR VEHICLE DRIVER – HEAVY	R14.46		
MOTOR VEHICLE DRIVER - LIGHT	R12.48		
BAKER/COOK	R12.71		
CATERING ASST/DEL.EMP / GEN ASST	R13.02		
WATCHMAN	R13.02		

**Note:**

- The equivalent monthly or weekly total due, amounts to multiplying the hourly rate by the employee's ordinary daily hours of work.
- Deductions for food – clause 17(1)(a) – amount to R70.00 per month or R16.15 perweek.

See clause 17(1)(b)

**(b) Part -Time Employees**

A Part- time employee shall be paid in respect of the ordinary hours of work prescribed in clause 9 for such part-time employee not less than 66.6%of the wage prescribed in paragraph (a) hereof.

**(c) Commission workers:**

- (1) The owner of an establishment and a commission worker may agree in writing that the commission worker will perform commission work when so required by the owner.
- (2) The owner shall pay a commission worker the rates applicable for commission work as agreed. Provided that if during any calculation period, the commission worker does not earn an amount equivalent to at least the prescribed minimum wage excluding any gratuity or tips, the owner shall pay the commission worker not less than the applicable minimum wage as prescribed for the category that the commission worker works.
- (3) An agreement to perform commission work in terms of this clause shall be concluded before the work commences and shall include-
  - (a) the commission worker's rate of commission;
  - (b) the basis for calculating commission;
  - (c) the period, over which the payment is calculated, which period may not be longer than one month;
  - (d) when the owner shall pay the commission to the commission worker which commission may not be paid more than seven days after the end of the period in which the commission was earned; and
  - (e) the type, description, number, quantity, margin, profit or orders (individual, weekly, monthly or otherwise) for which the commission worker is entitled to earn commission.
- (4) The owner shall supply the commission worker with a copy of the agreement to perform commission work.
- (5) If, during any calculation period, the commission worker does not earn an amount equivalent to at least the prescribed minimum wage, excluding any gratuity, tips or gift received from a customer for service rendered, because of any act or omission by or on behalf of the owner or the owner has restricted the commission worker's ability to earn commission in terms of the agreement, the owner shall pay the commission worker at least the applicable minimum wage as prescribed.
- (6) An owner who intends to cancel or amend the agreement in operation shall give the commission worker not less than four weeks' notice of such intention.

**(d) Casual employee other than a special-function casual employee**

A casual employee shall be paid not less than one and a half times the hourly wage prescribed in paragraph (a) hereof for an employee of the same class as the one in which he is employed: Provided that:

- (i) where a casual employee performs the work of a class of employee for whom wages on a higher scale are prescribed, the expression "hourly wage" shall mean the highest wage prescribed for an employee of that class : and
- (ii) Where a casual employee is required to work for less than three hours on any day he shall be deemed to have worked for three hours

**(e) Special – function casual employees**

Minimum hourly rates for the years ending on the last day of August of:-

CATEGORY/CLASS	2014 R/h	2015 R/h	2016 R/h
GENERAL ASSISTANT	15.00	15.00	15.00
CATERING ASSISTANT, COOK, BAKER, COUNTER ASSISTANT, WAITER, WINE STEWARD	16.00	16.00	16.00
ASSISTANT BARTENDER	17.00	17.00	17.00
DRIVER	18.00	18.00	18.00
BARTENDER, CLERK, CASHIER, HEAD COOK	20.00	20.00	20.00
STAFF SUPERVISOR	22.00	22.00	22.00

Where a special-function casual employee is required to work for less than five hours on any day he shall be deemed to have worked for five hours

## 2. Calculation of wages

- (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 Agreement –
  - (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 –
    - (i) 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.

- (3) **Differential wage:** Any employer who requires or permits a member of one class of his employees to perform work of another grade for longer than one hour in the aggregate on any own category is prescribed in sub- clause (1), shall pay such employee in respect of such day not less than the daily wage calculated at the higher rate.
- (4) Unless expressly otherwise provided in a written contract between an employer and employee, nothing in this Agreement shall so be construed as to preclude an employer from requiring his employee to perform work of another grade, for which grade the same or lower wage is prescribed for such employee.
- (5) **Reduction of wages:** An employer shall not reduce the wages of an employee who at the time this Agreement comes into operation or at any time thereafter, is paid a wage at a rate higher than the minimum rate prescribed for his grade in this Agreement, as long as the employee continues to work for the same employer. Provided that where a weekly-paid employee has been given one week's notice, or a monthly-paid employee two weeks' notice, of a change of conditions of employment and such employee agrees in writing to accept a transfer to a category of work for which a lower minimum wage is prescribed, this provision shall not apply.
- (6) **Night Work:** An employer who requires a full time employee, other than a commission worker, a casual employee, a special function casual employee and employees referred to in clause 9(9) to perform night work, shall pay such an employee an amount of R0,88 per hour, as a shift allowance, in addition to the employee's salary for the hours worked between 18:00 and 06:00 or grant the employee at least 10 minutes time off on full pay, for every hour worked at the end of each week.
- (7) **Annual bonus:** All employee(s) other than part-time, casual, special function and commission workers who are employed by the same employer for a minimum of 12 consecutive months shall receive one week's wages/remuneration as an annual bonus, payable during December.
- (8) **Additional bonus:** All employees, other than part-time, casual, special function and commission workers, who have been employed by the same employer for a minimum period of 24 consecutive months, shall receive one week's wages as an additional bonus to be paid by the employer, at the month end of the employee's anniversary date.
- (9) All employees other than part-time, casual, special function and commission workers who receive remuneration above the minimum prescribed wages(s) shall receive an annual increase of not less than 5% across the board.
- (10) **Work on Sunday:** An employer, other than a small employer, shall pay an employee, other than a commission worker, a casual employee or a special function casual employee, who ordinarily works on a Sunday, at one and a half times the employee's wage for each hour worked. Provided that an employer may 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 that the employee is entitled to in terms of sub- clause (1).

## 6. PAYMENT OF REMUNERATION

- (1) Except for the payment of leave, the provision of meals or transport, or the payment of night work, any amount due to an employee, other than a casual employee, special function casual employee and commission workers, will be paid daily, weekly, fortnightly or monthly in cash, or with the consent of the employee by cash cheque, during the ordinary hours of business of the establishment; and
  - (a) in the case of weekly-paid employee's, payment will not be later than the last working day of the week and shall include all overtime due to the employee.
  - (b) in the case of a monthly-paid employee, payment will be made not later than the last working day of the month and shall include all overtime due up to the 27th of that month.
- (2) An amount due to a casual employee, a commission worker or a special function casual employee, will be paid in cash or, with the consent of the employee, by cash cheque, and
  - (a) in the case of a casual employee, will be paid not later than the last working day of the week;
  - (b) in the case of a special function casual employee, will be paid as per contract of employment.
  - (c) in the case of a commission worker, will be paid as per contract of employment.
- (3) Notwithstanding anything to the contrary in this clause, all amounts due to an employee will become payable on termination of employment and in the event of a dismissal following a disciplinary hearing, all amounts due to an employee in terms of this agreement will become payable within 72 hours of such dismissal.
- (4) The amount due to an employee will be contained in a sealed envelope together with the following information in writing:
  - (a) the employer's name and address;
  - (b) the employee's name, employee number and position;
  - (c) the amount for ordinary time;
  - (d) the amount for overtime;
  - (e) details of any other remuneration;
  - (f) details of deductions;
  - (g) the actual amount paid to the employee;
  - (h) the period in respect of which payment is made.
- (5) An employee other than a commission worker may not work on a commission basis only though an employer may pay a commission in addition to the minimum wage.
- (6) An employer may not impose a fine on an employee for any infringements.
- (7) An employer may not make any deductions from an employee's remuneration, except;
  - (a) with the written consent of the employee;
  - (b) the deduction is required or permitted in terms of a law, this Agreement, court order or arbitration award;
  - (c) a deduction made to reimburse an employer for loss or damage only if-
    - (i) the loss or damage occurred in the course of employment and was due to the

- fault of the employee;
- (ii) the employer has followed fair procedure and has given the employee a reasonable opportunity to show why the deductions should not be made;
- (iii) the total amount of the debt does not exceed the actual amount of the loss or damage;
- (iv) the total deductions from the employee's remuneration in terms of this clause, except in the case of a termination of employment, do not exceed one-quarter of the employee's remuneration in money.
- (d) where the employee is absent without authorization;
- (e) if an employee is absent on the working day before or the working day following a public holiday, he will forfeit the pay for that paid holiday unless he can produce a medical certificate from a registered medical practitioner or he can satisfy the employer that his absence was due to circumstances beyond his control;
- (f) with the written consent of the employee, any amount advanced from his remuneration or lent to the employee;
- (g) the replacement costs of a uniform if the employee fails to return the uniform at the time of termination of the employment;
- (h) any amount that the employer has paid in respect of the rent of any house or accommodation;
- (i) a deduction for the expenses of the council as provided in clause 21
- (j) a deduction in respect of meals in terms of clause 17
- (k) a deduction for trade union subscriptions in terms of clause 22(2)
- (l) a deduction authorised by the council in terms of clause's 21(B) and 21(C)

## 7. PAID HOLIDAYS

- (1) An employer may in accordance with this Agreement require an employee to work on a public holiday.
- (2) If a public holiday falls on a day 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 not 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.

### **8. UNIFORMS, OVERALLS AND PROTECTIVE CLOTHING**

- (1) An employer shall supply and maintain free of charge any uniform, overall, washable coat, cap or apron that by any law he is compelled to provide for his employee and any such uniform, overall, washable coat, cap or apron shall remain the property of the employer
- (2) An employer may require an employee to pay a deposit towards wearing apparel. This deposit shall be refunded on the apparel being returned in reasonable condition, less fair wear and tear.
- (3) An employer may agree with an employee that the employee shall clean his wearing apparel in his or her own time, for which the employer shall pay the employee R17.50 per week. This amount shall not be payable when the employee is off work or when the employer provides the service.

### **9.HOURS OF WORK, OVERTIME AND PAYMENT FOR OVERTIME**

- (1) **Ordinary hours of work** : As from the date of coming into operation of this Agreement, an employer may not require or permit an employee to work more ordinary hours than, in case of –
- (a) a watchman –
    - (i) 50 hours in any week; and
    - (ii) subject to paragraph (i) hereof, 10 hours on any day;
  - (b) all other employees –
    - (i) 45 hours in any week; and
    - (ii) nine hours in any day;
    - (iii) by an agreement the employees ordinary hours of work may be extended up to 15 minutes in a day but not more than 60 minutes in a week.
  - (c) a casual employee, eight hours on any day;
  - (d) a special function casual employee 15 hours on any day.
- (2) **Number of Working days**: An employer shall not require or permit an employee to work on more than six days per week, which includes Sunday, unless it is his day off. Please see clause 9(6) (b).
- (3) **Meal Intervals** : An employer shall not require or permit an employee to work more than -
- (a) five hours continuously in the case of a six day week worker;
  - (b) six hours continuously in the case of a five day week worker, subject to a bilateral agreement between the employer and the employee;
  - (c) six hours continuously where the employee is requested to work a four day week; without a meal interval of not less than one hour, during which interval such an employee shall not be required or permitted to perform any work, and such interval shall not form part of the ordinary hours of work or overtime: Provided that –

- (i) an employer and his employee may agree to reduce the period of such interval to not less 30 minutes ;
- (ii) any other interval of less than 30 minutes shall be deemed to be time worked;
- (iii) any interval longer than three hours during the employee's ordinary hours of work, and longer than 30 minutes during or immediately before overtime is worked, shall be deemed to be overtime worked;
- (iv) only one such interval during the employee's ordinary hours shall be deemed to be an interval, and not part of the ordinary hours of work.

(4) **Limitation of overtime:** An employer may not require or permit an employee to work overtime for more than , in the case of –

- (a) a casual employee, three hours on any day;
- (b) a special function casual employee, four hours on any day;
- (c) all other employees, four hours on any day and 16 hours in any week;

Provided that the weekly limitation of overtime prescribed in this clause may not be exceeded by more than 20 hours

- (i) during unforeseen circumstances; and
- (ii) during –
  - (aa) the period 6 December to 15 January;
  - (ab) shows and exhibitions;
  - (ac) the Easter weekend.

(5) An employer shall be entitled to require an employee, other than a part-time employee, to work overtime on any day except on the employee's day off, and such overtime shall not exceed four hours per day and sixteen hours per week.

(6) **Payment of overtime:**

- (a) An employer shall pay an employee who works overtime at a rate of not less than one and a half times his ordinary wage in respect of the total period so worked on any day or during any week.
- (b) Where an employee agrees to work overtime on his day of rest owing to unforeseen circumstances, he shall be granted two full working days off, or he shall be paid not less than double his hourly rate of pay.
- (c) By agreement an employer may 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
- (d) Grant an employee at least 90 minutes paid time off for each hour of overtime worked.
- (e) An employer must grant paid time off within three months of the employee becoming entitled to it.

(7) Save as provided for in sub-clause (3), all hours of work of an employee on any day shall be consecutive.

(8) **Averaging of hours of work**

- (1) Despite sub-clause 9 (1) and sub-clause 9 (4), the ordinary hours of work and overtime of an employee may be averaged over a period of up to four months in terms of this Agreement.
- (9) **Savings:** (a) The provisions of this clause shall not apply to an employee if and for so long as such employee is in receipt of a regular wage at a rate of not less than R45 000,00 per annum.

## **10. PROHIBITION OF CHILD LABOUR AND FORCED LABOUR**

- (1) No employer 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.
- (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 the B.C.E. Act.

## **11. SPECIAL FUNCTION CASUAL EMPLOYEES**

- (1) A special function casual employee is deemed to have started work when he arrives at a place designated by the employer and finishes his shift when he returns to the designated place.
- (2) If a function is cancelled-
- (a) the employer must give the employee not less than 48 hours notice of the cancellation of the function;
- (b) if the employer gives less than 48 hours notice of the cancellation of a function, the employer must pay the employee an amount equivalent to five hours of paid an amount equivalent to five hours of work.
- (c) where a function is cancelled because of an act of God, the employer must give the employer at least 24 hours notice, failing which the employee will be paid an amount equivalent to five hours of work.

- (3) If an employee cannot work at a function-
- (a) he must give the employer not less than 48 hours notice of his inability to work at a function;
  - (b) if the employee is prevented by an act of God or ill health from working at a function, that employee must give the employer at least 24 hours notice of his indisposition.
  - (c) an employee who has not given notice or satisfied the employer of his indisposition, will pay the employer an amount equivalent to five hours of work or the employer may appropriate from any moneys still owing to the employee, an amount equivalent to five hours of work.

## **12. CONTRACT OF EMPLOYMENT**

- (1) An employer must provide an employee, when the employee commences employment, with a written contract of employment detailing the following:
- (a) the full name and physical 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 begins;
  - (e) the employee's ordinary hours or work and days of work;
  - (f) the employee's wage or the rate and method of calculating wages;
  - (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 employment in kind;
  - (j) how frequently the employee will be paid;
  - (k) the deductions to be made from the employee's remuneration;
  - (l) the leave to which the employee is entitled;
  - (m) the period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate;
  - (n) reference to this agreement.
  - (o) a list of any other documents that form part of the contract of employment, indicating a place that is reasonable accessible to the employee where a copy of each may be obtained.
- (2) The letter of employment must be signed by the employer and the employee and a copy given to the employee.
- (3) The employer may place the employee on probation to assess his ability or compatibility for not more than three months. Should the employment of the probationary employee be confirmed, his services will be deemed to have started from the first day of his employment.
- (4) Written particulars in terms of this section must be kept by the employer for a period of three years after the termination of employment.

### 13. NOTICE OF TERMINATION OF CONTRACT OF EMPLOYMENT

- (1) This clause does not apply to a part-time employee, casual employee, special function casual employee and a commission workler.
- (2) Subject to (subclause 3), 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 working day, if the employee has been employed for one month or less;
  - (b) one week, if the employee has been employed for more than a month or four months or less;
  - (c) two weeks, if the employee has been employed for more than four months.
- (3) Instead of giving an employee notice, an employer may pay the employee the remuneration the employee would have received if the employee had worked during the notice period as prescribed in sub-clause 2 of this clause.
- (4) 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;
  - (b) not run concurrently with any period of leave to which the employee is entitled, except sick leave.
- (5) Nothing in this clause affects the right of the employer or the employee to terminate a contract of employment without notice for any reason recognised in law.
- (6) An employee who absents himself from work without permission for a period of five consecutive working days will be deemed to have terminated his contract of employment.
- (7) Where an employee terminates his contract of employment without having given the required period of notice or without paying the employer in lieu of notice, the employer may from any moneys he owes the employee appropriate an amount of not more than that which the employee would have had to pay him in lieu of notice.

### 14. 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 day's 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.

## **15. MATERNITY LEAVE**

- (1) An employee is entitled to at least four consecutive months' unpaid 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) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
- (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 shall 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 –
  - (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) Protection of employees before and after birth of a child:**

(a) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her unborn child, including operating dangerous machinery or handling and/or using spray chemicals

(8) 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;

(a) the employee is required to perform night work 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..

(9) While an employee is on maternity leave the employer may employ in her stead a temporary employee until her return from maternity leave.

## **16. ANNUAL LEAVE**

(1) An employer must grant an employee –

(a) (i) at least three weeks (21 consecutive days) leave on full pay during the first 3 years;  
(ii) thereafter 30 consecutive days leave; 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 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 agreement.
  - (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 13.
- (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.
- (11) **Annual Closing:**
- (a) Notwithstanding anything to the contrary contained in this clause, an employer may for the purposes of annual leave, at any time, but not more than once in any period of 12 months, close his establishment for 14 consecutive days and in that case shall remunerate his employee in terms of subclause (1) or in terms of paragraph (b) or (c) hereof, as the case may be;
  - (b) Whenever a public holiday as defined, is observed on a day which otherwise would be a working day for an employee and falls within the closed period referred to in paragraph (a), another working day shall be added to the said closed period as a further period of leave and the employee shall be paid an amount of not less than his daily wage in respect of each such day added.
  - (c) An employee who, at the date of the closing of an establishment in which he is employed, is not entitled to the full period of annual leave prescribed in subclause (1) shall, in respect of any leave due to him, be paid by his employer on the basis set out in subclause (5), and for the purposes of annual leave thereafter this employment shall be deemed to commence on the date of such closing of the establishment.
  - (d) An employer and his employee may agree that any leave in excess of 21 days, plus days *in lieu* of public holidays accrued to the employee, may be paid out.
  - (e) An employer and his employee may agree in writing to observe an annual closed period of not less than 14 consecutive days, in which case all excess leave shall be paid to the employee.

## 16A FAMILY RESPONSIBILITY LEAVE

- (1) This clause applies to an employee-
  - (a) who has been in employment with an employer for longer than twelve months; and
  - (b) who works for at least five days a week for that employer.
- (2) An employee is entitled, during each annual leave cycle, four days paid in the following circumstances:
  - (a) when the employee's child is born;
  - (b) when the employee's child is ill;
  - (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, grandchild or sibling.
- (3) Before paying an employee for leave in terms of this clause, an employee must submit proof of an event contemplated in sub-clause (2) for which the leave was required.
- (4) An employee's unused entitlement to leave in terms of the clause lapses at the end of the annual leave cycle in which it accrues.

## **17. MEALS, TRANSPORT AND LATE NIGHT WORK**

- (1) **Provision of meals:**
  - (a) Where an employee, other than a casual employee or a special-function casual employee, agrees to accept meals from his employer, a deduction not exceeding R40,00 per month or R9,23 per week in respect of part-time employees, and R70,00 per month or R16,15 per week in respect of full-time employees, may be deducted from the employee's wage in respect of such meals.

Provided that –

- (i) the employee is provided with such meals as fall within his working hours but not less than two meals per working day or one meal for a part-time employee;
- (ii) no deduction shall be made in respect of meals not taken by the employee while absent from work with pay, such as pay *in lieu* of notice, annual leave or sick leave;
- (iii) no further deductions shall be made by the employer when an employee receives additional food while on duty;
- (iv) it shall not be construed that a deduction may not be made when an employee agrees to accept meals and does not avail himself thereof, unless notice has been given to cancel the arrangement and such notice has expired;
- (v) the meals shall be adequate as regards the quantities of food supplied, and reasonable in respect of their content and quality.

- (b) Every employer shall provide each casual employee, and special-function casual employee, with a free meal in respect of the first five consecutive hours of work or part thereof worked by such employee and thereafter in respect of each completed period of four consecutive hours worked.

(2) **Provision of transport for night workers:**

- (a) In the event of any special-function employee, commission worker, special-function casual employee or casual employee working later than 22:30, the employer shall make reasonable arrangements for the transport home of such employee: Provided that, *in lieu* of providing such transport home, an employer may order a taxi to take one or more of the employees home, and pay the taxi in advance or pay each employee R10.00 cash.
- (b) In the event of an employee, other than a special-function casual employee, a casual employee or a commission worker who works after 22h30 and being authorised to work, the employer shall pay such employee R150,00 per month as a “Late Night Allowance” provided that if an employer daily provides free transport home for late night workers, he shall not be required to pay an allowance to those employees.

(3) **Late night work:** An employer who requires an employee to perform work in an environment with hazardous substances 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 –
  - (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 reasonable time if –
  - (i) the employee suffers from a health condition associated with the performance of night work; and
  - (ii) it is practical for the employer to do so.

- (4) For the purposes of sub-clause (3), an employee works on a regular basis if the employee works for a period of longer than one hour after 23:00 and before 06:00 at least five times per month or 50 times per year.

## 18. RECORDS TO BE MAINTAINED

- (1) Every employer must keep a register in the form set out in annexure D for all employees working for that employer. The register must be kept on the premises where the employees work.
- (2) An employer will keep a register in the form specified in annexure B that must be signed by a casual employee, a special function casual employee or a commission worker when he starts and finishes work on each day that he is employed.
- (3) A schedule such as that set out in annexure G will be posted by the employer not less than seven days before the employee starts his/her's weekly shifts and or commences work in a place easily accessible to the employees giving particulars of the daily shifts to be worked by the employees.
- (4) A record in terms of this clause must be kept by the employer for a period of three years from the date of the last entry in the record.

### **19. REGISTRATION OF EMPLOYERS AND EMPLOYEES**

- (1) Every employer must within thirty days of falling within the registered scope of the council register with the council by submitting an application in the form of annexure C.
- (2) An employer must notify the council within thirty days of –
  - (a) any change in the particulars of the employer;
  - (b) sequestration of the employer's estate;
  - (c) liquidation of the company;
  - (d) change of ownership; or
  - (e) cessation of business activity.
- (3) The council must, by the 7<sup>th</sup> of any month furnish –
  - (a) the employer's organisations, with details of employers registered with the council in the preceding month.
  - (b) the trade unions, with a list of employees eligible for membership or who have deregistered as members.

### **20. CERTIFICATE OF SERVICE**

- (1) On termination of employment, except on the grounds of desertion, an employee is entitled to a certificate of service in the form of annexure E.

### **21. INCOME AND EXPENSES OF THE COUNCIL**

- (a) For the purpose of meeting the expenses of the Council, every employer shall deduct from the wages of each employee, R5.00 per month in the case of all employees who have worked in that month: Provided that, for the purposes of this paragraph, an employee shall be deemed to have worked during any period in which he is absent from work on paid leave or sick leave as provided in this Agreement.

- (b) For the purpose of meeting the expenses of the Council for its dispute resolution function, every employer shall deduct from the wages of each employee R3,00 per month in the case of all employees who have worked in that month: Provided that, for the purposes of this paragraph, an employee shall be deemed to have worked during any period in which he is absent from work on paid leave or sick leave as provided in this Agreement.
- (2) Every employer shall contribute to the funds of the Council –
- (a) an amount equal to that deducted from the employees as prescribed in sub-clause (1) (a) and (b)
  - (b) an amount of R25,00 in respect of each establishment each month, or part thereof, during which deductions were made or were required to be made in terms of sub-clause (1), which shall be contributed by the employer himself.
- (3) The total amounts deducted, or required to be deducted, in terms of sub-clause (1), from the wages of employees, together with the amounts required to be contributed by the employer in terms of subclause (2), shall be paid into the Council's banking account by not later than the 15<sup>th</sup> day of the month succeeding that month during which the deductions and contributions were made or were required to be made.
- (4) A proof of payment together with a completed statement in the form of "**Annexure F**" showing the number of employees from whom the deductions were made or were required to be made shall be forwarded monthly by the employer to the Council by not later than the 15<sup>th</sup> day of each month succeeding that month during which the deductions were made.
- (5) Notwithstanding anything to the contrary contained in this Agreement, the Council shall be entitled to a 5% collection fee on all funds administered by the Council or collected on behalf of any third party or fund, which said amounts shall accrue to the general funds of the Council. The Council, in its sole discretion, may waive the right to such entitlement.

#### **21A. DEFAULT PAYMENTS**

- (1) If any payment made by an employer to discharge his obligation in terms of this agreement, is not met, the council will impose an administration fee of R100.00 or 10% of the amount whichever is greater, to be payable by the employer on demand.
- (2) Should the council institute legal action for the recovery of any moneys due to it or to an employee or employer, then the debtor will be liable for all costs of the council on an attorney and client scale on scale C of the magistrate's court tariff.
- (3) Any party who fails to claim moneys recovered by the council on his behalf in terms of this agreement within thirty-six months will forfeit the moneys to the council.
- (4) Members and officials of the council are indemnified against all losses, charges, costs, damages and other expenses and liability they may incur or be put to concerning the bona fide execution of their duties as members and officials of the council.

### **21(B) FUNERAL BENEFITS**

- (1) Membership of the Hospitality Group Funeral Insurance Scheme, as underwritten by Metropolitan Life Limited with Registration No. 1949/032491/06 as per policy Number 4151686104 is compulsory for all employees under the age of 65 (sixty five years ) (other than a casual employee, a special function casual employee) who are employed in the Scope and Sector of the Council.
- (2) For the purpose of providing employees with Funeral Benefits, every employer shall, in respect of each month, deduct R12-50 from the wages payable to each employee and add to such a deduction an amount of R12-50, Provided that, for the purpose of this paragraph, an employee shall be deemed to have worked during any period in which an employee is absent from work on leave, sick leave or maternity leave as provided in this Agreement. Provided further, that the monthly contributions by the employer as well as employee's deductions must be paid during the months that the employee is absent from work.
- (3) Every employer shall ensure that the amounts referred to in sub-clause (2) are paid monthly in advance by debit order or by electronic transfer to: Standard Bank, Braamfontein Branch, Code 004805, Account Number 000462136.
- (4) A completed statement in the form of Annexure I showing the number of employees from whom deductions and contributions were made, or should have been made, their names and ID Numbers, shall be forwarded monthly by all employers to: P.O. Box 2363, Florida Hills, 1716 or faxed to: (011) 672-5803 not later than the 15<sup>th</sup> day of the month succeeding that during which the deductions and contributions were made.

### **21 (C) PROVIDENT FUND**

- (1) Membership of the Momentum "FundsAtWorkUmbrella Provident Fund" with registration No's 12/08/32083/1, SARS 18/20/No36990 is compulsory for all employees, (other than a casual employee, a commission worker or a special function casual employee) who are employed within the Scope and Sector of the Council and who have not reached the age of sixty five (65) years.
- (2) For the purpose of providing employees with Provident Fund Benefits, every employer shall in respect of each month deduct 5% from the wages payable to each employee, and add to such deduction an equal amount of 5%.
- (3) Every employer shall ensure that the employees deductions as well as the employers contributions as referred in sub-clause 2 are paid to the Momentum administrator electronically by no later than the 7<sup>th</sup> day of the month succeeding that during which the deductions and contributions were made.
- (4) Every employer shall submit the participating employer's membership particulars to the administrator in prescribed electronic format and in such detail as required in terms of the Provident Fund rules and regulations and this agreement by no later than the 25<sup>th</sup> of each month.

### **22. MEMBERSHIP OF EMPLOYER'S ORGANISATION AND TRADE UNIONS AS DEFINED IN THE PREAMBLE TO THIS AGREEMENT, AND INCIDENTAL MATTERS.**

- (1) Every employer, after prior arrangement with him, shall give reasonable facilities to the duly authorised trade union officials to enter his establishment at off-peak periods for the purpose of –
- (a) interviewing on trade union matters;
  - (b) enrolling new members;
  - (c) distributing documents issued by the trade union.
- (2) (a) Every employer shall, for the benefit of the employers' organisation, as defined in this Agreement, forward to the Secretary of the Council the subscription and/or levy payable by him to the said organisation in terms of that organisation's constitution, by not later than the 15<sup>th</sup> day of the month following that in which such subscription and/or levy fell due.
- (b) Where an employee requests his employer in writing to deduct trade union subscriptions, the employer shall forward such amounts to the Secretary of the Council not later than the 15<sup>th</sup> of the following month of the amount so deducted. *Provided that* the employer may retain as a collection fee an amount not exceeding five percent of the amount so deducted.
- (3) **Trade union representatives to the Council:** Every employer shall give to an employee who is a representative on the Council every reasonable facility to attend to his duties in connection with the work of the Council.
- (4) The subscriptions and fees payable in terms of subclause (2) of this clause shall be included with the other amounts to be remitted together with Annexure F to this Agreement.

### **23. ADMINISTRATION OF AGREEMENT AND DESIGNATED AGENTS**

- (1) The Council is responsible for the administration, promoting, monitoring and enforcement of this agreement.
- (2) The Council may issue guidelines or instructions to employers and employees regarding the implementation of this Agreement.
- (3) The Council may request the Minister in terms of Section 33 (1) of the Act to appoint a person as a designated agent.
- (4) The Council shall appoint one or more specified persons as designated agents to assist in giving effect to the terms of this agreement.
- 1. A designated agent of the Council shall promote, monitor and enforce compliance with this agreement.
  - 2. A designated agent may:
    - (a) secure compliance with the Council's collective agreement by;
      - (i) publicising the contents of the agreement;

- (ii) conducting inspections;
- (iii) investigating complaints; or
- (iv) any other means the Council may adopt; and
- (b) perform any other functions that are conferred or imposed on the designated agent by the Council; and
- (c) a designated agent of the Council has all the powers as set out in schedule 10 to the Act;
- (d) issue a compliance order requiring any person to comply with the collective agreement within 21 days of the date of the compliance order.

(5) In terms of section 33 (3) read with Section 142 of the Labour Relations Act, 1995, a designated agent may enter any establishment and question any employer during the course of such inspection and inspect the record of wages paid, time worked and payments made for overtime, and it shall be the duty of every employer and employee to permit such a designated agent to institute such inquiries and to examine such books and/or documents and to interrogate such person as may be necessary for the purpose of ascertaining the terms of this agreement are being observed.

It is an offence to –

- (a) obstruct or attempt to improperly influence a designated agent or other person who is performing a function in terms of this agreement;
- (b) present or submit a false or forged document;
- (c) pretend to be a designated agent of this Council performing a function in terms of this agreement,
- (d) refuse or fail to answer fully any lawful question put by a designated agent or other person in the performance of his duties in terms of this agreement;
- (e) refuse or fail to comply with any lawful request of, or lawful order by a designated agent or person in the performance of his duties in terms of this agreement;
- (f) hinder or obstruction of a designated agent or any other person performing a function in terms of this agreement.

Upon conviction of any of the offences mentioned in 6.1 above, a penalty similar to that prescribed in section 92 and 93 of the Basic Conditions of Employment Act, No 75 of 1997, as amended, may be imposed.

## **24. DISPLAY OF AGREEMENT**

- (1) The employer must display a copy of this agreement in a prominent place in the workplace and make it available to an employee on demand.

## **25. RIGHTS AND OBLIGATION OF THE TRADE UNION**

### **Access**

- (1) A trade union may, at a mutually convenient time and place, meet with the employer to discuss matters pertaining to this agreement or any related matters.

- (2) Each party will inform the other in writing of the names and status of their respective representatives.
- (3) No more than two trade union officials may have access to a workplace for the purpose of meeting with the trade union representatives or their members at a time agreed with the employer but not more than once in any calendar month.
- (4) The employer will specify the area in the workplace where the meeting can be held.
- (5) The activities of the trade unions in the workplace will not interfere with the employer's operations with the employer having the right to vary or withdraw the access by written notice to the trade union should the interference persist.

***trade union subscriptions***

- (6) The employer must deduct the trade union subscriptions from the wages of the employee and remit the full amount to provided that –
  - (a) the employee is employed in the sector;
  - (b) the trade union has satisfied the employer that the employee is a bona fide member of the trade union;
  - (c) the trade union has lodged with the employer a stop order form.
- (7) The employer may retain as a collection fee no more than 5% of the trade union subscription deducted.
- (8) The employer will not be responsible for the collection of any subscription that may be in arrears.
- (9) The employer will submit a monthly statement to the trade union stating the names of the members in respect of whom deductions have been made, the amount and cancellations, if any
- (10) An employee may, on one month's written notice to the trade union and to the employer, cancel the stop order facility in favour of the trade union.

***trade union representatives***

- (11) A trade union representative may assist and represent trade union members in any grievance or disciplinary hearings.
- (12) A trade union representative will consult with the employer for the purposes of promoting cooperation and understanding and preventing grievances and disputes.
- (13) The trade union representatives will consult with the trade union members only during breaks and not delay work operations.
- (14) A trade union representative must observe the terms and conditions of employment and be subject to the same performance and disciplinary standards as other employees.

- (15) The employer may, by prior arrangement, allow a trade union representative the reasonable use of photocopying, facsimile and e-mail facilities for trade union activities but under the supervision of the employer.

***election of trade union representatives***

- (16) Trade union representatives and their alternates will be elected by the trade union members on an ordinary work day.
- (17) The election date and procedural details for the election will be agreed with the employer not less than seven days before the election.
- (18) The election will not disrupt the normal working operations.
- (19) The election will be by secret ballot.
- (20) A trade union representative will occupy office for a period of two years.
- (21) The number of trade union representatives in respect of each place where the employer conducts his business will be as follows:

<b>NUMBER OF TRADE UNION MEMBERS</b>	<b>NUMBER OF STOP STEWARDS</b>
10	One
10 – 50	Two
50 - 299	Two for the first 50 plus one for each additional 50 up to a maximum of seven
300 – 600	Seven for the first 300 pls one for every 100 additional members up to a masimum of 10

- (22) Only trade union members with fully paid-up membership or not being investigated, charged or found guilty of any misdemeanour and with one year of continuous service with the employer, may nominate or accept nomination for the position of a trade union representative.
- (23) A trade union representative or an alternate must resign from office if-
- (a) he ceases to be employed by the employer;
  - (b) he ceases to be a member of the trade union;
  - (c) at the written request of the majority of employees in the workplace.

***leave for trade union activities***

- (24) A trade union representative is entitled to four days paid and two leave to attend training or any other formal activity related to his position as a trade union representative.
- (25) This leave may not be taken over any period that includes a Friday, Saturday, Sunday or a public holiday.

- (26) A request for such leave must be made on not less than seven days' written notice together with a letter from the trade union stating the nature and purpose of such leave.

***peace obligation***

- (27) The parties agree not to embark or participate in any form of industrial action as a result of any dispute on any wage or their conditions of employment provided that the employer has implemented the terms of the agreement.

***internal dispute resolution procedures***

- (28) A party declaring the dispute must furnish written particulars to the other party giving details of the nature of the dispute and the proposed terms of settlement.
- (29) The other party must within five working days of receipt of the notice, inform the aggrieved party in writing of its response together with its proposal for settlement.
- (30) A meeting of the parties will be convened within five working days of receipt by the aggrieved party of the other party's response.
- (31) If agreement is not reached at the meeting, the parties may consider alternative processes such as conciliation or arbitration.
- (32) If the dispute still remains unresolved the parties may refer it to the council or the commission for conciliation mediation and arbitration.

***industrial action***

- (33) Industrial action means lock outs and strikes which includes go-slows, pickets, overtime bans, work-to-rule and product boycotts.
- (34) No party may embark on, or participate in industrial action until the procedures prescribed by this agreement or the act have been complied with.

***industrial action rules***

- (35) Employees on industrial action will not interfere with the employer's customers or suppliers, other employees not participating in the Industrial action, members of the public or disrupt the employer's operations.
- (36) The employees will not be within twenty metres of any entrance to or access from the employer's premises.

***picketing***

- (37) A trade union may authorise a picket by its members for the purpose of peacefully demonstrating in support of a protected strike or in opposition to a lock-out.
- (38) The picket may be held in any place to which the public has access but outside the premises of the employer or with the permission of the employer, inside the employer's premises.

- (39) The commission for conciliation mediation and arbitration may at the request of the trade union or the employer establish picketing rules.

***replacement labour***

- (40) The employer may utilise replacement labour except where the employer has implemented a lock-out.

***severance pay***

- (41) Where an employee is dismissed for reasons based on the employer's operational requirements, the employee will be entitled to one week's severance pay for each completed year of continuous service with that employer.;
- (42) 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.
- (43) For the purpose of determining the length of an employee's employment with an employer, previous employment with the same employer must be taken into account if the break between the periods of employment is less than one year.

**26. THE CODE OF GOOD PRACTICE**

**CODE OF GOOD PRACTICE: DISMISSAL**

**1. INTRODUCTION**

- (1) This code of good practice deals with some of the key aspects of dismissals for reasons related to conduct and capacity. It is intentionally general. Each case is unique, and departures from the norms established by this Code may be justified in proper circumstances. For example, the number of employees employed in an establishment may warrant a different approach.
- (2) This Act emphasises the primacy of collective agreements. This Code is not intended as a substitute for disciplinary codes and procedures where these are the subject of collective agreements, or the outcome of joint decision-making by an employer and a workplace forum.
- (3) The key principle in this Code is that employers and employees should treat one another with mutual respect. A premium is placed on both employment justice and the efficient operation of business. While employees should be protected from arbitrary action, employers are entitled to satisfactory conduct and work performance from their employees.

**2. FAIR REASONS FOR DISMISSAL**

- (1) A dismissal is unfair if it is not affected for a fair reason and in accordance with a fair procedure, even if it complies with any notice period in a contract of employment or in legislation governing employment. Whether or not a dismissal is for a fair reason is determined by the facts of the case, and the appropriateness of dismissal as a penalty.

Whether or not the procedure is fair is determined by referring to the guidelines set out below.

- (2) This Act recognises three grounds on which a termination of employment might be legitimate. These are: the conduct of the employee, the capacity of the employee, and the operational requirements of the employer's business.
- (3) This Act provides that a dismissal is automatically unfair if the reason for the dismissal is one that amounts to an infringement of the fundamental rights of employees and trade unions, or if the reason is one of those listed in section 187 of the L.R. Act. The reasons include participation in a lawful strike, intended or actual pregnancy and acts of discrimination.
- (4) In cases where the dismissal is not automatically unfair, the employer must show that the reason for dismissal is a reason related to the employee's conduct or capacity, or is based on the operational requirements of the business. If the employer fails to do that, or fails to prove that the dismissal was effected in accordance with a fair procedure, the dismissal is unfair.

### **3. DISCIPLINARY MEASURES SHORT OF DISMISSAL**

#### **Disciplinary procedures prior to dismissal.**

- (1) All employers should adopt disciplinary rules that establish the standard of conduct required of their employees. The form and content of disciplinary rules will obviously vary according to the size and nature of the employer's business. In general, a larger business will require a more formal approach to discipline. An employer's rules must create certainty and consistency in the application of discipline. This requires that the standards of conduct are clear and made available to employees in a manner that is easily understood. Some rules or standards may be so well established and known that it is not necessary to communicate them.
- (2) The courts have endorsed the concept of corrective or progressive discipline. This approach regards the purpose of discipline as a means for employees to know and understand what standards are required of them. Efforts should be made to correct employees' behaviour through a system of graduated disciplinary measures such as counselling and warnings.
- (3) Formal procedures do not have to be invoked every time a rule is broken or a standard is not met. Informal advice and correction is the best and most effective way for an employer to deal with minor violations of work discipline. Repeated misconduct will warrant warnings, which themselves may be graded according to degrees of severity. More serious infringements or repeated misconduct may call for a final warning, or other action short of dismissal. Dismissal should be reserved for cases of serious misconduct or repeated offences.

#### **Dismissals for misconduct**

- (4) Generally, it is not appropriate to dismiss an employee for a first offence, except if the misconduct is serious and of such gravity that it makes a continued employment relationship intolerable. Examples of serious misconduct, subject to the rule that each case should be judged on its merits, are gross dishonesty or wilful damage to the property of the employer, wilful endangering

of the safety of others, physical assault on the employer, a fellow employee, client or customer and gross insubordination. Whatever the merits of the case for dismissal might be, a dismissal will not be fair if it does not meet the requirements of section 188 of the L.R. Act.

- (5) When deciding whether or not to impose the penalty of dismissal, the employer should in addition to the gravity of the misconduct consider factors such as the employee's circumstances (including length of service, previous disciplinary record and personal circumstances), the nature of the job and the circumstances of the infringement itself.
- (6) The employer should apply the penalty of dismissal consistently with the way in which it has been applied to the same and other employees in the past, and consistently as between two or more employees who participate in the misconduct under consideration.

#### **4. FAIR PROCEDURE**

- (1) Normally, the employer should conduct an investigation to determine whether there are grounds for dismissal. This does not need to be a formal enquiry. The employer should notify the employee of the allegations using a form and language that the employee can reasonably understand. The employee should be allowed the opportunity to state a case in response to the allegations. The employee should be entitled to a reasonable time to prepare the response and to the assistance of a trade union representative or fellow employee. After the enquiry, the employer should communicate the decision taken, and preferably furnish the employee with written notification of that decision.
- (2) Discipline against a trade union representative or an employee who is an office-bearer or official of a trade union should not be instituted without first informing and consulting the trade union.
- (3) If the employee is dismissed, the employee should be the reason for dismissal and reminded of any rights to refer the matter to a council with jurisdiction or to the Commission or to any dispute resolution procedures established in terms of a collective agreement.
- (4) In exceptional circumstances, if the employer cannot reasonably be expected to comply with these guidelines, the employer may dispense with pre-dismissal procedures.

#### **5. DISCIPLINARY RECORDS**

Employers should keep records for each employee specifying the nature of any disciplinary transgressions, the actions taken by the employer and the reasons for the actions.

#### **6. DISMISSALS AND INDUSTRIAL ACTION**

- (1) Participation in a strike that does not comply with the provisions of Chapter IV is misconduct. However, like any other act of misconduct, it does not always deserve dismissal. The substantive

fairness of dismissal in these circumstances must be determined in the light of the facts of the case, including-

- (a) the seriousness of the contravention of this Act;
  - (b) attempts made to comply with this Act; and
  - (c) whether or not the strike was in response to unjustified conduct by the employer.
- (2) Prior to dismissal the employer should, at the earliest opportunity, contact a trade union official to discuss the course of action it intends to adopt. The employer should issue an ultimatum in clear and unambiguous terms that should state what is required of the employees and what sanction will be imposed if they do not comply with the ultimatum. The employees should be allowed sufficient time to reflect on the ultimatum and respond to it, either by complying with it or rejecting it. If the employer cannot reasonably be expected to extend these steps to the employees in question, the employer may dispense with them.

## **7. GUIDELINES IN CASES OF DISMISSAL FOR MISCONDUCT**

Any person who is determining whether a dismissal for misconduct is unfair should consider-

- (a) whether or not the employee contravened a rule or standard regulating conduct in, or of relevance to, the workplace; and
- (b) if a rule or standard was contravened, whether or not-
  - (i) the rule was a valid or reasonable rule or standard;
  - (ii) the employee was aware, or could reasonably be expected to have been aware, of the rule or standard;
  - (iii) the rule or standard has been consistently applied by the employer; and
  - (iv) dismissal was an appropriate sanction for the contravention of the rule or standard.

## **8. PROBATION**

- (1) (a) An employer may require a newly-hired employee to serve a period of probation before the appointment of the employee is confirmed.
- (b) The purpose of probation is to give the employer an opportunity to evaluate the employee's performance before confirming the appointment.
- (c) Probation should not be used for purposes not contemplated by this Code to deprive employees of the status of permanent employment. For example, a practice of dismissing employees who complete their probation periods and replacing them with newly-hired employees, is not consistent with the purpose of probation and constitutes an unfair labour practice.
- (d) the period of probation should be determined in advance and be of reasonable duration. The length of the probationary period should be determined with reference to the nature of the job and the time it takes to determine the employee's suitability for continued employment.

- (e) During the probationary period, the employee's performance should be assessed. An employer should give an employee reasonable evaluation, instruction, training, guidance or counselling in order to allow the employee to render a satisfactory service.
  - (f) In the employer determines that the employee's performance is below standard, the employer should advise the employee of any aspects in which the employer considers the employee to be failing to meet the required performance standards. If the employer believes that the employee is incompetent, the employer should advise the employee of the respects in which the employee is not competent. The employer may either extend the probationary period or dismiss the employee after complying with sub items (g) or (h), as the case may be.
  - (g) the period of probation may only be extended for a reason that relates to the purpose of probation. The period of extension should not be disproportionate to the legitimate purpose that the employer seeks to achieve.
  - (h) An employer may only decide to dismiss an employee or extend the probationary period after the employer has invited the employee to make representations and has considered any representations made. A trade union representative or fellow employee may make the representations on behalf of the employee.
  - (i) If the employer decides to dismiss the employee or to extend the probationary period, the employer should advise the employee of his or her rights to refer the matter to a council having jurisdiction, or to the Commission.
  - (j) Any person making a decision about the fairness of a dismissal of an employee for poor work performance during or on expiry of the probationary period ought to accept reasons for dismissal that may be less compelling than would be the case in dismissals effected after the completion of the probationary period.
- (2) After probation, an employee should not be dismissed for unsatisfactory performance unless the employer has –
- (a) given the employee appropriate evaluation, instruction, training, guidance or counselling; and
  - (b) after a reasonable period of time for improvement, the employee continues to perform unsatisfactorily .
- (3) The procedure leading to dismissal should include an investigation to establish the reasons for the unsatisfactory performance and the employer should consider other ways, short of dismissal, to remedy the matter.

- (4) In the process, the employee should have the right to be heard and to be assisted by a trade union representative or a fellow employee.

## **9. GUIDELINES IN CASES OF DISMISSAL FOR POOR WORK PERFORMANCE**

Any person determining whether a dismissal for poor work performance is unfair should consider-

- (a) whether or not the employee failed to meet a performance standard; and
- (b) if the employee did not meet a required performance standard whether or not -
  - (i) the employee was aware, or could reasonably be expected to have been aware, of the required performance standard;
  - (ii) the employee was given a fair opportunity to meet the required performance standard; and
  - (iii) dismissal was an appropriate sanction for not meeting the required performance standard.

## **10. INCAPACITY: ILL HEALTH OR INJURY**

- (1) Incapacity on the grounds of ill health or injury may be temporary or permanent. If an employee is temporarily unable to work in these circumstances, the employer should investigate the extent of the incapacity or the injury. If the employee is likely to be absent for a time that is unreasonably long in the circumstances, the employer should investigate all the possible alternatives short of dismissal. When alternatives are considered, relevant factors might include the nature of the job, the period of absence, the seriousness of the illness or injury and the possibility of securing a temporary replacement for the ill or injured employee. In cases of permanent incapacity, the employer should ascertain the possibility of securing alternative employment, or adapting the duties or work circumstances of the employee to accommodate the employee's disability.
- (2) In the process of the investigation referred to in subsection (1) the employee should be allowed the opportunity to state a case in response and to be assisted by a trade union representative or fellow employee.
- (3) The degree of incapacity is relevant to the fairness of any dismissal. The cause of the incapacity may also be relevant. In the case of certain kinds of incapacity, for example alcoholism or drug abuse, counselling and rehabilitation may be appropriate steps for an employer to consider.
- (4) Particular consideration should be given to employees who are injured at work or who are incapacitated by work-related illness. The courts have indicated that the duty on the employer to accommodate the incapacity of the employee is more onerous in these circumstances.

## **11. GUIDELINES IN CASES OF DISMISSAL ARISING FROM ILL HEALTH OR INJURY**

Any person determining whether a dismissal arising from ill health or injury is unfair should consider-

- (a) whether or not the employee is capable of performing the work; and
- (b) if the employee is not capable-
  - (i) the extent to which the employee is able to perform the work;
  - (ii) the extent to which the employee's work circumstances might be adapted to accommodate disability, or, where this is not possible, the extent to which the employees duties might be adapted; and
  - (iii) the availability of any suitable alternative work.

## **27. FREEDOM OF ASSOCIATION**

Section 4 of the L.R. Act shall apply to all employees. Employees may join a trade union (subject to its constitution) and to partake in its lawful activities. Section 6 of the L.R. Act shall apply to all employers. Employers may join an employer organisation and participate in its lawful activities.

## **28. DISPUTE RESOLUTION FUNCTION OF THE COUNCIL**

### **28A. DISPUTES PERTAINING TO THE CONTRAVENTION OF THE AGREEMENT**

- (1) A party complaining about an alleged contravention of this agreement must do so in a sworn statement setting out full details of the complaint and lodge it with the council within 30 days of the alleged contravention.
- (2) The council must within fourteen days of receipt of the complaint appoint a designated agent to investigate the complaint.
- (3) The designated agent must within thirty days of his appointment submit a written report to the council detailing his investigations, the steps he had taken to ensure compliance and the recommendations for the finalisation of the complaint.
- (4) If the complaint is not resolved, the complainant may refer a dispute in the form prescribed by the council within thirty days of being served by the council with the outcome of the investigation.
- (5) The referral must be accompanied by proof that a copy was served on the other party.
- (6) If the complainant shows good cause at any time, the council may permit the complainant to refer the complaint after the thirty days have expired.
- (7) The council will set the complaint down as a con-arb on at least fourteen days written notice on both parties.
- (8) Should a party fail to appear or be represented at the scheduled hearing and that party-
  - (a) is the complainant, the commissioner may dismiss the matter; or
  - (b) had not referred the dispute, the commissioner may-

- (i) continue with the matter in the absence of that party; or
- (ii) adjourn the matter to a later date.

- (9) In con-arb proceedings a party may appear in person or be represented only by-
- (a) a director, member or employee of that party; or
  - (b) any member, official or office bearer of that party's registered trade union or registered employers' organisation.
- (10) An arbitrator may-
- (a) conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the complaint fairly and quickly, but must deal with the substantial merits of the complaint with the minimum of legal formalities;
  - (b) subject to the discretion of the arbitrator as to the appropriate form of the proceedings, a party to the complaint may give evidence, call witnesses, question the other witnesses and address concluding arguments to the arbitrator;
  - (c) if all parties consent, the arbitrator may suspend the arbitration proceedings and attempt to resolve the complaint through conciliation.
- (11) An arbitrator may make any appropriate award including:
- (a) ordering any party to pay any amount owing in terms of this agreement provided that any claim pursuant to clauses 5, 6, 7, 9, 13, 14, 16 and 17 will not exceed the period of twelve months from the date the complaint was received by the council in terms of sub-clause (1);
  - (b) charging a party an arbitration fee
  - (c) ordering a party to pay the costs of the arbitration
  - (d) any award contemplated in section 138(9) of the act.
- (12) An award in terms of this clause is final and binding and may be enforced as if it were an order of the Labour Court if the Secretary of the Council has certified that it is an award issued by a commissioner
- (13) The council may, by agreement between the parties or on the application by a party, make any written settlement agreement, an arbitration award that may be enforceable in terms of sub-clause (12).

## **28B. DISPUTES PERTAINING TO THE INCOME AND EXPENSES OF THE COUNCIL AND NON PAYMENT OF CONTRIBUTIONS TO BENEFIT FUNDS**

- (1) If any party to this agreement does not fulfil the obligations imposed by clauses 19, 21, 21A and 21B, 21C, the council may demand in writing, that the party comply with the agreement within seven days.
- (2) If the party fails to comply with the demand, the council will set the matter down for a con-arb on not less than fourteen days notice on that party.
- (3) Clause 28A(8) to 28A(13) will apply to proceedings in terms of this clause.

## **28C. DISPUTES PERTAINING TO THE CONDUCT OR CAPACITY OF AN EMPLOYEE**

- (1) An employer party to the Council may, in terms of the Collective Agreement request the Council to appoint an arbitrator to conduct an inquiry into allegations about an employee's conduct or capacity: Provided that the employee has been advised of the allegations regarding his/her conduct or capacity.
- (2) The employer requesting the Council to appoint an arbitrator to conduct an inquiry must do so by delivering a completed form prescribed by the Council to the Council together with a copy of the notice advising the employee of the allegations referred to in sub-clause (1).
- (3) Within 3 days of receiving a request in terms of sub-clause (1) the Council must notify the parties to the inquiry of the date, time and place of the inquiry.
- (4) Unless the parties agree otherwise the Council must give the parties at least seven days notice prior to the commencement date of the inquiry.
- (5) In any inquiry in terms of this clause a party to the dispute may appear in person or be represented only by –
  - (a) a co-employee;
  - (b) a director or employee, if the party is a juristic person;
  - (c) any member, office bearer or official of that party's registered trade union or registered employer's organisation; or
  - (d) a legal practitioner by agreement between the parties.
- (6) Section 138 of the L.R. Act, read with the changes required by the context, applies to any arbitration in terms of this clause.
- (7) an arbitrator appointed in terms of this clause has all the powers conferred on a commissioner by section 142 (1) (a) to (e) (2) and (7) to (9) of the L.R. Act, read with the changes required by the context, and any reference in that section to the director for the purpose of this clause, must be read as a reference to :-
  - (a) the secretary of the Council, if the arbitration is held under the auspices of the Council;
  - (b) the director of the accredited agency, if the arbitration is held under the auspices of an accredited agency.
- (8) The ruling of the arbitrator in an inquiry has the same status as an arbitration award and the provisions of section 143 to 146 of the L.R. Act, apply with the changes required by the context to any ruling made by an arbitrator in terms of this clause.
- (9) An arbitrator conducting an inquiry in terms of this clause must, in the light of the evidence presented and by reference to the criteria of fairness in the L.R. Act, rule as to what action, if any, may be taken against the employee.

## **28D. RULES FOR THE CONDUCT OF PROCEEDINGS BEFORE THE STATUTORY COUNCIL FOR THE FAST FOOD, RESTAURANT, CATERING AND ALLIED TRADES**

Rules for the conduct of proceedings before the council pertaining to the disputes in the Labour Relations Act, No 66 of 1995 as amended is set out in Annexure "K" to this agreement.

## **29. EXEMPTIONS**

- (1) The council, in terms of section 32 of the Labour Relations Act, 66 of 1995 hereby confirms the status of an exemptions committee to consider applications for exemption from any of the provisions of this Agreement.
- (2) The application for exemption must be fully supported and include the following particulars:
  - (a) the clauses from which the exemption is sought;
  - (b) the period for which the exemption is required; and
  - (c) proof that the application has been discussed with the other party and its representatives and the response.
- (3) The secretary will refer the application for exemptions to the exemptions committee together with the comments of the Secretary.
- (4) The exemptions committee must consider the application and may call for further oral or written submissions from any of the parties.
- (5) The exemptions committee will inform the applicant party within fourteen days of its decision.
- (6) In making its decision, the exemptions committee must-consider-
  - (a) the submissions of the parties;
  - (b) the extent of the consultation between the parties and other role players;
  - (c) the scope of the exemption sought;
  - (d) the period for which exemption is sought;
  - (e) the effect of the exemption on basic conditions of employment;
  - (f) the impact of the exemption on collective bargaining in the sector;
  - (g) other economic and social factors.
- (7) Any party may appeal the decision of the exemption committee, to the Exemptions Appeal Board , within 30 days of being informed by the council of the ruling.

## **30. EXEMPTIONS APPEAL BOARD**

- (1) The council In terms of section 32 of the Labour Relations Act, 66 of 1995, hereby establishes an Exemptions Appeal Board to hear and decide, as soon as possible any appeal brought against –
  - (a) the council's refusal of a non-party's application for exemption from the provisions of this agreement.
  - (b) the withdrawal of such an exemption by the council.
- (2) The Exemptions Appeal Board will comprise of three persons appointed by the the executive committee with two persons forming a quorum.
- (3) The appellant must set out the grounds of appeal in full traversing both the disputes of fact and questions of law.
- (4) The council may elect to oppose the appeal in which event it must file opposing papers.
- (5) Oral arguments may be permitted by the Exemptions Appeal Board.
- (6) The council may be represented by an official while the other party may be represented by its director, member or employee or an official from a registered trade union or registered employers' organisation.

Thus signed on this \_\_\_\_\_ day of \_\_\_\_\_ 2013 at Johannesburg.

\_\_\_\_\_

CHAIRMAN

\_\_\_\_\_

DEPUTY CHAIRMAN

\_\_\_\_\_

SECRETARY

EMPLOYER'S ORGANISATION

\_\_\_\_\_

CATRA

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PCA

TRADE UNIONS

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SACCAWU

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HOTELICCA

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