



# NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY

## HEAD OFFICE

**Address:** 7th Floor, Industria House, 350 Victoria Rd, Salt River, 7925  
**Tel:** 021 460 4020 **Fax:** 021 460 4191 **Post:** PO Box 1142, Woodstock 7915 **Website:** www.nbc.org.za

### NATIONAL MAIN COLLECTIVE AGREEMENT

#### PART A: PROVISIONS FOR THE EASTERN CAPE REGION

Herewith follows the preamble and Part A of the Agreement published under Government Notice No R.1154 in Government Gazette No 28280 of 15 December 2005, as Amended, Extended, Re-Enacted, Corrected and Renewed as per the Government Notices below:

Amended/Extended/Re-Enacted/ Corrected/Renewed	Government Notice	Government Gazette	Date of Publication
Correction Notice	R.82	28428	03.02.2006
Correction Notice	R.647	28976	07.07.2006
Renewed from 08/09/06 to 31/08/07	R.884	29174	08.09.2006
Cancellation Notice	R.1078	29332	03.11.2006
Re-Enacted, Amended & Extended further to 31/08/08	R.1079	29332	03.11.2006
Correction Notice	R.1232	29434	08.12.2006
Renewed from 14/09/07 to 31/08/12	R.844	30276	14.09.2007
Cancellation Notice	R.1052	30443	09.11.2007
Re-Enacted, Amended & Extended further to 31/08/12	R.1053	30443	09.11.2007
Cancellation Notice	R.1008	31434	19.09.2008
Re-Enacted, Amended & Extended	R.1009	31434	19.09.2008
Cancellation Notice	R.214	33040	19.03.2010
Re-Enacted, Amended & Extended	R.215	33040	19.03.2010
Cancellation Notice	R.1219	33893	24.12.2010
Re-Enacted, Amended & Extended	R.1220	33893	24.12.2010
Extension Notice to 31/08/15	R.761	35683	14.09.2012
Re-Enacted, Amended & Extended further to 31/08/15	R.762	35683	14.09.2012
Extension Notice to 31/08/16	R.278	36360	12.04.2013
Re-Enacted, Amended & Extended further to 31/08/16	R.279	36360	12.04.2013

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#### DISCLAIMER

Whilst every care has been taken to ensure that this Consolidated Agreement is accurate in all respects, the Council does not accept responsibility for any inaccuracy or deviation from the original text of the Agreements as published under the Government Notices listed on the front cover of this document.

The text of the agreement, amendments thereto and correction notices where applicable, as published in the abovementioned Government Notices are binding in terms of each thereof.

#### REGIONAL CHAMBERS:

##### CAPE

Industria House  
350 Victoria Road  
Salt River 7925  
P.O. Box 1142  
Woodstock 7915  
Tel: 021 460 4000  
Fax: 021 447 0628

##### KWAZULU NATAL

127/129 Magwaza Maphalala Street (Gale Street)  
Umbilo, Durban 4001  
P.O. Box 18354  
Dalbridge 4014  
Tel: 031 362 0700  
Fax: 031 307 6716

##### NORTHERN

1st Floor, Garment Centre  
148 Kerk Street  
Johannesburg 2001  
P.O. Box 5101  
Johannesburg 2000  
Tel: 011 402 2737  
Fax: 011 402 7375

**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY  
NATIONAL MAIN COLLECTIVE AGREEMENT  
PART A: PROVISIONS FOR THE EASTERN CAPE REGION**

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**GOVERNMENT NOTICE**

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**DEPARTMENT OF LABOUR**

**No. R. 1154**

**15 December 2005**

**LABOUR RELATIONS ACT, 1995**

**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY:**

**EXTENSION TO NON-PARTIES OF NATIONAL MAIN COLLECTIVE AGREEMENT**

I, MEMBATHISI MPHUMZI SHEPHERD MDLADLANA, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the National Bargaining Council for the Clothing Manufacturing Industry, and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry, with effect from 19 December 2005 and for the period ending 31 August 2006.

**M M S MDLADLANA  
Minister of Labour**

**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY**

**NATIONAL MAIN COLLECTIVE AGREEMENT**

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the

Cape Clothing Association

Coastal Clothing Manufacturers' Association

Eastern Province Clothing Manufacturers' Association

Free State and Northern Cape Clothing Manufacturers' Association

Transvaal Clothing Manufacturers' Association

(hereinafter referred to as the "employers" or the "employers' organisations")  
of the one part, and the

Southern African Clothing and Textile Workers' Union

(hereinafter referred to as the "employees" or the "trade union"),  
of the other part, being the parties to the National Bargaining Council for the  
Clothing Manufacturing Industry.

## **1. SCOPE OF APPLICATION**

- (1) The terms of this Agreement shall be observed in the Clothing Manufacturing Industry in all areas of the Republic of South Africa as individually provided for in each of the following Parts:

Part A Provisions for the Eastern Cape Region

Part B Provisions for the Free State and Northern Cape Region

Part C Provisions for the KwaZulu-Natal Region

Part D Provisions for the Northern Region (Clothing)

Part E Provisions for the Northern Region (Knitting)

Part F Provisions for the Western Cape Region (Clothing)

Part G Provisions for the Western Cape Region (Country Areas)

Part H Provisions for the Western Cape Region (Knitting)

Part I Provisions for the Non-Metro Areas

- (b) by the employers and employees in the Clothing Industry who are members of the employers' organisations and the trade union, respectively.

- (2) Clauses 1 (1) (b) and 2 of this Agreement shall not apply to employers and employees who are not members of the employers' organisations and the trade union respectively.

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

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 (2) of the Act, and shall remain in force until 31 August 2016. This Agreement shall bind the Parties and their members and shall remain effective beyond the expiry date determined by the Minister or until the Parties agree otherwise.

## **3. SPECIAL PROVISIONS**

The provisions contained in clause 11.1(1) and (5), 14.4B and 14.6(5) of Part A; clauses 19B, 23A(1) and (5) and 34(5) of Part B; clauses 4 (5), 23B, 27(1) and (4) and 38(5) of Part C; clauses 19B, 22(5), 25(1) and 26A(1) and (2) of Part D; clauses 13A(1) and (2), 16B and 28(5) of Part E; clauses 11(4)(b), 14(1) and (5), 19B, 26(13)(a) to 26(13)(g)(v) and 37(5) of Part F; clauses 11(4)(b), 14(1) and (5), 19B, 26(13)(a) to 26(13)(g)(v) and 37(5) of Part G; clauses 11(4)(b), 14(1) and (5), 19B, 26(13)(a) to 26(13)(g)(v) and 37(5) of Part H and clause 34(5) of Part I of the Agreement published under Government Notices Nos. R. 1154 of 15 December 2005, R. 884 of 8 September 2006 and R.844 of 14 September 2007 (hereinafter referred to as the "Former Agreement"), as further amended, extended and re-enacted from time to time, shall apply to employers and employees who are members of the parties to the collective agreement.

## **4. GENERAL PROVISIONS**

The provisions contained in clauses 3 to 10, 11.1 (2) to (4), 11.2 to 14.4A, 14.5 to 14.6 (4) and 14.6 (6) to 18 of Part A; clauses 3 to 19A, 20 to 22, 23A (2) to (4), 23B to 34 (4) and 34 (6) to 38 of Part B; clauses 3 to 4(4), 4(6) to 23A, 24 to 26, 27(2) and (3), 27(5) to 38(4) and 38(6) to 41 of Part C; clauses 3 to 19A, 20 to 22 (4), 22 (6) to 24, 25 (2) to (12) and 26A (3) to 29 of Part D; clauses 3 to 12, 13A (3) to 16A, 17 to 28 (4) and 28 (6) to 33 of Part E; clauses 3 to 11 (4) (a), 11 (5) to 13, 14 (2) to (4), 15 to 19A, 20 to 26 (12), 26 (13) (g) (vi) to 37 (4) and 37 (6) to 45 of Part F; clauses 3 to 11 (4) (a), 11 (5) to 13, 14 (2) to (4), 15 to 19A, 20 to 26 (12), 26 (13) (g) (vi) to 37 (4) and 37 (6) to 45 of Part G; clauses 3 to 11 (4) (a), 11 (5) to 13, 14 (2) to (4), 15 to 19A, 20 to 26 (12), 26 (13) (g) (vi) to 37 (4) and 37 (6) to 45 of part H; clauses 3 to 34 (4) and 34 (6) to 42 of Part I of the Former Agreement (as further amended, extended and re-enacted from time to time), shall apply to employers and employees.

Original Agreement signed at **CAPE TOWN** on behalf of the Parties the **14th day of SEPTEMBER**  
**2005**. Latest amendments signed on 12 April 2013.

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**AMANDA CRONJE**  
Chairperson

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**FREDA OOSTHYSEN**  
Vice-Chairperson

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**S D NDUNA**  
General Secretary

## **PART A : PROVISIONS FOR THE EASTERN CAPE REGION**

### **1. SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT**

- (1) The terms of this part of the Agreement shall be observed in the Clothing Industry-
  - (a) by all employers who are members of the employers' organisation and by all employees who are members of the trade union and who are engaged or employed in the said Industry;
  - (b) within the Magisterial Districts of-
    - (i) Port Elizabeth, including that portion of Hankey which, prior to the publication of Government Notice No. 1515 of 4 October 1963, fell within the Magisterial District of Port Elizabeth, including that portion which was transferred by the publication of Government Notice No. 1687 of 5 September 1975 to Uitenhage and excluding that portion of Hankey which was transferred by Government Notice No. 1974 of 26 September 1980 to Port Elizabeth; and
    - (ii) East London, including that portion which was transferred to Mdantsane by Government Notice No. 1481 of 27 August 1971, excluding those portions of the Ciskei that were transferred to East London by Government Notice No. 1877 of 4 September 1981 and Government Notice No. 1079 of 10 June 1988 and including that portion that was transferred to Ciskei by Government Notice No. 2354 of 5 October 1990.
- (2) Notwithstanding the provisions of subclause (1), the terms of this part of the Agreement shall apply only in respect of employees for whom wages are specified in this part of the Agreement.
- (3) The terms of this part of the Agreement shall not apply to a designer, foreman, factory clerk and supervisor who are remunerated monthly at a rate in excess of the weekly wage specified in this part of the Agreement for such employees, multiplied by four and a third, and whose conditions of employment include the following provisions:
  - (a) That his contract of service may not be terminated without a month's notice;
  - (b) that his monthly remuneration may not be reduced as a result of short time working, unpaid public holidays or periods of absence through illness, not exceeding 10 working days in any one year of employment and subject to the production of a medical certificate, if required by the employer.
- (4) The terms of this part of the Agreement shall also cover all garment knitting employees and who shall receive the same package labour cost increase as agreed to for all other employees covered by the scope of the Council.
- (5) Clauses 1 (1) (a), 2, 11.1, 14.4.B and 14.6(5) of this part of the Agreement shall not apply to employers and employees who are not members of the employer's organisation and trade union, respectively.

### **2. PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT**

This part of the Agreement shall come into operation on the same date as fixed by the Minister of Labour in terms of Clause 2 of this Agreement.

### **3. DEFINITIONS**

- (1) Any expressions used in this part of the Agreement, which are defined in the Labour Relations Act, No. 66,1995, shall have the same meaning as in that Act; any reference

in this part of the Agreement to an Act shall include any amendments to such Act; and unless the contrary intention appears, words importing the masculine gender shall also include females, unless inconsistent with the context-

"**Act**" means the Labour Relations Act No. 66, 1995;

"**band-knife cutter**" means an employee, other than a cutter-out, engaged in cutting out garments or parts of garments from a 'lay' or 'layers' of material with a band-knife;

"**beader**" means an employee who is engaged in rolling the open end of dipped gloves to form a bead ring of rubber, and in assisting with coagulant dipping and oven drying or curing operations;

"**boiler attendant**" means an employee engaged in firing a boiler and maintaining the water level and steam pressure;

"**checker in the knitting section**" means an employee in the knitting section engaged in checking garments during folding and bagging operations and/or checking unfinished garments or parts of knitted garments for faults;

"**chlorinator**" means an employee who is engaged in measuring and mixing ingredients for the chlorination (washing) process, and in loading, unloading and operating chlorination equipment in the manufacture of rubber gloves and in transferring gloves to rinse water;

"**cleaner**" means an employee engaged in dusting or sweeping inside the establishment;

"**cleaning**" means the removal of spots, marks or foreign matter from materials or garments and/or the removal of threads;

"**clerk**" means an employee who is engaged in writing, typing or filing or in any other form of clerical work, and includes a cashier, a telephone switchboard operator and an operator of a machine used for accounting and calculating purposes or of a punch card machine, but does not include any other class of employee elsewhere defined in this clause, notwithstanding the fact that clerical work may form part of such employee's work;

"**clicker**" means an employee who sorts, selects, marks in and subsequently cuts leather garments by means of a clicking knife from leather supplied to him;

"**cloakroom attendant**" means an employee who is in charge of any change room and/or room in which employees eat and/or any rooms or lockers in which employees store their personal effects and who may in addition supervise the cleaning of such rooms and ablution facilities and shall include any person who is in charge of first-aid;

"**Clothing Industry**" or "**industry**" means, without in any way limiting the ordinary meaning of the expression, the industry in which employers and their employees are associated for the making of all classes of the undermentioned items of apparel/clothing/garments:

Belts (manufactured from cloth), braces, brassieres, caps, collars, corsetry, cummerbunds, gloves, handkerchiefs, hats, hosiery (including ladies' stockings, pantihose and socks), knitted outerwear, knitted underwear; nightwear (including pyjamas), outerwear, protective wear (including overalls and wetsuits), scarves, shirts, suspenders, ties (including bowties), and underwear.

#### **A. and includes -**

- (a) all operations incidental thereto and consequent thereon and all succeeding processes or operations performed in connection therewith carried on by such employers and any of their employees irrespective of the process or method used in such making and irrespective of whether such processes or operations are performed on the premises of such employers, or elsewhere;
- (b) all types of hand-sewing operations (including beading and embroidery), whether by hand and/or machine, on garments and/or parts of garments and irrespective of whether or not such operations are performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (c) any of the aforementioned items made for quantity production tailoring made to

the order of any government department, provincial administration, S A Airways, Telkom, Transnet or local authority;

- (d) any part(s) of garments whether by means of a knitting process or otherwise;
- (e) design-room services, irrespective of whether or not such services are provided by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (f) fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery;
- (g) screen process printing on garments and parts of garments performed in a clothing, textile and/or knitting establishment;
- (h) tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or on the responsibility of such dealers;
- (i) the changing of labels, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (j) the making of button-holes, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (k) the ironing of garments and/or parts of garments irrespective of whether or not such ironing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work on newly manufactured garments on behalf of such employers and any of their employees;
- (l) the making up of garments from knitted fabric in the establishment in which the fabric was knitted;
- (m) the making up of sample garments and/or parts of garments, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (n) the marking-in and/or cutting of garments or parts of garments, irrespective of whether or not such operation(s) is/(are) performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees; and
- (o) the packing of garments and/or parts of garments irrespective of whether or not such packing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work with newly manufactured garments on behalf of such employers and any of their employees;

**B. but excludes -**

- (a) belts, braces, garters, suspenders and armlets manufactured from leather;
- (b) boxing gloves;
- (c) retail dressmaking, i.e., the making of single garments to the measurement of individual persons;
- (d) retail millinery, i.e., the making of hats in shops for sale in such shops and the making of single hats to the measurement of individual persons;



- (e) tailor-made garments for individual persons, provided such garments are not manufactured in a factory.

**"complying employer"** means an employer whose company or concern is fully registered with the Council or a council which amalgamated to form the Council, who has given effect to the applicable Council Main and Benefit Fund Collective Agreements in each of its establishments or who has received due exemption therefrom, who is up to date with Council and any Benefit Fund contributions, trade union and employer subscriptions and who has registered all permanent and contract employees with the Council;

**"compounder"** means an employee who is engaged in the measuring by volume and mass and the mixing of ingredients used in compounds in the manufacture of rubber gloves, and in operation and cleaning of mixing equipment and the drawing of chemicals and ingredients from stores;

**"Council"**, means the Cape Chamber (Eastern Cape sub-chamber) of the National Bargaining Council for the Clothing Manufacturing Industry;

**"cutter-out"** means an employee engaged in cutting out garments or parts of garments from a "lay" or "layers" of material by electric hand knife or by shears;

**"designer"** means an employee engaged in designing and/or making patterns;

**"despatcher"** means an employee who under general supervision is engaged in the making up of orders;

**"despatcher, unqualified"**, means a despatcher who has had less than one year's experience;

**"dipper"** means an employee who is engaged in dipping formers into compounds in the manufacture of rubber gloves, and in preparing and cleaning equipment, topping up tanks, inspecting compounds, loading drip racks and ovens, loading dipping gantry, operating dipping machines, finger tip control leaching, if applicable, loading and unloading curing ovens, stripping, checking for quality on a dip gauge, checking the thickness and visual appearance of gloves, and filling in reduction figures on a board; and falls into the following categories:

Category A: Small plant/conveyor/nitrile/cut resist dipper;

Category B: Gauntlet tank dipper;

Category C: Electrician's glove dipper;

**"establishment"** means any place in which any operation in connection with the Clothing Industry is carried on;

**"examiner"** means an employee, other than a checker in the knitting section, who is engaged in the final examination for quality requirements of finished garments;

**"experience"** means the total length of all periods of employment in the Industry of an employee in respect of whom wages are specified in this part of the Agreement, and shall be deemed to be continuous from the time the employee enters his employer's service until the time such service is terminated: Provided that an employee whose services are terminated at the end of his employer's working year and who resumes work with his former employer within 14 days of the re-opening of the employer's factory shall be deemed to have worked continuously;

**"factory clerk"** means an employee who is engaged in one or more of the following duties or capacities in a garment knitting establishment:

- (a) Calculating piece-work or bonus payments from production schedules;
- (b) checking attendance records or recording particulars of employees at work or absent from work; preparing wage cards or envelopes for subsequent use by another employee;
- (c) checking or recording for production control;

- (d) copying invoices or other documents by machine or hand;
- (e) issuing machine parts, tools, oil and other equipment from workshop store and/or recording same;
- (f) issuing material, lining, canvas, trimming, buttons, cotton and zips to the different departments of an establishment and/or recording same;
- (g) issuing trimming, lining, cotton and zips to employees of an establishment from a substore and/or recording same;
- (h) receiving into stock, goods, material, trimming, tools and other equipment and checking goods received against specifications of goods ordered such as quantity, size and quality;
- (i) recording particulars of materials or general stores consumed or to be consumed or keeping stock records;
- (j) recording particulars of waste;

Provided that a calculator may be used in carrying out one or more of the above duties;

**"fitter and/or trimmer"** means an employee engaged in fitting and/or trimming a part or parts of garments after they have been marked in by the marker-in, according to the pattern provided by the employer, and cut to shape by the cutter-out;

**"football jersey cutter"** means an employee who is engaged in marking-in and/or cutting material for football jerseys with any power-driven cutting machine, knife or shears;

**"foreman"** means an employee who is in charge of the employees including supervisors, in a factory and who exercises control over such employees and who is charged with the responsibility for engaging or terminating the employment of such employees, and who is responsible for the efficient performance by them of their duties;

**"general assistant"** means an employee engaged wholly or mainly in one or more of the following occupations:

- (a) Cleaning vehicles or machines;
- (b) loading or unloading goods;
- (c) carrying goods or stacking;
- (d) packing goods for despatch or delivery, nailing up packing cases or sewing up bales;
- (e) delivering letters, messages or goods no foot or by means of a foot or hand propelled vehicle;
- (f) making or maintaining fires or removing refuse or ashes;
- (g) mixing rubber solutions for rubberised garments;
- (h) fixing machine belts;
- (i) lubricating machines;

**"general worker"** means an employee engaged on one or more of the following operations:

- (a) Applying adhesive solutions on seams, edges and other parts of clothing and rolling them over with a roller;
- (b) attaching of ornamental trimmings or fasteners by hand or press;
- (c) cutting of aprons;

- (d) fastening permanent turn-ups;
- (e) fastening catch in top of trousers and various odds and ends of sewing by hand;
- (f) fastening edge-stays;
- (g) fastening by hand facings inside already based into position;
- (h) feeding into and taking out of automatic roller or form presses;
- (i) felling bindings;
- (j) felling crutch linings in trousers;
- (k) hemming bottoms by hand;
- (l) folding of garments and/or inserting folded garments into containers;
- (m) ironing open seams during the course of production and ironing loose collars;
- (n) making and sewing on hangers by hand;
- (o) making covered buttons and/or buckles;
- (p) making of the positions for pockets, buttons, loops, fasteners, darts, turn-ups, buttonholes, hems and the like, preparatory to further operations;
- (q) marking and/or trimming of the shapes of the necks of shirts and underwear;
- (r) marking off and/or cutting by hand of any trimming (not being piecegoods) to a given length or shape;
- (s) marking by template and cutting to shape of materials previously cut out;
- (t) nipping by machine or hand;
- (u) pinning of finished garments;
- (v) putting on bridles by hand;
- (w) pulling out bastings;
- (x) sewing buttons by hand;
- (y) soaping;
- (z) sorting out of garments or parts of garments as required for various operations-
  - (aa) stamping of sizes, identity or mark numbers or other details on garments and/or the removal of threads;
  - (ab) tacking;
  - (ac) the removal of spots, marks or foreign matter from materials or garments and/or the removal of threads;
  - (ad) touching up of completed garments with a hand iron after they have been pressed by a presser in the infants' end children's section;
  - (ae) turning bonnet brims and pressing same;
  - (af) turning out or over of the edges of collar facings, belts, cuffs, tabs, pockets and/or flaps by hand or machine, and the turning of garments or parts thereof inside out;
  - (ag) turning sleeves or trousers inside out;
  - (ah) underpresser;
  - (ai) welding plastic clothing;
  - (aj) carrying or stacking completed garments which may be in containers or parts of uncompleted garments, the total mass of which shall not be more than 9 kg;
  - (ak) packing goods for dispatch or delivery, excluding the making up of orders;

- (al) delivering of messages within the establishment;
- (am) sorting leather for the manufacture of gloves;
- (an) counting components and cut parts used in the manufacture of gloves;
- (ao) rounding out the fingers of gloves that have been turned;
- (ap) turning the cuffs of completed gloves;
- (aq) attaching press-studs;
- (ar) pneumatic wire stitching;
- (as) preparation of leather for the manufacture of gloves, including the pasting thereof;

**"glover turner"** means an employee who grades patterns from any material to various sizes from a master pattern and according to requirements or directions given to him;

**"Grade A employee"** means an employee engaged in one or more of the following duties or capacities in a garment knitting establishment:

- (a) **"handyman"** means an employee who makes minor repairs or effects renovations to buildings, fixtures and fittings and who covers ironing and pressing machines or tables with any type of materials;
- (b) **"machine knitter"** means an employee operating one or a set of knitting machines and capable of identifying faults, changing bad needles and making minor adjustments to such items as yarn tensions when necessary;
- (c) **"knitting machine mechanic"** means an employee who is engaged in making repairs or adjustments to machinery or equipment used directly in the manufacture of products of an establishment;

**"Grade B employee"** means an employee engaged in one or more of the following duties or capacities in a garment knitting establishment:

- (a) assistant to handyman;
- (b) **"chaser"** means an employee who searches and locates garments or orders in an establishment and who may organise orders through the establishment;
- (c) **"cook"** means an employee engaged in preparing meals and cooking;
- (d) **"design room assistant"** means an employee who assists employees in the design room in one or more of the following duties or capacities;
  - (i) Fetching or taking patterns, garments, parts of garments, cotton, cloth or trimmings to and from the different departments in the establishment;
  - (ii) cutting out patterns after they have been marked out by pattern makers or pattern graders;
  - (iii) stamping identification details such as size, style and season on cut out patterns;
- (e) **"knitter's assistant"** means an employee who brings yarn to and from the machines, removes fabric from the machines, unloads and reloads yarn onto the machine and can stop and start a machine, all under the general supervision of a knitter;
- (f) **"knitting machine hand operator"** means an employee who operates a hand operated knitting machine;

- (g) **"knitting shaper"** means an employee who cuts semi-fashioned garments (body or sleeve blanks) individually or collectively;
- (h) **"laboratory assistant"** means an employee who prepares samples and who make initial and routine tests and record the results thereof;
- (i) **"linker"** means an employee engaged in operating a linking machine;
- (j) **"mender"** means an employee who examines knitted garments, other than berets, for defects and rectifies such defects;
- (k) **"NES (Knitting)"** means an employee employed at a Garment Knitting establishment, in a capacity not elsewhere specified in this part of the Agreement;

**"Grade C employee"** means an employee engaged in one or more of the following duties or capacities in a garment knitting establishment:

- (a) **"bobbin-winder"** means an employee engaged in winding bobbins;
- (b) draw-thread operator;
- (c) drawn-thread mender;
- (d) hand sewer;
- (e) **"label printer"** means an employee engaged in printing or writing labels;
- (f) **"line feeder"** means an employee engaged in feeding and/or collecting work, garments, parts of garments, cotton, trimmings, cartons, boxes and labels on the line or in a department of an establishment;
- (g) sock trimmer;
- (h) toe-closing by machine;
- (i) **"turner"** means an employee engaged in turning garments or parts of garments;
- (j) **"winder"** means an employee engaged in operating a yarn winding machine;
- (k) zip machine operator;
- (l) **"fringe threader"** means an employee threading and knotting strands of thread into ends of scarves and trimming the fringe after threading;

**"grader"** means an employee who grades patterns from any material to various sizes from a master pattern and according to requirements or directions given to him;

**"hourly wage"** means the total weekly wage divided by 42;

**"instructor"** means an employee who is responsible for training employees in any garment knitting establishment or who in any manner whatsoever assists an employer in or about a factory in carrying out training programmes to improve the productivity of his employees;

**"layer-up"** means an employee engaged in laying material preparatory to cutting, and/or dusting with powder through perforated patterns, and/or bundling parts of garments, and/or spraying of outlines on pre-laid patterns, and/or the placing of carbon sheets on a lay, and/or tracing patterns, and/or making carbon copies or machine duplicated copies of pre-marked lays;

**"learner"** means, in the case of an employee referred to in subclause 6.1 (1) (b), (c), (h) and (v), and employee who has had less than four and a half years' experience; in the case of an employee referred to in subclause 6.1 (1) (d), (f), (j) and (p), an employee who has had less than two and a half years' experience; in the case of an employee referred to in subclause 6.1 (1) (9) and (o), an employee who has had less than two years' experience; in the case of an employee referred to in subclause 6.1 (1) (m), an employee who has less than one and a half years' experience; in the case of an employee referred to in subclause 6.1 (1) (n), an employee who has less than one year's experience and in the case of an employee referred to in subclause 6.1 (1) (i), (k) and (l), an employee who has had less than a half a year's experience;

**"machine serviceman"** means an employee engaged in adjusting and/or maintaining machines and boilers in good repair;

**"machinist"** means an employee who performs any operation by sewing and/or linking and/or cuff seaming machines and/or mechanical stapling machines and includes the operation of a mechanical and/or hydraulic cutting press in the glove making section and a tailor;

**"marking"** means the marking of the position of the pockets, buttons, button-holes, loops, fasteners, darts, hems, turn-ups and the like preparatory to further operations;

**"marker-in"** means an employee engaged in marking in or chalking around outlines of garments or lays of garments from patterns provided by the employer and who may cut out garments or lay-ups of garments by electric, hand or band-knife or by shears;

**"motor vehicle driver"** means an employee who is engaged in driving a motor vehicle, and for the purposes of this definition driving a motor vehicle includes all periods of driving and any time spent by the driver on work connected with the motor vehicle or the load an all periods during which he is obliged to remain at his post in readiness to drive;

**"mouldmaker"** means an employee who is engaged in the making of mould by mixing ingredients and pouring resultant paste into or onto formers in the manufacture of gloves;

**"National Council"**, means the National Bargaining Council for the Clothing Manufacturing Industry, registered in terms of the Act;

**"NES (Clothing)"** means an employee employed at a Clothing establishment, in a capacity not elsewhere specified in this part of the Agreement;

**"night shift worker"** means an employee who is required to work his normal shift between the hours of 22h00 and 06h00 on any day;

**"normal shift worker"** means an employee who works shifts, other than a twilight shift, in or in connection with an activity with respect to which work is performed in two or more shifts per day;

**"occupier"** means the person having the general management and control of the workshop, and if there are two or more such persons, includes all such persons;

**"packer"** means an employee who is engaged in counting and packing finished products in the glove-making section of the Clothing Industry, and in checking beads, size, overall length, pinholes, thickness and appearance, affixing labels where applicable, and packing into plastic bags and/or containers;

**"pattern grader"** means an employee at a garment knitting establishment who grades patterns to various sizes and makes ancillary patterns to a master pattern and includes an employee engaged in making master patterns for pleating process;

**"pattern maker"** means an employee at a garment knitting establishment engaged in designing and/or making master patterns;

**"part-time driver of a motor vehicle"** means an employee who is ordinarily engaged on duties other than driving a motor vehicle but who on more than two days in any week is engaged in driving a motor vehicle for not more than three hours in total on any such day, and for the purposes of this definition driving a motor vehicle includes all periods of driving and any time spent by the driver while in charge of the vehicle or on work connected with the vehicle or the load;

**"paternity"** means any event connected to the birth or adoption of a child parented by an eligible employee.

**"piece-work"** means any system by which remuneration is calculated by quantity or output of work done;

**"plainsewer"** means an employee engaged in performing one or more of the following operations by hand:

- (a) Felling linings or seams already basted into position;
- (b) felling necks, shoulders or arm-holes;
- (c) fellin waistband linings or parts thereof;

**"premiums"** means without in any way limiting the ordinary meaning of the term, any consideration of whatever nature given in return of the training of an employee.

**"presser"** means an employee engaged in pressing completed garments by hand or machine;

**"progress examiner"** means an employee, other than a checker in the knitting section, engaged in examination for quality requirements of parts of or components of or uncompleted garments;

**"qualified"** means, in the case of an employee referred to in subclause 6.1 (1) (b), (c), (h) and (v), an employee who has had not less than four and a half years' experience; in the case of an employee referred to in subclause 6.1 (1) (d), (f) (j) and (p), an employee who has had not less than two and a half years' experience; in the case of an employee referred to in subclause 6.1 (1) (9) and (o), an employee who has had not less than two years' experience; in the case of an employee referred to in subclause 6.1 (1) (m), an employee who has not less than one and a half years' experience; in the case of an employee referred to in subclause 6.1 (1) (n), an employee who has not less than one year's experience and in the case of an employee referred to in subclause 6.1 (1) (i), (k) and (l), an employee who has had not less than half a year's experience.

**"quality control inspector"** means an employee who is engaged in the final examination for quality requirements of finished rubber gloves, and in checking pH, temperature, specific gravity and viscosity, testing dip plate tensile strengths of compounds, conducting an electrical test on finished gloves and completing records;

**"quality product co-ordinator"** means an employee who is engaged in classifying, sorting, inspecting and packing products in the glove-making section of the Clothing Industry;

**"short-time"** means a temporary reduction in the number of ordinary hours of work owing to slackness of trade, shortage of supplies, or a breakdown of plant or machinery or break-down or threatened breakdown of buildings;

**"specialised presser"** means an employee engaged in pressing all jackets being part of ladies' and gents' suits: Provided that where high grade overcoats are manufactured at any establishment, the Council may, after due consideration, require that any employees pressing such garments be included under this definition;

**"steam box pleater"** means an employee engaged on one or more of the following duties

- (a) putting material between two paper looms (formers) and preparing for steambox in hand or loom pleating process;
- (b) putting prepared formers in steambox and taking them out again in hand or loom pleating process;

- (c) taking material out of looms in hand or loom pleating process;
- (d) guiding material with paper through automatic pleating machine;

**"supervisor"** means an employee who under general supervision is responsible for the efficient performance of the duties of the employees or a section of the employees in a factory;

**"tailor"** means an employee engaged in all hand or machine operations relating to the production of men's outerwear, excluding the operations referred to in the definition of "plain sewer";

**"tea maker"** means an employee engaged in making tea or similar beverages and who may wash cups, saucers and kitchen utensils and who may be responsible for cleaning the kitchen and/or rest rooms;

**"temporary employee"** means an employee who is employed for a fixed period of not exceeding six months to replace an employee on confinement leave;

**"traveller's driver"** means an employee at a garment knitting establishment accompanying the traveller on his journey and assisting the traveller in driving and in packing, unpacking and displaying samples;

**"twilight shift"** means a shift, other than a normal shift, introduced by an employer between the hours 16h30 and 23h00 on any day from Monday to Friday;

**"twilight shift worker"** means an employee, other than a normal shift worker, employed any time between the hours 16h30 and 23h00 on any day from Monday to Friday with the specific intent of being employed on a twilight shift and who is not ordinarily employed by the employer who has introduced the twilight shift or any other employer;

**"underpresser"** means an employee, other than a presser, engaged in pressing processes during the course of manufacture;

**"unladen mass"** means the mass of any motor vehicle or trailer as recorded in a licence or certificate issued in respect of such motor vehicle or trailer by any authority empowered by law to issue licences in respect of motor vehicles: Provided that in the case of a two or three-wheeled motor cycle, motor scooter or auto-cycle or a cycle fitted with an auxiliary engine, with an engine capacity exceeding 50 cm, the unladen mass shall be deemed not to exceed 453 kg;

**"wage"** means the amount payable in terms of subclause 6.1 of this part of the Agreement in respect of the ordinary hours laid down in terms of subclause 7.1: Provided that-

- (i) if an employer regularly pays an employee an amount higher than the basic wage as specified in subclause 6.1 in respect of such ordinary hours, it shall mean such higher amount;
- (ii) the first proviso shall not be construed so as to refer to or include any remuneration which an employee who is employed on any basis provided for in subclause 6.10 received over and above the amount which he would have received if he had not been employed on such a basis;

**"watchman"** means an employee engaged in guarding premises or property;

**"workshop"** means any premises in which one or more employees are engaged in operations in the Industry;

- (2) For the purposes of this part of the Agreement an employee shall be deemed to be in that class in which he is wholly or mainly engaged.



#### 4. REGISTRATION OF EMPLOYERS

- (1) Every employer engaged in the Industry and to whom this part of the Agreement applies, shall ensure that he is registered with the Council within one month from the date of commencement of operations.
- (2) Where an employer is not yet registered under a previous Agreement, he shall do so within one month after this part of the Agreement comes into operation, or after he becomes engaged as an employer in the Industry.
- (3) The employer shall notify the Secretary of the Council, in writing, of the address of the premises, the names of the partners of the concern, or if a limited liability company, the names of the Secretary and directors.
- (4) The Secretary of the Council shall issue a signed registration certificate.

#### 5. EMPLOYEES

##### 5.1 Prohibited employment

No employer shall require or permit any person under the age of 15 years to work in the Industry.

##### 5.2 Proportion or ratio of employees

- (1) One qualified employee shall be employed by an employer before a reamer may be employed by him and the number of learners employed by him shall not exceed three times the number of qualified employees employed by him.

For the purposes of this subclause, a learner receiving not less than the remuneration of a qualified employee may be deemed to be a qualified employee.

- (2) One qualified marker-in shall be employed by an employer before a layer-up may be employed. Whenever any vacancy for a marker-in occurs in any establishment, the employer shall fill the vacancy from among the cutters-out in his employ provided such employee is suitable.
- (3) One qualified presser shall be employed by an employer before an employee may be employed on-
  - (a) the touching-up of completed garments with a hand iron; (b) underpressing.

#### 6. WAGES

##### 6.1 Minimum wages

- (1) Subject to the provisions of this part of the Agreement, the minimum wages that shall be paid to and accepted by the under-mentioned classes of employees employed at clothing establishments, shall be as set out hereunder:

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2012 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2012 = 80%
		R	R	R	R
( a )	<b>Foreman</b>	1387.50	1110.00	1394.50	1115.50
( b )	<b>Designer:</b>				
	(i) Qualified:	1769.00	1415.00	1777.50	1422.00
	(ii) Learners:				
	first six months of experience	603.50	483.00	606.00	485.00
	second six months of experience	703.00	562.50	705.50	564.50
	third six months of experience	841.50	673.00	845.50	676.50
	fourth six months of experience	937.00	749.50	941.50	753.00
	fifth six months of experience	1042.00	833.50	1047.50	838.00
	sixth six months of experience	1130.50	904.50	1135.50	908.50
	seventh six months of experience	1230.00	984.00	1236.50	989.00
	eighth six months of experience	1329.00	1063.00	1335.50	1068.50
	next four months of experience	1410.50	1128.50	1416.00	1133.00
	Thereafter, the wage specified in (b)(i) i.e.	1769.00	1415.00	1777.50	1422.00
( c )	<b>Grader:</b>				
	(i) Qualified:	1271.00	1017.00	1276.00	1021.00
	(ii) Learners:				
	first six months of experience	598.00	478.50	601.00	481.00
	second six months of experience	650.50	520.50	653.50	523.00
	third six months of experience	707.50	566.00	711.50	569.00
	fourth six months of experience	742.00	593.50	745.00	596.00
	fifth six months of experience	857.50	686.00	861.50	689.00
	sixth six months of experience	918.00	734.50	923.00	738.50
	seventh six months of experience	968.50	775.00	973.50	779.00
	eighth six months of experience	1018.00	814.50	1022.50	818.00
	next four months of experience	1083.00	866.50	1088.50	871.00
	Thereafter, the wage specified in (c)(i) i.e.	1271.00	1017.00	1276.00	1021.00
( d )	<b>Marker-in:</b>				
	(i) Qualified:	968.50	775.00	973.50	779.00
	(ii) Learners:				
	first six months of experience	598.00	478.50	601.00	481.00
	second six months of experience	640.00	512.00	644.00	515.00
	third six months of experience	683.50	547.00	687.00	549.50
	fourth six months of experience	729.00	583.00	732.00	585.50
	next four months of experience	814.50	651.50	818.50	655.00
	Thereafter, the wage specified in (d)(i) i.e.	968.50	775.00	973.50	779.00
( e )	<b>Band-knife cutter:</b>				

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2012 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2012 = 80%
		R	R	R	R
	Qualified	968.50	775.00	973.50	779.00
	Note: Subject to the availability of a band knife, only a qualified cutter-out shall progress to this class of employee				
( f )	<b>Cutter-out:</b>				
	(i) Qualified:	856.50	685.00	860.50	688.50
	(ii) Learners:				
	first six months of experience	598.00	478.50	601.00	481.00
	second six months of experience	627.00	501.50	629.50	503.50
	third six months of experience	647.00	517.50	649.50	519.50
	fourth six months of experience	670.50	536.50	673.00	538.50
	next four months of experience	699.00	559.00	703.00	562.50
	Thereafter, the wage specified in (f)(i) i.e.	856.50	685.00	860.50	688.50
( g )	<b>Layer-up:</b>				
	(i) Qualified:	671.00	537.00	674.00	539.00
	(ii) Learners:				
	first six months of experience	598.00	478.50	601.00	481.00
	second six months of experience	611.50	489.00	614.00	491.00
	third six months of experience	621.50	497.00	625.00	500.00
	fourth six months of experience	631.00	505.00	634.50	507.50
	Thereafter, the wage specified in (g)(i) i.e.	671.00	537.00	674.00	539.00
( h )	<b>Specialised presser:</b>				
	(i) Qualified:	933.50	747.00	939.00	751.00
	(ii) Learners:				
	first six months of experience	598.00	478.50	601.00	481.00
	second six months of experience	622.50	498.00	626.00	501.00
	third six months of experience	645.00	516.00	648.00	518.50
	fourth six months of experience	670.50	536.50	673.00	538.50
	fifth six months of experience	697.50	558.00	700.00	560.00
	sixth six months of experience	721.00	577.00	723.50	579.00
	seventh six months of experience	788.00	630.50	792.50	634.00
	eighth six months of experience	817.00	653.50	820.50	656.50
	next four months of experience	835.00	668.00	838.50	671.00
	Thereafter, the wage specified in (h)(i) i.e.	933.50	747.00	939.00	751.00
( i )	<b>Examiner:</b>				
	(i) Qualified:	800.00	640.00	802.50	642.00
	(ii) Learners:				
	first six months of experience	670.50	536.50	673.00	538.50
	Thereafter, the wage specified in (i)(i) i.e.	800.00	640.00	802.50	642.00

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2012 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2012 = 80%
		R	R	R	R
(j)(a)	<b>Machinist:</b>				
	(i) Qualified:	784.00	627.00	787.00	629.50
	(ii) Learners:				
	first six months of experience	598.00	478.50	601.00	481.00
	second six months of experience	612.00	489.50	614.50	491.50
	third six months of experience	630.00	504.00	633.50	507.00
	Thereafter, the wage specified in (j)(i) i.e.	784.00	627.00	787.00	629.50
(j)(b)	<b>Presser, trimmer, factory clerk, embroidery machinist and cloak room attendant:</b>				
	(i) Qualified:	784.00	627.00	787.00	629.50
	(ii) Learners:				
	first six months of experience	598.00	478.50	601.00	481.00
	second six months of experience	612.00	489.50	614.50	491.50
	third six months of experience	630.00	504.00	633.50	507.00
	fourth six months of experience	652.00	521.50	654.00	523.00
	next four months of experience	668.50	535.00	671.50	537.00
	Thereafter, the wage specified in (j)(i) i.e.	784.00	627.00	787.00	629.50
(k)	<b>Progress examiner:</b>				
	(i) Qualified:	792.50	634.00	796.00	637.00
	(ii) Learners:				
	first six months of experience	628.50	503.00	630.50	504.50
	Thereafter, the wage specified in (k)(i) i.e.	792.50	634.00	796.00	637.00
(l)	<b>Despatcher:</b>				
	(i) Qualified:	750.50	600.50	753.50	603.00
	(ii) Learners:				
	first six months of experience	633.50	507.00	636.00	509.00
	Thereafter, the wage specified in (l)(i) i.e.	750.50	600.50	753.50	603.00
(m)	<b>Checker in the Knitting section:</b>				
	(i) Qualified:	666.50	533.00	670.00	536.00
	(ii) Learners:				
	first six months of experience	598.00	478.50	601.00	481.00
	second six months of experience	611.50	489.00	614.00	491.00
	third six months of experience	627.00	501.50	629.50	503.50
	Thereafter, the wage specified in (m)(i) i.e.	666.50	533.00	670.00	536.00
(n)	<b>General Worker:</b>				
	(i) Qualified:	646.50	517.00	649.00	519.00
	(ii) Learners:				
	first six months of experience	598.00	478.50	601.00	481.00

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2012 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2012 = 80%
		R	R	R	R
	second six months of experience	611.50	489.00	614.00	491.00
	Thereafter, the wage specified in (n)(i) i.e.	646.50	517.00	649.00	519.00
( o )	<b>Steambox pleater:</b>				
	(i) Qualified:	762.00	609.50	765.50	612.50
	(ii) Learners:				
	first six months of experience	598.00	478.50	601.00	481.00
	second six months of experience	625.50	500.50	628.50	503.00
	third six months of experience	645.00	516.00	648.00	518.50
	fourth six months of experience	670.00	536.00	672.50	538.00
	Thereafter, the wage specified in (o)(i) i.e.	762.00	609.50	765.50	612.50
( p )	<b>Plain sewer:</b>				
	(i) Qualified:	670.00	536.00	672.50	538.00
	(ii) Learners:				
	first six months of experience	598.00	478.50	601.00	481.00
	second six months of experience	605.00	484.00	607.50	486.00
	third six months of experience	612.00	489.50	614.50	491.50
	fourth six months of experience	621.50	497.00	625.00	500.00
	next four months of experience	633.50	507.00	636.00	509.00
	Thereafter, the wage specified in (p)(i) i.e.	670.00	536.00	672.50	538.00
( q )	<b>General assistant</b>	732.00	585.50	735.50	588.50
( r )	<b>Cleaner</b>	652.00	521.50	654.00	523.00
( s )	<b>Tea maker</b>	652.00	521.50	654.00	523.00
( t )	<b>Watchman</b>	792.50	634.00	796.00	637.00
( u )	<b>Motor vehicle driver:</b>				
	(i) (aa) does not exceed 453 kg	790.00	632.00	793.00	634.50
	(ab) exceeds 453 kg but does not exceed 2 722 kg	849.50	679.50	853.50	683.00
	(ac) exceeds 2 722 kg but does not exceed 4 536 kg	939.50	751.50	942.50	754.00
	(ad) exceeds 4 536 kg	1098.50	879.00	1104.50	883.50
	(ii) Part-time driver of a motor vehicle	732.50	586.00	736.00	589.00
( v )	<b>Clicker:</b>				
	(i) Qualified:	1282.50	1026.00	1288.50	1031.00
	(ii) Learners:				
	first six months of experience	598.00	478.50	601.00	481.00
	second six months of experience	647.00	517.50	649.50	519.50
	third six months of experience	699.50	559.50	703.50	563.00
	fourth six months of experience	791.50	633.00	794.00	635.00
	fifth six months of experience	851.00	681.00	854.50	683.50

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2012 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2012 = 80%
		R	R	R	R
	sixth six months of experience	897.50	718.00	901.00	721.00
	seventh six months of experience	951.00	761.00	956.50	765.00
	eighth six months of experience	1002.00	801.50	1006.00	805.00
	next four months of experience	1056.00	845.00	1060.50	848.50
	Thereafter, the wage specified in (v)(i) i.e.	1282.50	1026.00	1288.50	1031.00
( w )	<b>Beader</b>	800.00	640.00	802.50	642.00
( x )	<b>Chlorinator</b>	719.00	575.00	722.50	578.00
( y )	<b>Componder</b>	851.00	681.00	854.50	683.50
( z )	<b>Dipper</b>				
	(i) Qualified:				
	Category A	851.00	681.00	854.50	683.50
	Category B	870.00	696.00	874.00	699.00
	Category C	898.50	719.00	902.00	721.50
	(ii) Learners:				
	first six months of experience to Category A	647.50	518.00	650.50	520.50
	first six months of experience to Category B	851.00	681.00	854.50	683.50
	first six months of experience to Category C	870.00	696.00	874.00	699.00
( aa )	<b>Glove turner</b>	1032.00	825.50	1037.00	829.50
( ab )	<b>Mouldmaker</b>	818.00	654.50	821.00	657.00
( ac )	<b>Packer</b>	687.00	549.50	690.00	552.00
( ad )	<b>Quality product co-ordinator</b>	1079.50	863.50	1083.50	867.00
( ae )	<p>A supervisor shall be paid the qualified rate applicable to the employees being supervised, plus 33<sup>1/3</sup> per cent:</p> <p><b>Provided that-</b></p> <p>(i) a trainee supervisor shall serve a probationary period not exceeding six months and shall be paid the qualified rate applicable to the employees being supervised, plus 10 per cent;</p> <p>(ii) a trainee supervisor, who is not considered suitable for promotion after completion of the probationary period, shall return to his former position at his former wage.</p>				
<p><b>NB: All employers who employed staff on 2011/2012 New Entry Wage Dispensation, must with effect from the coming into operation of this agreement, increase the Weekly Wage for those employees by 6.5% Across-the-Board.</b></p>					

- (2) Subject to the provisions of this part of the Agreement, the minimum wages that shall be paid to and accepted by the under-mentioned classes of employees employed at Garment Knitting establishments, shall be as follows:











	Note: Refer to "2008" Side Agreement between EPCMA & SACTWU. The calculation is based on 95% of Western Cape Knitting Wage Rates per week)		Note: Refer to "2008" Side Agreement between EPCMA & SACTWU		Note: Refer to "2008" Side Agreement between EPCMA & SACTWU. The calculation is based on 95% of Western Cape Knitting Wage Rates per week)		Note: Refer to "2008" Side Agreement between EPCMA & SACTWU	
DESCRIPTION	GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme) Based on 42.5 hrs per week	New Employees on Incentivised Scheme Effective 1 September 2012 = 80%	GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme) Based on 42hrs per week	New Employees on Incentivised Scheme Effective 1 September 2012 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme) Based on 42.5 hrs per week	New Employees on Incentivised Scheme Effective 1 September 2012 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme) Based on 42 hrs per week	New Employees on Incentivised Scheme Effective 1 September 2012 = 80%
	R	R	R	R	R	R	R	R
<b>the unladen mass of any trailer or trailers drawn by such vehicle -</b>								
(a) does not exceed 1 360 kg	<b>751.00</b>	601.00	<b>742.00</b>	593.50	<b>753.50</b>	603.00	<b>744.50</b>	595.50
(b) exceeds 1 360 but not 2 720 kg	<b>779.00</b>	623.00	<b>770.00</b>	616.00	<b>783.00</b>	626.50	<b>774.00</b>	619.00
(c) exceeds 2 720 kg	<b>888.00</b>	710.50	<b>877.50</b>	702.00	<b>893.00</b>	714.50	<b>882.50</b>	706.00
<b>Supervisor, quality controller and instructor</b>	<b>952.00</b>	761.50	<b>941.00</b>	753.00	<b>956.50</b>	765.00	<b>945.00</b>	756.00
<b>Traveller's driver</b>	<b>779.00</b>	623.00	<b>770.00</b>	616.00	<b>783.00</b>	626.50	<b>774.00</b>	619.00
<b>Watchman or caretaker, whose ordinary hours of work are -</b>								
(a) less than 60 hours per week	<b>810.00</b>	648.00	<b>800.50</b>	640.50	<b>813.50</b>	651.00	<b>804.00</b>	643.00
(b) 60 hours per week	<b>850.00</b>	680.00	<b>840.00</b>	672.00	<b>854.00</b>	683.00	<b>844.00</b>	675.00
<b>NB: All employers who employed staff on 2011/2012 New Entry Wage Dispensation, must with effect from the coming into operation of this agreement, increase the Weekly Wage for those employees by 6.5% Across-the-Board.</b>								

## (3) New Employees

3.1 New employees shall be paid a weekly wage of 70% of the rate in metro areas, subject to the following provisions:

3.1.1 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a period of 3 years.

3.1.2 The provision is only applicable to compliant companies.

3.1.3(a) The new entry-level wage provision will continue in force and effect as an industry-wide provision after the 31<sup>st</sup> August 2014 if there has been an increase in employee strength of compliant

employers in the industry of at least 15% as at 31<sup>st</sup> March 2014, monitored on a bi-annual basis.

3.1.3(b) The bi-annual benchmark monitoring shall be measured against the following schedule of new employment growth:

1 March 2012:	3% increase
1 September 2012:	6% increase
1 March 2013:	9% increase
1 September 2013:	12% increase
1 March 2014:	15% increase

3.1.4 It is only applicable to those compliant companies who were in existence and operational as at 1 June 2011.

3.1.5 All other provisions of the main agreement shall be applicable to new employees.

3.1.6 The closed shop shall be applicable to all new employees.

3.1.7(a) The employee strength to determine whether or not there has been an increase in employee strength will be measured by comparing the employee strength of compliant employers whose businesses are registered with the bargaining council on the 1<sup>st</sup> June 2011, as per clause 3.1.3, and to that of the employee strength of compliant employers whose businesses are registered with the bargaining council on the 31<sup>st</sup> March 2014, i.e. a period of 30 months following the implementation of this *Agreement*.

(b) In the event that the employee strength does not increase as per the provisions of this *Agreement* and more specifically, the provisions of *Clause 3.1.3* above, the provisions of the new-entry wage provision will terminate.

(c) Upon such termination of the application of the new entry level wage provision, the wages of all employees earning the new-entry wage will be increased to the full applicable gazetted wage for all job categories from the first pay week following the 31<sup>st</sup> August 2014, unless the parties during the 2014/2015 round of annual or other negotiations agree otherwise or agree to an alternative to address any further job losses or the absence of job growth in the industry.

3.1.8 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to employ employees at the rates specified in sub-clause 3.1.3 (a) above.

3.1.9 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.

3.1.10 Qualified employees shall be employed at the qualified new entry rate, subject to sub-clause 3.1.1.

3.1.11 Effective 1<sup>st</sup> September 2011, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's

retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.

(4) **Incentivised Wage Rates**

The "new entry wage rates" provisions as specified in clause 6.1(3), shall be abolished and be replaced with the following incentivised wage rate provisions, **applicable to new employees only:**

- 4.1 With effect from the coming into operation of this agreement, new employees shall be paid a guaranteed wage of no less than 80% of the normal gazetted wage rate of ALL wage categories applicable to current employees, subject to the following provisions:
- 4.2 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a minimum period of 3 years, unless the applicant employee agrees otherwise with his/her prospective employer.
- 4.3 The guaranteed wage rate as specified in sub-clause 4.1 above shall be supplemented with an incentivised wage component which shall allow new employees to earn up to 100% or more of the qualified rate, provided that the employee(s) meets the required performance standards as contained in the plant level incentive scheme. This incentive shall be applicable to all new employees engaged under the incentivised wage provisions and employed after 1 September 2012, once a national framework agreement governing the incentive portion has been agreed.
- 4.4 The incentivised wage rate provisions are only applicable to companies which are registered with the National Bargaining Council for the Clothing Manufacturing Industry of South Africa, subject further to sub-clause 4.5 below.
- 4.5 The provisions are only applicable to those current compliant companies which were in existence and operational as at 1 June 2011.

It is **NOT** applicable to those companies who:

- are members of an employer association which have not signed the wage agreement and/or
- have not implemented the wage increases envisaged in the agreement.

During the first year of operation of the incentivised wage provisions, the parties will engage to explore mechanisms which will protect current companies and current employees in the event of it being agreed that this provision be extended to new companies which enter the industry for the first time.

- 4.6 All other provisions of the Industry's Main Agreement shall be applicable to new employees.
- 4.7 The closed shop shall be applicable to all new employees.

- 4.8 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to re-employ employees at the rates specified in sub-clause 4.1 above.
- 4.9 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
- 4.10 Qualified employees shall be employed at the qualified rate, subject to sub-clause 4.2 above.
- 4.11 Current employees employed in terms of the new entry rate provision envisaged in the 2011/2012 party to party agreement and who were so employed prior to 1 September 2012 shall by exemption be ring-fenced on those rates plus the annual increase of 6.5%, and subject to the companies at which they are employed meeting the compliant employment growth targets as set out in the 2011/2012 wage agreement.
- 4.12 Effective 1<sup>st</sup> September 2012, all retrenched employees will, within a period of 12 months of having being retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.
- 4.13 The parties shall negotiate a national framework agreement at National Bargaining Council level, to give enabling effects to the plant level incentivised wage component as contemplated in sub-clause 4.3 above. This shall be finalised within a period of 4 months with effect from 1 October 2012 (excluding the annual shutdown period). Thereafter, companies who qualify for the incentivised wage provisions and who wish to implement it shall have a 2 month period to conclude plant-level incentive arrangements in terms of the provisions of the national framework agreement.
- 4.14 The deadlock breaking mechanism for the national framework agreement is either binding interest arbitration or, at the end of the prescribed period, the entire 80% dispensation falls away, unless other forms of deadlock breaking mechanisms are agreed between the parties.
- 4.15 Should the 80% dispensation fall away in consequence of the provision in sub-clause 4.14 above, new employees employed on the incentive wage provisions should be paid 100% of the applicable agreed rate.

The deadlock breaking mechanism for operationalising the incentive component at plant level shall consist firstly of a facilitation process by a panel of experts jointly appointed by the employer and trade union parties to this agreement and if not resolved, by an advisory award by the panel, unless other forms of deadlock breaking mechanisms are agreed to between the parties.

- (5)(i) This agreement shall come into operation with effect from 1 September 2011 for employers who are members of parties to the agreement, and with effect from the date of extension of the agreement in respect of non-parties.
- (ii) All employers covered by the registered scope of the NBC shall implement the wage increases agreed to at NBC level" and/or

All employers covered by the registered scope of the NBC who have not implemented the wage increases agreed to at NBC level shall implement a 10% wage increase for

metro areas and the rand equivalent for non-metro areas with effect from 1 September each year

- (6) Notwithstanding the definition of "experience" in clause 3-
- (a) an employer engaged in one of the following sections of the Industry:
- Rainwear section; men's outerwear section; women's outerwear section; men's or women's underwear section; infants' end children's clothing section; workwear section; may when engaged in a qualified machinist whose previous experience was gained in one or more of the other sections specified, pay such machinist for a maximum period of four weeks a commencing wage of one notch below that to which he is entitled and thereafter to progress him according to the learnership scale applicable to machinists: Provided that such machinist shall be paid the wage of a qualified machinist as soon as such machinist is again engaged in the section in which the previous experience was gained.
- For the purposes of this subparagraph "workwear section" means that section of the Industry in which boiler-quits, overalls, dustcoats, waiters' jackets and office jackets are manufactured;
- (b) when an employee transfer an employee in any category to another category for which a higher wage is specified, he shall pay such employee for the first 26 weeks not less than the wage he was receiving or was entitled to receive in such first-named category and shall thereafter pay him in accordance with the scale of wages for employees in the category to which such employee was transferred commencing at the next highest notch.

## 6.2 Off-set period

Notwithstanding the wage increases specified in subclause 6.1, an employer may grant to an employee such increases in advance of the specified incremental dates: Provided that if such an increase is granted within three months of the specified incremental date, the employee shall not qualify for a further increase in terms of subclause 6.3 (2).

## 6.3 Incremental dates

- (1) An employer shall pay increases due to his employees during each calendar year on the following basis:
- (a) All employees who qualify for an increase during the period 1 January to 31 March of the calendar year shall be granted such increases with effect from the pay-week in which 15 February of such year falls.
- When an employee is not in employment during the said pay-week he shall become entitled to the increase with effect from the date he is employed.
- (b) Likewise and in the same manner all increases which become due during the periods 1 April to 30 June, 1 July to 30 September and 1 October to 31 December of each calendar year, shall be granted to employees with effect from the pay week in which 15 May, 15 August and 15 November fall within respective periods.
- (c) In calculating whether an employee qualifies for an increment, all periods of absence from work shall be regarded as employment except any absence without pay for a continuous period in excess of four consecutive pay-weeks and in respect whereof full particulars of the name of the employee and the period of absence have been advised to the Council within 14 days of the employee resuming work.
- (2) Notwithstanding anything to the contrary herein, the wage of an employee, who immediately prior to the date on which this part of the Agreement comes into operation, is in respect of a wage higher than that specified for the class of work

on which he is engaged shall, with effect from the date on which this part of the Agreement comes into operation, be increased by an amount equal to the difference between the wage as agreed by the parties as at 1 September 2012 and the wage specified in this part of the Agreement for the class of work on which he is engaged.

- (3) Nothing in this part of the Agreement shall operate to reduce the wage which was being paid to the employee at any time prior to or at the date of coming into operation of this part of the Agreement.
- (4) Notwithstanding the fact that the ordinary hours of work in any establishment are less than 42 in any week, the full minimum weekly remuneration shall, save for any deductions permitted under subclauses 6.8 (3) and 7.4 (3) of this part of the Agreement, be paid to each employee.

#### **6.4 Night shift**

An employee who is required to work his normal shift between the hours of 22:00 and 06:00 on any day shall be deemed to be on night work, and shall be paid not less than his ordinary wage in respect of the total period so worked plus 10 per cent.

#### **6.5 Long service award**

An employee who has not less than three years unbroken service with an employer, shall receive a service award of not less than R2 per week, in addition to the wage payable to an employee in terms of subclause 6.1, irrespective of whether such an employee is, in respect of his ordinary hours of work, in receipt of a wage higher than that specified for an employee of his class.

Notwithstanding anything to the contrary contained in this part of the Agreement, the periods referred to in subclause 8.1 (5), except in the case of confinement or illness, shall, for the purposes of this subclause, be deemed to be unbroken service: Provided that such an employee immediately after such periods of absence, returns to his place of employment: Provided further that, where an employee is absent from employment for maternity reasons or illness, such absence shall be regarded as unbroken service for the purpose of this subclause on condition that such an employee returns to the place of employment within 12 calendar months without having been employed elsewhere. An employer may require such an employee to furnish satisfactory proof of absence from work owing to illness or for maternity reasons prior to the payment of the service award.

#### **6.6 First-aid**

Any employee who is in charge of first aid shall, in addition to the wage payable to such employee in terms of subclause 6.1, be paid an additional amount of not less than R6,50.

#### **6.7 Payment of wages**

- (1) Wages and all other amounts due to an employee shall be paid in cash weekly on Friday: Provided that where an employee's service does not terminate on the ordinary pay-day of the establishment concerned, any amounts due to him shall be paid immediately upon such termination.
- (2) In the case of a normal shift worker the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during the usual office hours of the establishment, but not later than twenty-four hours after the usual pay day.
- (3) In the case of a twilight shift worker, the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during a twilight shift, but not later than twenty-four hours after the usual pay day.



- (4) Wages and all other amounts due shall be placed in a sealed envelope on which shall be reflected, or shall be accompanied by, a clip or statement showing the name or number of the employee, the date of payment, total deductions made and the net amount of earnings contained therein. Entries on the said envelope or slip shall be made in ink or indelible pencil or shall be a clear carbon copy.

## 6.8 Deductions

- (1) No deductions of any description shall be made from the amount due to an employee: Provided that-
- (a) except where otherwise provided in this part of the Agreement whenever an employee is absent from work otherwise than on the instructions or at the request of his employer, a deduction proportionate to the period of his absence and calculated on the basis of the wage which such employee was receiving in respect of his ordinary hours of work at the time thereof;
  - (b) where the employer supplies the employees with tea, he may deduct from the wages of his employees the cost of such tea;
  - (c) with the written consent of an employee, deductions may be made by an employer for contributions to a pension or sick fund or medical scheme;
  - (d) contributions to Council funds shall be deducted in terms of subclause 14.1 of this part of the Agreement;
  - (e) contributions to the Council's Supplementary Benefits Fund and Provident Fund may be deducted;
  - (f) with the written consent of the employee, deductions may be made by an employer for contributions to the funds of the trade union;
  - (g) the cost of scissors supplied to employees may be deducted in terms of subclause 13.2 (2) of this part of the Agreement;
  - (h) if owing to the stoppage of machinery, no work is available for an employee, a pro rata deduction may be made by the employer from the wages of such employee, only for the time lost which is in excess of two hours;
  - (i) any amount paid by an employer, compelled by a statutory law, ordinance or legal process to make payment on behalf of an employee, may be deducted;
  - (j) subject to the provisions of subclause 7.4 (3), a deduction proportionate to the amount of short time worked may be made;
  - (k) deductions in terms of subclause 8.2 (4) (b) may be made;
  - (l) with the written consent of the employee, deductions may be made by the employer, up to a maximum of one-sixth of the employee's wage for that week for purchases made from the employer and loans advanced by the employer; Provided that the employee shall not be indebted to the employer for an amount exceeding seven working days' wages at any one time.
- (2) In any establishment where work is performed by employees organised in sets or teams, each employee shall be paid his earnings by the employer in whose establishment the work is performed or by his representative.

## 6.9 Overtime rates

- (1) (a) Payment for overtime shall be not less than one and a half times the hourly wage for each hour or part of an hour so worked or, in the case of piece work, not less than one and a half times the ordinary rate of wage for all work done during each hour: Provided that-

- (i) an employee who works overtime for less than four hours on a Saturday shall be paid as if he had on that day worked four hours' overtime;
- (ii) an employee who works overtime for more than four and a quarter hours or after 12:00 on a Saturday shall be paid at the rate of two times the hourly wage for each hour or part of an hour so worked;
- (b) for the purpose of calculating overtime, the hourly wage shall mean the weekly wage divided by 42.
- (2) (a) If an employee works on a Sunday, his employer shall either pay the employee-
  - (i) if he so works for a period not exceeding four hours, not less than the ordinary wage payable in respect of the period ordinarily worked by him on a week-day; or
  - (ii) if he so works for a period exceeding four hours, wages in respect of the total period worked on such Sunday or wages which is not less than double his ordinary wage payable in respect of the period ordinary worked by him on a weekday, whichever is the greater; or
- (b) at not less than one and a half times his ordinary rate of wage in respect of the total period worked on such Sunday and the employer shall in addition grant the employee within seven days of such Sunday, one day's leave and pay him in respect thereof, wages at a rate of not less than his ordinary rate of wage as if he had on such holiday worked his average ordinary working hours for that day of the week.
- (3) If overtime calculated on a daily basis differs from that calculated on the weekly basis, the basis more favourable to the employee shall be adopted.
- (4) Subject to the provisions of subclause 7.1 (4), the provisions of this clause shall not apply to a watchman.

#### **6.10 Incentive bonus scheme and/or conveyor belt system**

- (1) An incentive bonus scheme and/or conveyor belt system may be introduced in any establishment by mutual agreement between the management, representatives of the trade union and the employees concerned and may be altered only by mutual agreement between these parties. Such schemes may be terminated by either the employer or the trade union giving not less than one week's notice.
- (2) Any dispute concerning the introduction or working of any scheme which cannot be settled in the factory by negotiation between the employer, the employees and the trade union official shall be referred to the Council.
- (3) An incentive bonus scheme may be introduced in respect of some of the employees employed in a particular section of an establishment: Provided that it shall be applied within a reasonable period after its commencement to all employees engaged in the production of the particular garment in respect of which the scheme has been introduced.
- (4) Subject to the provisions of subclauses 6.8 (1) and 7.4 (3), such incentive bonus scheme and/or conveyor belt system shall enable an employee to earn at least 10 per cent in excess of the specified wage.
- (5) A copy of the incentive bonus rates and subsequent alterations thereto, agreed upon and duly signed by the employer and the Secretary of the trade union, shall be filed with the Secretary of the Council and the employer shall keep a copy thereof posted in a conspicuous place readily accessible to his employees.

- (6) When an employee is remunerated on an incentive bonus and/or conveyor belt basis, his ordinary rate of wage shall, for the purpose of overtime in terms of clause 8, be calculated as though he were paid by the hour and shall be ascertained at any date by dividing his total earnings, excluding overtime, during the three months immediately preceding that date or during the total period of his employment on an incentive bonus basis by the employer concerned, whichever is the shorter, by the number of hours worked, excluding overtime, during the period in respect of which such earnings were paid.

#### **6.11 Annual bonus**

Each employee shall be paid an annual bonus on the day of his employer's annual closure in December of each year, equivalent to 2% of an employee's annual basic prescribed wage (excluding overtime earnings and production bonuses) calculated from 1 January to 31 December and earned with the employer by whom he is employed.

A pro rata share thereof shall be paid to an employee who leaves employment before the 31st of December.

The bonus is inclusive of and not additional to any annual bonus paid by an employer. A shop steward may not be prejudiced in respect of annual bonus earnings for time off authorised by his employer, in attending to union business.

### **7. HOURS OF WORK**

#### **7.1 Ordinary hours of work**

- (1) No employer shall require or permit an employee-
- (a) to work for more than 42 hours, excluding meal times, in any one week, which may however be comprised of either a five or six-day working week; or
  - (b) to work on a Saturday, unless his establishment is working a six-day week;
  - (c) in establishments working a six-day week, to work later than 12:30 on Saturday: Provided that the working hours performed from Monday to 12:30 Saturday (inclusive) do not exceed 42 in all; or
  - (d) to work on a Sunday without the permission of the Council;
  - (e) to work in a five-day week for more than eight and a half hours on any one day: Provided that the working hours performed from Monday to Friday, inclusive, do not exceed 42 in all; or
  - (f) to work in a six-day week for more than-
    - (i) eight hours on any one day during the period Monday to Friday, inclusive;
    - (ii) two and a half hours or beyond the hours of 12:30 on a Saturday; or
  - (g) to work before 07:45 or after 18:00 during the period Monday to Friday, inclusive, or before 07:45 on Saturdays.
- (2) For the purposes of subclause 7.1 (1) (a), an employee who does not work on any holiday referred to in subclause 8.1 (2) or who on such holiday works less than his average ordinary working hours for that day of the week in which such holiday falls, shall be deemed to have worked his average ordinary working hours on that day.
- (3) Notwithstanding the provisions of subclause 7.1 (1) (g), an employee engaged on shift work on embroidering or pleating machines may be permitted to commence work earlier than 07:45 but not earlier than 06:00, and the second shift worked on any one day may extend beyond 18:00: Provided that an employee on such shift work shall not be required or permitted to work after 22:00.

- (4) The provisions of this clause shall not apply to a watchman whose hours of work do not in total exceed 72 hours per week and whose employer grants him a day off of 24 consecutive hours in respect of every week of employment: Provided that-
- (i) he makes no deductions from the watchman's wage in respect thereof;
  - (ii) the employer may, in lieu of granting his watchman any such day off, pay such watchman the wage which he would have received if he had not worked on such day, plus an amount of not less than double his daily wage in respect of such day not granted.

## 7.2 Overtime hours

- (1) Notwithstanding the provisions of subclause 7.1 (1) (a), (b) and (c) of this part of the Agreement, no employer shall require or permit an employee to work overtime-
- (i) for more than two hours on any day, except that an employee who works a five day week may work up to four hours on a Saturday: Provided that 10 hours are not exceeded in such week;
  - (ii) on more than three consecutive days;
  - (iii) on more than 60 days in any year;
  - (iv) after completion of his ordinary working hours, for more than one hour on any day unless he has-
    - (a) provided such employee with an adequate meal before he has to commence overtime; or (b) paid such employee an allowance of not less than R5 in sufficient time to enable the employee to obtain a meal before the overtime is due to commence: Provided that-
      - (aa) an employee shall not be required to work overtime without his consent nor shall he be dismissed or adversely affected in his employment by reason of his refusal to work overtime;
      - (ab) the requirements of paragraph (iv) shall not apply to an employee who works on a Saturday or Sunday.
- (2) Notwithstanding the provisions of the first and second provisos to subclause 7.2 (1), where an employer requires an employee to work overtime for more than one and a half hours on any day, such an employer shall provide such employee with an adequate meal before he has to commence overtime, or pay such employee an allowance of not less than R5 in sufficient time to enable the employee to obtain a meal before the overtime is due to commence.
- (3) Notwithstanding the provisions of sub-clause 7.1 (1) (g), an employee may be required or permitted to work overtime before the normal commencement of an establishment: Provided that such overtime shall not commence earlier than 06:45.

## (4) Twilight Shift

- (a) **General provisions:** Subject to the provisions contained in this part of the Agreement an employer may establish a twilight shift, the establishment and operation of which shall be subject to the following conditions:
- (i) Only unemployed people may be recruited for working this shift.
  - (ii) Notwithstanding the provisions of sub-clause 1 (a) above, supervisory and management staff from the existing staff complement of the employer's business may be employed on a twilight shift.

- (iii) A twilight shift may only operate between the hours 16h30 to 23h00 daily from Monday to Friday.
- (b) **Employment conditions:** Staff employed on the twilight shift shall be subject to the following employment conditions:
  - (i) All provisions contained in this part of the Agreement, unless specifically excluded, shall be applicable to employees employed on a twilight shift.
  - (ii) The remuneration payable to a twilight shift worker shall accrue at an hourly rate.
  - (iii) A twilight shift worker shall not be entitled to the payment of a shift allowance.
- (c) **Transport arrangements:** The following conditions will apply to the transportation of employees working on a twilight shift:
  - (i) The cost of transport from the work place to the home of employees will be funded by the employer; and/or
  - (ii) The employer will be responsible for the arrangements and expenses of transport from the work place to the homes of the employees at the conclusion of a twilight shift; Provided that where an employer and employee agree that the employee shall make the practical arrangements for transport home, this shall be permissible provided the employer shall still be responsible for the costs of such transport.

(5) **Aggregation of Overtime**

For the purposes of determining the number of hours, or part thereof, which an employee should be paid at overtime rates, the hours worked outside the employee's normal working hours in terms of clause 7.1 of this part of the Agreement may be reduced by the number of hours or part thereof, in that pay week that the employee was absent.

Provided that no reduction of the overtime worked by an employee shall be made should the absence result from any of the following:

- (i) time not worked as a result of protected industrial/protest action;
  - (ii) time not worked as a result of a public holiday as declared in terms of the Public Holidays Act;
  - (iii) time not worked as a result of the employer having declared short time;
  - (iv) time not worked as a result of the employee being on authorised shop steward stewards time off; and
  - (v) time not worked as a result of any authorised absenteeism.
- (6) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.

**7.3 Meal and other rest intervals**

- (1) No employer shall require or permit an employee-
  - (a) to work for a continuous period of more than five hours without an uninterrupted interval of-
    - (i) in the Magisterial District of Port Elizabeth, an interval of 45 minutes;

- (ii) in all other areas, an interval of one hour;

Provided that for the purpose of this paragraph, periods of work interrupted by shorter intervals than those specified in sub-paragraphs (i) and (ii) shall be deemed to be continuous.

- (2) A rest interval of not less than 15 minutes during which no work shall be performed, shall be allowed to each employee as nearly as practicable to the middle of each morning work period, and a rest interval of 10 minutes shall be allowed to each employee as nearly as practicable to the middle of each afternoon work period. Such intervals shall be reckoned as time worked. Utensils and boiling water for making tea shall be provided by the employer and be available for the employees at the commencement of each rest and lunch interval.

#### **7.4 Short-time**

- (1) The employer shall notify and consult with the union at least five days in advance of the intention to work short-time, except where the employer shows that it was impractical to give such notice.
- (2) Where short-time is being worked in any establishment, the work shall be distributed as evenly as possible amongst the employees in each of the sections or departments concerned.
- (3) Where short-time is being or has been introduced in any establishment, employees who are not informed and are present for work on a particular day, shall be employed for at least half a day or be paid a day's wage in lieu thereof. For the purposes of this subclause "day's wage" shall mean the wage usually paid in respect of the hours constituting a fully day's work (i.e. other than the usual short days in the establishment).

### **8. LEAVE**

#### **8.1 Annual leave**

- (1) (a) Every employer shall grant to his employees during December in each year:
  - (i) in the case of an employee with less than 12 completed months' service with the same employer, two consecutive weeks and four days' leave;
  - (ii) in the case of an employee with more than 12 completed months' service with the same employer, three consecutive weeks' leave and shall not be paid less than three weeks' wages as annual leave pay;
  - (iii) An employee who at the end of a leave cycle or at the date of termination of service, has worked less than 12 completed months during that specific leave cycle, shall be paid a pro rated value of the amount specified in either paragraph 1 (a) (i) or 1 (a) (ii), depending on which is applicable.

Every employee shall be paid not later than the last working day before the commencement of such leave.
- (b) Every employer shall grant to a watchman paid leave of not less than three consecutive weeks to commence during December in each year, and shall be paid not later than the last working day before the commencement of such leave. A watchman who at the end of a leave cycle or at the date of termination of service has worked less than 12 completed months during that specific leave cycle shall be paid an amount on a pro rate basis, depending on the months worked: Provided that-

- (i) The period of such leave shall not be concurrent with any period during which the employee is under notice of termination of employment.
  - (ii) If any public holiday referred to in subclause 8.2 (1) falls within the period of such leave, such public holiday shall be added to the said period as a further period of leave and the employee shall be paid in respect of such public holiday not later than the first pay-day following resumption of work or on the date of termination of services, whichever is the earlier, an amount equal to the wage would have earned had he on such public holiday worked his daily average ordinary working hours.
- (c) An employer may by agreement with his employees allow for two consecutive weeks' leave, inclusive of public holidays, to be taken in the period of December and January each year with the balance to be taken before the end of June of the following year.

Every employee shall be paid the total wage owed for the periods specified in paragraphs 1 (a) and 1 (b), not later than the last working day before the commencement of such periods of leave.

The terms of any such agreement reached by an employer with his employees shall be referred, for the purposes of the record, to the Council.

- (2) On termination of employment, the employer shall pay the employee the amount of leave allowance due as at the date of such termination, calculated as provided in subclause 8.1 (1): Provided that where an employee is required to forfeit a week's wages in lieu of notice to an employer in terms of the provisions of subclause 9.1 (4) of this part of the Agreement, the leave pay due to such an employee may be used to offset the difference between the wages accrued to the employee and the wage to be forfeited, provided the accrued wages are less than the amount of the wage to be forfeited: Provided further that the amount so forfeited shall not exceed one week's wages.
- (3) Employment for half a month or over shall be reckoned as employment for a full month for the purposes of calculating the leave allowance payable in terms of subclause 8.1 (1) and 8.1 (2). "Half a month" shall mean any period of 15 consecutive calendar days (irrespective of working days).
- (4) The amount of the leave allowance payable in terms of subclauses 8.1 (1) and 8.1 (2) shall be calculated at the rate of remuneration which the employee was receiving immediately prior to the date from which his holiday is granted or on which his employment is terminated, as the case may be, and the provisions of subclause 6.10 (6) shall also apply where work is being done on a piece work basis of remuneration.
- (5) Any period during which an employee-
- (a) is on leave in terms of subclause 8.1 (1); or
  - (b) is absent from work on the instructions or at the request of his employer; or
  - (c) is absent from work owing to illness or confinement; shall be deemed to be employment for the purposes of subclauses 8.1 (1) and (2): Provided that the provisions of paragraph (c) shall not apply in respect of any period of absence owing to illness of more than three consecutive days, if the employee fails, after a request for such a certificate by the employer, to submit to the employer, a certificate from a medical practitioner that he was prevented by illness from doing his work or in respect of that portion of any total period of absence during any 12 months of employment which is in excess of 30 days.
- (6) In this clause the expression "employer" includes-

- (a) in the case of the death of an employer, the executor of his estate or his heir or legatee; and
- (b) in the insolvency of an employer or the liquidation of his estate, or the transfer or sale of his business, the trustee or liquidator or the new owner of the business;

If such executor, heir legatee, trustee, liquidator or new owner continues to employ that employee.

## 8.2 Public holidays

- (1) Public holidays shall be granted in terms of the Public Holidays Act, 1994 (Act No. 36 of 1994):
  - (a) New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day, Day of Goodwill and any other day declared to be a public holiday under section 2A of the Public Holidays Act, 1994.
  - (b) All public holidays are on full pay: Provided that-
    - (i) whenever an employee works on any of these days, his employer shall pay him remuneration at a rate of not less than his ordinary remuneration in respect of the total period worked on such day, in addition to the remuneration to which he would have been entitled had he not so worked;
    - (ii) any public holiday shall be exchangeable for any other day which is fixed by agreement or agreed to between an employer and an employee.
    - (iii) Whenever any public holiday falls on a Sunday, the following Monday shall be a public holiday.
  - (c) In the event of any of the public holidays referred to in paragraph (a) of this subclause falling on a Saturday, the employer shall pay to each of his employees, not less than their ordinary wage payable in respect of the period ordinarily worked by his employees on a week day.
- (2) No work shall be performed after 13:00 on the day immediately preceding Good Friday and the employees shall be granted the afternoon off and shall receive for such afternoon full pay in respect of the hours normally worked on Thursday afternoons: Provided that where work is performed on such afternoon the employees shall in addition to their ordinary wages be paid at overtime rates for all time worked after 13:00 on that day: Provided further that the provisions of this subclause shall not apply in respect of an employee who is absent from work during the morning work period of the day immediately preceding Good Friday.
- (3) (a) Notwithstanding anything contained in this part of the Agreement, any establishment may be closed for any reason other than short time during any period of work specified for the establishment in terms of subclause 7.1 (1) of this part of the Agreement by mutual arrangement between the employer and not less than 75 per cent of the employees affected by such closing.
- (b) Whenever an employee is not required to work resultant on the closing of an establishment by mutual arrangement, in terms of paragraph (a), a deduction pro rata to the hours not worked may be made from the amounts payable in terms of this part of the Agreement.
- (4) For the purposes of this subclause, employment shall be deemed to commence from-
  - (a) the date on which the employee entered the employer's service; or



- (b) the date on which the employee last became entitled to annual leave or absence; whichever may be the later.

### **8.3 Maternity leave**

- (1) Notwithstanding anything to the contrary contained in this part of the Agreement, the provisions of this subclause shall apply only to female employees proceeding on and returning from maternity leave.
- (2) Female employees with not less than one year's service with the same employer shall be entitled to maternity leave for a maximum of six months, subject to the following conditions:
  - (a) The period of absence for maternity leave shall be regarded as unpaid leave;
  - (b) to qualify for such leave an employee shall be required to provide her employer with a proper medical certificate from a medical practitioner at least three months prior to the expected date of confinement, reflecting the expected date of confinement;
  - (c) if an employee intends to work on or before the completion of her maternity leave, she must notify her employer in writing at least two weeks beforehand of such intention.
- (3) The period of absence on maternity leave shall be deemed to be continuous for the purpose of accruing annual leave.
- (4) An employer shall be entitled to replace the service of any employee who is away from work on maternity leave with a temporary employee.
- (5) Where an employee is absent or proceeds on maternity leave during the annual shutdown, such employee shall be entitled to the holiday pay accrued in terms of subclause 8.1 up to the date the maternity leave commenced: Provided that, on re-employment, the employee is paid the difference between the full leave allowance due as prescribed in subclause 8.1 and the accrued holiday pay paid.

### **8.4 Compassionate/paternity leave**

- (1) Compassionate/paternity leave amounting to three days per year shall be granted to an employee as follows:
  - (a) In the event of the death of a close relative. In this regard, "close relative" shall mean spouse, child of an employee, and mother and father of an employee or his spouse;
  - (b) male employees, regardless of marital status, shall be entitled to a maximum of three days' unpaid paternity leave per annum. The employer shall be entitled to require proof of paternity: Provided that no employee shall be entitled to more than three days' compassionate and/or paternity leave per annum.
- (2) Payment for such leave shall not be made by the employer, but from the Supplementary Benefits Fund.

### **8.5 Sick leave**

- (1) Subject to the provisions of subclause 8.5 (2), an employer shall grant to an employee who is absent from work through incapacity, sick leave on full pay amounting to-
  - (a) 20 working days in the case of an employee who works a five-day week;

- (b) 24 working days in the case of an employee who works a six-day week;
  - in the aggregate during any one year of employment: Provided that the employer may require the employee to provide him with a certificate signed by a registered medical practitioner showing the nature and duration of each period of absence covering more than two consecutive days for which payment is claimed.
- (2) The provisions of subclause 8.5 (1) shall not apply where the employer and his employees participate in a sick or other fund which entitles the employees to receive sick pay, which in the opinion of the Council, amount in the aggregate to not less than that provided in subclause 8.5 (1).
- (3) For the purpose of this subclause, the term "employment" shall have the same meaning as in subclause 8.1 (5).
- (4) "Incapacity" means inability to work owing to any sickness or injury other than sickness or injury caused by an employee's own misconduct: Provided that any such inability to work caused by an accident for which compensation is payable under the Compensation for Occupational Injuries and Disease Act, No. 130 of 1993, shall only be regarded as incapacity during any period in respect of which no disablement payment is payable in terms of that Act.

## 9. TERMINATION OF EMPLOYMENT

### 9.1 Notice period

- (1) Whenever an employer or an employee intends terminating a contract of employment, he shall give the other party one week's notice in writing, and such notice shall take effect from the first day of the usual working week of the employee: Provided that this provision shall not apply in the case of an employee engaged on trial for a period of not less than and not exceeding 15 consecutive working days, in which case notice may be given on any working day: Provided further that if any written contract of employment provides for a period of notice of equal duration for both parties which is longer than one week, notice shall in accordance with such contract be given over such longer period.
- (2) Notwithstanding the provisions of subclause 9.1 (1) and provided such a termination of the employment contract takes effect from the first day of the usual working week-
  - (a) an employer may terminate the contract of employment without giving notice to the employee provided, he pays to the employee an amount which is not less than the appropriate wage which he would otherwise have been required to pay the employee had he terminated the contract with the proper notice; and
  - (b) an employee may terminate the contract of employment without giving notice to the employer, provided he pays to the employer an amount which is not less than the appropriate wage which the employer would otherwise have been required to pay him had he terminated the contract with the required notice.
- (3) The provisions of this subclause shall not-
  - (a) affect the right of an employee who is working short-time to terminate the contract of employment without notice;
  - (b) apply during the first four hours of employment of a new employee;

- (c) affect the right of an employer or employee to terminate the contract of service without notice for any good cause recognised by law as sufficient.
- (4) Notwithstanding anything to the contrary contained in this part of the Agreement-
  - (a) the employment of any employee who absents himself from work for a period of six consecutive working days, without notifying his employer, in writing, of the reason may be terminated after an enquiry has been held on the seventh day, notification of which enquiry shall be given at least 24 hours in advance, and such an employee shall forfeit the employer the equivalent of one week's wages in respect of the week in which he so leaves the services of his employer; and
  - (b) any employee who leaves the service of his employer without notice in terms of subclause 9.1 (1) shall forfeit one week's wages in respect of the week in which he so leaves the service of his employer;

Provided that if the accrued wages due to any such employee is less than the amount of the wages to be forfeited, the difference between the amount of the accrued wages and the wage to be forfeited may be offset against the holiday pay due to such an employee in terms of the provisions of subclause 8.1 (2) of this part of the Agreement.

- (5) No employer shall dismiss any employee by reasons of such employee's absence from work-
  - (a) through illness for a period not more than 60 consecutive days, if the employee has furnished or caused to be furnished to the employer within six consecutive working days after absencing himself from work a medical certificate, certifying that such employee is unable to work due to illness;
  - (b) on leave, the permission of the employer having been obtained.
- (6) An employer employing less than 50 employees may after a period of four weeks temporarily replace the services of an employee who is absent from work in terms of subclause 5 (a) or (b): Provided that the employee on notifying his employer of his intention to resume work shall be re-engaged after a maximum of one week from the date of such notification.

## 9.2 Certificates of service

- (1) Every employer shall issue a certificate of service free of charge to each of this employees at the time when he leaves such employer's service. The certificate shall show the employee's full name, address, age, occupation, sex, rate of pay per week at the time of engagement, rate of pay per week at the time of leaving, date of entering service, date of leaving service, date of last increase, and number of certificates which was produced by the employee in terms of subclause 9.2 (3) when entering his employment. All certificates issued by each employer shall be numbered consecutively signed by the employer or his representative, and a duplicate of each certificate shall be retained by him.
- (2) A duplicate copy of each certificate issued in terms of this section shall be forwarded to the Secretary of the Council, P O Box 1142, Woodstock, 7915.
- (3) An employer shall before engaging any applicant for work require such applicant to produce a certificate of service issued in accordance with the provisions of subclause 9.2 (1) or a certificate issued by the Secretary of the Council, specifying the experience the applicant has had, which certificate shall be issued by the Secretary of the Council on request. The employer shall forward to the Secretary of the Council such certificate with the specified engagement form containing the undermentioned particulars not later than one week after the applicant has commenced work. The engagement form shall show the full name of the

employee, name of factory, address of employee, occupation, age, sex and rate of pay per week, and shall be signed by the employer.

## 10. OUTWORK

No employer shall give outwork to be done except in a workshop registered in terms of clause 4 of this part of the Agreement, nor shall he require or permit an employee to perform work in the Industry other than in an establishment which is equipped, maintained and controlled by the employer.

## 11. ORGANISATIONAL RIGHTS

### 11.1 Closed Shop

- (1) No employer who is a member of an employers' organisation (which is a party to the Council), shall continue to employ an employee -
  - (a) who, while being eligible for membership of the union, is not a member of the union as at the date of coming into operation of this part of the Agreement; or
  - (b) who does not become a member of the trade union within a period of 90 days from such date.
  - (c) The provisions of this clause shall apply to persons who are eligible for membership in terms of the constitution of the union or employers' organisation or who have been refused membership of or expelled from the union or employers' organisation.
- (2) Every employer shall forward all deductions made from the remuneration of employees in respect of union membership fees to the Secretary of the Cape Regional Chamber of the Council, P O Box 1142, Woodstock, 7915, not later than the seventh day of the month following that to which it refers. The Regional Chamber shall forward the amounts to the Secretary of the union, together with such analyses of the amounts as are received from employers.
- (3) For this part of the Agreement no union membership subscriptions may be -
  - (a) paid to a political party as an affiliation fee;
  - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
  - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.
- (4) Provided that the provisions of this clause will also not be applicable to:
  - (a) clerks; or
  - (b) a casual employee.
- (5) Provided further that the provisions of section 26(3)(c) of the Act shall be observed by the parties to the Council and to whom this clause is applicable.

### 11.2 Organisation of employees

Every employer shall, provided that 24 hours' notice has been given to the employer or his representative, in writing, permit any person or persons authorised by the trade union and by the Council to enter his establishment during the lunch interval for the

purpose of-

- (a) interviewing employees on trade union matters;
- (b) enrolling new members;
- (c) posting and distributing notices issued by the trade union;
- (d) collecting members' contributions to the trade union.

### **11.3 Shop stewards**

- (1) Provided that an outline of each such training course has been lodged with the Bargaining Council, and is available on request to any employer, shop stewards shall be entitled to three days' paid leave per annum per shop steward to attend shop stewards' training courses, if such attendance falls within normal working hours.
- (2) In addition to the leave granted in subclause 11.3 (1) above, shop stewards shall be eligible for and have access to further paid leave to attend to trade union duties. This additional leave shall be calculated at seven days per annum per shop steward. At each establishment, this additional leave shall be pooled and the shop stewards shall be entitled to use the additional leave so pooled to attend to trade union duties in any manner that the trade union deems fit: Provided that in establishments employing five or fewer employees, the trade union shall give the employer ten days' written notice of the activity for which it seeks time off in terms of this clause.
- (3) Access to email and internet facilities for shop stewards will be encouraged, provided that such access shall be during shop stewards' own time and dealt with in a manner that is not disruptive to production.

### **11.4 Negotiated plant level procedures**

Every employer shall negotiate at plant level with the union procedures relating to grievances, discipline, retrenchment and the functioning and training of shop stewards.

### **11.5 Balloting**

In order to promote orderly industrial relations, the union party to the Council shall be entitled to on-site balloting facilities in order to conduct any ballot in terms of the Act.

## **12. EMPLOYEE BENEFITS**

### **12.1 Supplementary Benefits Fund**

- (1) The Fund established in terms of the Agreement published under Government Notice No. 1724, dated 21 September 1956, known as the Clothing Industry Welfare Fund (in this clause referred to as the "Fund"), is hereby continued.
- (2) The objects of the Fund shall be the provision of financial assistance to employees who-
  - (a) lose earnings as a result of being on short-time in terms of subclause 7.4;
  - (b) lose earnings through being certified unfit for work on account of tuberculosis;
  - (c) require spectacles;
  - (d) are entitled to a grant when proceeding on maternity leave in terms of subclause 8.3;
  - (e) lose earnings as a result of proceeding on compassionate leave/paternity leave in terms of subclause 8.4.
- (3) (a) The employer shall deduct an amount of 60 cents per week from the wages of each employee.

- (b) An employer shall, in respect of each contributor from whose wages deductions are made in terms of subclause (a) above, contribute an amount of 84 cents per week.
  - (c) The total amount deducted, together with his contribution in terms of subclause (b) above, shall be forwarded by the employer to the Regional Secretary of the Regional Chamber of the Council, not later than the seventh day of the month following that to which it refers, together with a statement in such form as the Council may from time to time specify.
- (4) An employee who has been employed in the Industry for not less than 13 weeks and who has been absent from work on account of short-time, shall be entitled to 50% of his actual daily wage: Provided that no benefits shall be paid to an employee who earns the equivalent of four days' wages in any week, irrespective of the number of days such an employee may work during that week: Provided further that the amount paid to an employee shall not be in excess of 10 days in any period of 12 consecutive calendar months.
- (5) An employee who has been a member of the Fund for 13 weeks, shall be entitled to financial assistance by way of tuberculosis pay at the rate of 50% of his actual wage for a consecutive period of not more than eight weeks commencing on the day the employee, certified to be suffering from tuberculosis by a medical practitioner, ceased work on the instructions of such medical practitioner, or for such lesser period as the medical practitioner may deem it necessary for the employee to remain absent from his place of work due to his contraction of tuberculosis: Provided that-
- (i) an employee who during any week is absent for a period of less than a full calendar week shall be paid one fifth of the weekly benefit in respect of each day of such absence,
- (6) An employee who has been a member of the Fund for 13 weeks and who satisfies the Council that because of defective eyesight, he has had to obtain spectacles, shall be paid an amount of R20 towards the cost thereof: Provided that not more than one such payment shall be made during each cycle of 24 months.
- (7) An employee proceeding on maternity leave in terms of subclause 8.3 shall be entitled to a grant of R500: Provided that-
- (i) only one such grant shall be payable to such employee every three years;
  - (ii) the maximum number of grants payable to such employee shall be three.
- (8) An employee who has been a member of the Fund for 13 weeks and who proceeds on compassionate/ paternity leave in terms of subclause 8.4 shall be entitled to claim leave pay.
- (9) All moneys paid into the Fund shall be deposited in a special account to be opened in the name of the Fund at a bank and/or institution approved by the Council. All payments from the Fund shall be by cheque on the Fund's accounts and such cheques shall be signed by two persons duly authorised thereto by the Council.
- (10) Any moneys regarded by the Council as being surplus to its requirements may be placed on deposit with a bank or registered building society: Provided that sufficient money is kept in such liquid form as will enable the Council to meet its liabilities immediately it is called upon to do so.

- (11) A public accountant shall be appointed by the Council to audit the accounts of the Fund annually and not later than 31 March in each year, and to prepare a statement showing-
- (a) all moneys received-
    - (i) in terms of subclause 12.1 (3) thereof;
    - (ii) from any other source; and
  - (b) expenditure incurred under all headings during the 12 months ended 31 December preceding, together with a statement showing the assets and liabilities of the Fund.

The audited statements, shall thereafter lie for inspection at the office of the Council and copies thereof shall be sent to the Registrar of Labour Relations, Pretoria, within three months after the closure of the period covered thereby.

- (12) In the event of the expiry of this part of the Agreement through effluxion of time or cessation or through any other cause, the Fund shall continue to be administered by the Council until the Fund is liquidated or transferred to a fund duly constituted for the same purpose for which the original Fund was created: Provided that the Fund shall be liquidated unless an agreement providing for the continuation of the Fund or for the transfer of its moneys as aforesaid, is entered into within one year of the date of expiry of this part of the Agreement.
- (13) In the event of the dissolution of the Council or in the event of its ceasing to function during any period in which this part of the Agreement is binding in terms of section 61 (5) of the Act, the Fund shall continue to be administered by a committee consisting of the members of the Council at the date on which the Council ceases to function or is dissolved: Provided, however, that any vacancy occurring on the Committee may be filled by the Registrar of Labour Relations from employers or employees in the Industry, as the case may be, so as to ensure an equality of employer and employee representatives and of alternates in the membership of the Committee. In the event of such Committee being unable or unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable in the opinion of the Registrar of Labour Relations, he may appoint a trustee or trustees to carry out the duties of the Committee and who shall possess all the powers of the Committee for such purposes.

If there is no Council in existence upon the expiry of this part of the Agreement, the Fund shall be liquidated by the Committee or the trustees, as the case may be, in the manner set forth in subclause 12.1 (12) and if upon such expiry the affairs of the Council have already been wound up, and its assets distributed, the balance of this Fund shall be distributed as provided for in section 59 (5) of the Act, as if it formed part of the general funds of the Council.

- (14) Upon liquidation of the Fund in terms of subclause 12.1 (12), the moneys remaining to the credit of the Fund after the payment of all claims against the Fund, including administration and liquidation expenses, shall be paid into the funds of the Council.
- (15) All costs of administration and liquidation of the Fund shall be charge upon the Fund.

## **12.2 SACTWU Education Bursary Scheme**

Every employer to whom this part of the Agreement applies shall pay 29c per week for each trade union party member in his employ to the SACTWU Education Bursary

Scheme. The total amount per month shall be paid to the SACTWU Finance Department, P.O. Box 18359, Dalbridge, 4014, by not later than the 15th day of the following month.

### **12.3 Retrenchment benefit**

An employer must pay an employee who is dismissed for reasons based on the employer's operational requirements, severance pay, equal to at least one week's remuneration for each completed year of continuous service with that employer, unless the employer has been exempted from the provisions of section 196 (1) of the Act by the Minister.

### **12.4 SACTWU's HIV/AIDS Project**

Every employer to whom this part of the Agreement applies shall contribute an amount of 42 cents per week in respect of each of his employees for whom wages have been specified in this part of the Agreement. The total amount shall be forwarded by the employer to the Secretary of the Council, P.O. Box 1142, Woodstock, 7915, not later than the seventh day of the month following that to which it refers.

## **13. GENERAL EMPLOYER OBLIGATIONS**

### **13.1 Insurance of wages**

Every employer shall within four weeks of the date of publication of this part of the Agreement take out a policy of insurance with a registered insurance company which shall provide for payment to be made to all employees of the employer who are deprived of work, through fire, for the amount of two week's wages: Provided that, should the stoppage of work be for a period of less than two weeks, a pro rata payment may be made. Should it not be possible for the employer to obtain such a policy of insurance, he shall deposit with the Council, an amount equal to two weeks' wages of all employees in the establishment at the date of coming into operation of this part of the Agreement which the Council shall retain in a special trust investments account until required for a like payment to employees. Any adjustment to the amount held by the Council shall be made within two weeks from the date of an increase or decrease, as the case may be, in the total number of employees employed by the employer.

### **13.2 Tools**

- (1) Every employer may supply scissors to his employees at the price paid therefore by him.
- (2) Where the cost of scissors supplied to an employee does not exceed R1, the employer may deduct the cost thereof from the wages of the employee in instalments of not more than 10c per week. Where the cost of scissors exceeds R1, the deductions shall be at a rate mutually agreed upon between the employer and his employee. The scissors shall be kept sharpened and otherwise in good order by the employer without cost to the employee.

### **13.3 Premiums**

No premiums shall be charged or accepted by an employer for the training of an employee: Provided that this subclause shall not apply in respect of a training scheme to which the employer is legally required to contribute.

## **14. AGREEMENT**

### **14.1 Council funds**



The employer and the employee NBC Levy contribution shall be converted to a percentage-based contribution.

The funds of the Council, which shall be vested in and administered by the Council, shall be provided in the following manner:

- (1) An amount equal to 0.23% of each employee's wages per week, calculated at the qualified machinist rate of pay, up to a maximum of R1,84 per week, payable by means of a deduction from the employee's wages for whom wages have been specified in this part of the Agreement.
- (2) An employer shall, in respect of each contributor from whose wages deduction are made in terms of subclause (1) above, contribute an amount equal to 0.33% of each employee's wages per week, calculated at the qualified machinist rate of pay, up to a maximum of R2,96 per week, payable by the employer.
- (3) The total amount deducted, together with his contribution in terms of subclause (2) above, shall be forwarded by the employer to the Regional Secretary of the Regional Chamber of the Council, not later than the seventh day of the month following that to which it refers, together with a statement in such form as the Council may from time to time specify.
- (4) (a) Every employer shall make a return to the Regional Chamber of the number of employees employed by him for each week of each calendar month in the form and manner specified and supplied by the Regional Chamber.
- (b) Should any amount due in terms of this clause not be received by the Regional Chamber by the 14<sup>th</sup> day of the month it is due, the employer shall forthwith be liable for and be required to pay interest on such amount as remains unpaid at a rate determined by the Regional Chamber from time to time, calculated from the 1<sup>st</sup> day of the month in which the payment is due until the day upon which payment is actually received by the Regional Chamber: Provided that the Regional Chamber shall be entitled in its absolute discretion to waive payment of such interest or part thereof in any individual instance.
- (c) In the event of the Council or Regional Chamber incurring any costs or becoming obliged to pay any collection commission by reason of the failure of the employer to make any payment on or before the due date, the employer shall then also be liable to pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission, and the Council or Regional Chamber shall be entitled in its absolute discretion to allocate any payment by the employer first in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.

#### 14.2 Exhibition of Agreement

Every employer on whom the Main Collective Agreement is binding must-

- (a) keep a legible copy of the Main Collective Agreement in two official languages available in the workplace at all times;
- (b) keep the copy available for inspection by any employee;
- (c) give a copy of the Main Collective Agreement-
  - (i) to an employee who has paid the specified fee; and
  - (ii) free of charge, on request, to an employee who is a trade union representative or a member of a workplace forum.

### 14.3 Agents

- (1) The Council may request the Minister of Labour to appoint one or more specified persons to be designated agents to assist in enforcing the terms of this part of the Agreement.
- (2) A designated agent may-
  - (a) secure compliance with the Council's collective agreements by:
    - (i) publicising the contents of the agreements;
    - (ii) conducting inspections;
    - (iii) investigating complaints;
    - (iv) investigating means of conciliation;
    - (v) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period; or
  - (b) perform any other function that are conferred or imposed on the agent by the Council.
- (3) A designated agent shall report all disputes concerning compliance with any provision of this part of the Agreement to the General Secretary of the Council and to designated official at the relevant Regional Chamber of the Council.
- (4) Within the registered scope of the Council, a designated agent of the bargaining council shall have all the following powers-
  - (a) A designated agent may, without warrant or notice at any reasonable time, enter any workplace or any other place where an employer carries on business or keeps employment records that is not a home, in order to monitor or enforce compliance with a collective agreement concluded in the Council.
  - (b) A designated agent may only enter a home or any place other than a place referred to in subclause (1):
    - (i) with the consent of the owner or occupier; or
    - (ii) if authorised to do so by the Labour Court in terms of subclause (3).
  - (c) The Labour Court may issue an authorisation contemplated in subclause (2) (b) only on written application by a designated agent who states under oath or affirmation the reasons for the need to enter a place in order to monitor or enforce compliance with a collective agreement concluded in the Council.
  - (d) If it is practicable to do so, the employer and a trade union representative shall be notified that the designated agent is present at a workplace and of the reason for the designated agent's presence.
  - (e) In order to monitor or enforce compliance with a collective agreement a designated agent may:
    - (i) require a person to disclose information, either orally or in writing, and either alone or in the presence of witnesses, on a matter to which a collective agreement relates, and require that disclosure to be under oath or affirmation;

- (ii) inspect and question a person about any record or document to which a collective agreement relates;
  - (iii) copy any record or document referred to in paragraph (b) or remove these to make copies or extracts;
  - (iv) require a person to produce or deliver to a place specified by the designated agent any record or document referred to in paragraph (b) for inspection;
  - (v) inspect, question a person about, and if necessary remove, an article, substance or machinery present at a place referred to in subclauses (1) and (2);
  - (vi) question a person about any work performed; and
  - (vii) perform any other prescribed function necessary for monitoring or enforcing compliance with a collective agreement.
- (f) A designated agent may be accompanied by an interpreter and any other person reasonably required to assist in conducting an inspection.
- (g) A designated agent shall:
- (i) produce on request a copy of the authorisation referred to in subclause (2) (b);
  - (ii) provide a receipt for any record or document removed in terms of subclause (5) (e); and
  - (iii) return any removed record, document or item within a reasonable time.
- (h) Any person who is questioned by a designated agent in terms of subclause (4) (e) shall answer all questions lawfully put to that person truthfully and to the best of that person's ability.
- (i) An answer by any person to a question by a designated agent in terms of this clause may not be used against that person in any criminal proceedings, except proceedings in respect of a charge of perjury or making a false statement.
- (j) Every employer and every employee shall provide any facility and assistance at a workplace that is reasonably required by a designated agent to effectively perform the designated agent's functions.
- (k) The Council may apply to the Labour Court for an appropriate order against any person who:
- (i) refuses or fails to answer all questions lawfully put to that person truthfully and to the best of that person's ability;
  - (ii) refuses or fails to comply with any requirement of the designated agent in terms of this clause; or
  - (iii) hinders the designated agent in the performance of the agent's functions in terms of this clause.
- (l) For the purposes of this clause, a collective agreement shall be deemed to include any basic condition of employment which constitutes a term of a

contract of employment in terms of section 49 (1) of the Basic Conditions of Employment Act.

#### 14.4. Exemptions

##### A. For any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this part of the Agreement

- (1) Any business entity, whether a party or a non-party to the Council, which is registered with and falls within the Council's registered scope for the purposes of this part of the Agreement may apply to the Council for exemption from any or all of the provisions of this part of the Agreement.
- (2) All applications for exemption shall be made in writing on a prescribed form provided by the Council.
- (3) All applications for exemption shall be motivated in accordance with the exemption criteria set out in subclause (7) below; shall be supported by relevant documentation and, in addition, shall contain the following information:
  - (a) the period for which the exemption is sought;
  - (b) the number of employees affected and how many of such employees are members of a registered trade union;
  - (c) the clauses and subclauses of this part of the Agreement from which the exemption is sought;
  - (d) satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, which consultations shall include a registered party trade union, where such union has members employed at the workplace, and shall include the response resulting from such consultations; and
  - (e) the demonstrable commercial need of the applicant for the exemption sought.
- (4)
  - (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other officer designated by the Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.
  - (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in subclause (7) below, within 45 days from the date of lodgement of the application with the General Secretary, failing which the application shall be deemed to have been refused.
  - (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time period stipulated in subclause (b) above may be extended by agreement between the applicant and the Committee by the period the applicant takes to furnish the additional information or submissions.
  - (d) The Exemptions Committee may, after considering the application in terms of the provisions and the criteria contained in this clause, grant, partially grant, or reject such application for exemption, and may impose any conditions on the granting or partial granting of any application it deems fit under the circumstances. If the applicant is not prepared to accept a partial granting of the application or any conditions imposed by the Exemptions Committee, the application shall be deemed to have been rejected.

- (e) Subject to the time period for considering the application, referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected and the reasoning of the members of the Exemptions Committee who wish to reject the application shall constitute the reasons of the Committee for the purposes of subclause 4 (i) below.
  - (f) The Exemptions Committee shall notify the applicant of its decision within seven days of such decision having been reached.
  - (g) If the application has been granted or partially granted, the Exemptions Committee shall specify the following in its notification to the applicant:
    - (i) the conditions, if any, of its approval of the application;
    - (ii) the period for which the exemption(s) will be valid;
    - (iii) the clauses or subclauses of this part of the Agreement in respect of which exemption was granted or partially granted; and
    - (iv) the full name of the exempt employer or employee(s).
  - (h) Upon receipt of a written request, the Exemptions Committee shall provide brief written reasons for its decision to grant the exemption to any party which has an interest in the matter.
  - (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in subclause (5) below since the latter may make a decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.
- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or withdraw the application, may be referred on appeal to the Independent Exemptions Body (Exemptions Board) hereby established in terms of the Act and the constitution of the Council. Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.
- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the quantum thereof: Provided that such fee shall be consistent with-
- (i) the cost incurred for the hearing of the appeal;
  - (ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.
- (c) The Exemptions Board shall, in addition, have the power to raise a cost order on the applicant in respect of cost incurred by the parties to the appeal where it is satisfied that it will be proper to do so on the basis that the appeal is so completely without merit that it would be justified in doing so.
- (6) (a) The Exemptions Board shall consist of a single independent umpire

appointed by the parties from a panel selected for this purpose.

- (b) The Exemptions Board shall determine the procedure to be adopted in determining the appeal.
  - (c) The provisions of subclause (4) above shall, read with the changes required by the context, apply equally to the appeal process.
  - (d) The decision of the Exemptions Board shall be final and binding.
- (7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee and, where applicable, the Exemptions Board of the following:
- (a) There is a demonstrable commercial need for the exemption.
  - (b) Competitors covered by the Council who are in compliance with the applicable Council agreements will not be materially prejudiced by the exemption.
  - (c) The applicant is not in arrears with respect to payment of Bargaining Council levies or employer or employee contributions and/or trade union/employer subscriptions and/or levies, or, if so, an agreed payment plan exists in respect of any such outstanding moneys. "Arrears", for this purpose, means any payment of Bargaining Council levies or employer or employee or trade union subscriptions which remain unpaid as at the last day of the month following the month in respect of which the payment is due.
  - (d) No infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted, nor will the application, if granted, result in a conflict with the primary objectives of the Act.
  - (e) The exemption will not undermine collective bargaining and labour peace in the industry.
  - (f) There has been compliance with subclause (3) above.
  - (g) The majority of affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. In such instance, either the employer, or the trade union may request that a ballot be conducted.
- (8) In addition, the following criteria shall be taken into account by the Exemptions Committee and the Exemptions Board when determining applications for exemptions:
- (a) The merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has made a compelling case for the exemption.
  - (b) Whether the applicant firm will constitute a viable concern after the expiry of the exemption.
  - (c) If the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee, transferability, administration, management, costs, growth and stability. "Sufficiency", for the purposes of this subclause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund.
  - (d) The terms of the exemption sought, including the period thereof.

- (e) Any existing projected special financial, economic or other circumstances put forward by the applicant as reasons warranting the granting of an exemption, including what economic hardship the applicant will suffer if the applicant is refused: Provided that the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may require the disclosure of such relevant, verifiable information as it deems fit in this regard.
  - (f) The history of the business entity and/or its shareholders, directors and owners within the Industry, including the period of its operation and in particular whether or not the entity is a new emerging enterprise or a small or medium enterprise (SME); and its history of compliance with Council agreements.
  - (g) Any representations made by the employees and/or their representatives, including a registered trade union, the Council or Executive Committee or Exemptions Committee and/or the parties to the Council and/or the relevant Regional Chamber of the Council.
  - (h) Any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances.
  - (i) The cost, efficiency and administration of any conditions which the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may feel it necessary to impose.
  - (j) What cost-saving measures may have been implemented by the applicant other than those in respect of its cost of labour
  - (k) What hardship may eventuate to employees in the event of the exemption being granted.
  - (l) Any relevant time limits contained in the Council's constitution and the Act, and in particular that any exemption or partial granting of an exemption shall be for a fixed, stipulated period.
  - (m) Any other relevant factors, including any decisions of the Council relevant to exemption applications.
- (9) (a) An applicant shall be entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the Regional Exemptions Committee or the Exemptions Board. An application for extension shall contain such additional information as may be necessary and required to substantiate the request with reference to the criteria set out in subclause (7) above.
- (b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of subclause (4) above, read with the changes required by the context.
- (10) Employers employing five or fewer employees shall, upon application to the Council through the General Secretary, be exempted from the provisions of this part of the Agreement.

**B. For any employer who is a party or a member of a party to the Council and its employees represented by a trade union representative**

- (1) Exemption from the provisions of this part of the Agreement shall be granted in the following circumstances:

- (a) Where the employer, who is a party or a member of a party to the Council, and its employees, represented by a trade union representative as defined in the Act, have concluded a collective agreement in accordance with the procedure set out in subclause (2) below to vary such provisions: Provided that-
  - (i) the collective agreement does not contravene the minimum employment standards set out in this part of the Agreement or in any law or the provisions of the Agreement dated 25 May 1993 between the Cape Clothing Manufacturers' Association, the Cape Knitting Industry Association, the Garment Manufacturers' Association of the Western Cape, the Eastern Province Clothing Manufacturers' Association, the Natal Clothing Manufacturers' Association, the Orange Free State and Northern Cape Clothing Manufacturers' Association, the Transvaal Clothing Manufacturers' Association (incorporating the Transvaal Knitters' Association) and the Southern African Clothing and Textile Workers' Union; and
  - (ii) Wage rates and contributions to social funds including the Council's fund may not be amended without the Council's approval.
- (2) An employer who is a party or a member of a party to the Council shall implement the following procedure in order to conclude a collective agreement as set out in subclause (1) (a) (i) above:
  - (a) The employer shall place on the notice board of the establishment a notice to employees specifying the proposed variation to this part of the Agreement. At the same time a copy of the notice shall be sent to the trade union.
  - (b) A meeting shall take place at the establishment in order to reach agreement on the proposed variation, which agreement shall then be reduced to writing. In the absence of agreement the employer shall undertake not to refer an application for exemption to the Exemptions Board established by the Council.
  - (c) The agreement shall be referred to the Council or Regional Chamber for registration and any agreement concluded in terms of subclause (1) (a) (i) above that is in contravention of any law or the minimum employment standards set out in this part of the Agreement shall be null and void ab initio.

#### **14.5 Existing contracts**

Any contract of service in operation at the date of commencement of this part of the Agreement or concluded subsequent to such date shall be subject to the provisions of this part of the Agreement.

#### **14.6 Dispute procedure**

- (1) Unless otherwise provided in the Council's Constitution or in this part of the Agreement, any dispute within the registered scope of the Council shall be resolved as set out below:
  - (a) The General Secretary of the Council shall, after consultation with the Secretary of any relevant Regional Chamber, decide whether any dispute referred to the Council must be dealt with by the Council or the Regional Chamber.
  - (b) The Council shall, from time to time, adopt by resolution, guidelines for the General Secretary of the Council to follow in the allocation of such disputes.



- (c) When any dispute is allocated to a Regional Chamber in terms of this clause then such Regional Chamber shall have the same rights, powers and obligations as the Council.

**(2) Accreditation:**

- (a) With a view to performing its dispute resolution functions in terms of section 51 (3) of the Act only, the Council shall by decision apply to the governing body of the CCMA for accreditation to perform these functions as appropriate.
- (b) In the event that the Council fails to secure such accreditation, the Council may enter into an agreement with the CCMA in terms of which the CCMA is to perform, on behalf of the Council, its dispute resolution functions in terms of section 51 (3) of the Act.

**(3) Panel of conciliators, arbitrators and senior arbitrators-**

- (a) The Council shall appoint:
  - (i) a panel of conciliators, for the purpose of conciliating disputes;
  - (ii) a panel of arbitrators, for the purpose of determining disputes;
  - (iii) a panel of senior arbitrators, for the purpose of determining disputes where:
    - (aa) the nature of the questions of law raised by the dispute;
    - (bb) the complexity of the dispute;
    - (cc) conflicting arbitration awards, Labour Court precedents or Labour Appeal Court precedents; and/or
    - (dd) the public interest, requires the appointment of a senior arbitrator and a party to the dispute requests that the Council refer the dispute for determination by a senior arbitrator.
- (b) The Council shall determine from time to time the number of persons to be appointed to the panels of conciliators and arbitrators.
- (c) All parties to the Council shall attempt to reach agreement on the persons to be appointed to the conciliation and arbitration panels. In the event that the parties to the Council cannot agree on the appointment of some or all of the conciliators and arbitrators, the following process shall be followed:
  - (i) The union parties to the Council shall prepare a list of nominees to fill the remaining vacancies on each panel, and the employer parties to the Council shall be filled by appointing the nominees most preferred by the shall do likewise.
  - (ii) The lists prepared by the parties shall be exchanged, and the union parties shall rank the nominees of the employer parties in order of their preference, and the employer parties shall do likewise in respect of the nominees of the union parties.
  - (iii) In the event of the number of remaining vacancies being an even number, half of the vacancies union parties from the employer parties' list, and the remaining half by appointing the nominees most preferred by the employer parties from the union parties' list.

- (iv) In the event that the number of remaining vacancies is an odd number, then the appointments from the parties' lists shall make up the number of vacancies less one, and the final vacancy shall be filled by inserting the names of the next most preferred nominee from each list into a hat, from which the General Secretary of the Council shall draw the name of the remaining appointee.
- (d) The arbitrators and senior arbitrators are to be appointed to the relevant panel for a period of two years, after which period they may be re-appointed by agreement between all the parties to the Council. Should any or all of the arbitrators and senior arbitrators not be re-appointed, all parties to the Council shall attempt to reach agreement on the persons to be appointed to the panel or senior panel, failing which the remaining vacancies shall be filled in accordance with the method described in subclause (3) (c) above.
- (e) Notwithstanding subclause (3) (d) above, the Council may remove a member of the panel of conciliators or arbitrators from office-
  - (i) for serious misconduct; or
  - (ii) owing to incapacity; or
  - (iii) if at least one half of the employer parties and at least one half of the union parties have voted in favour of the removal of that member from the panel.
- (f) If for any reason there is a vacancy on the panels, the Council may appoint a new member to the relevant panel in accordance with the method described in subclause (3) (c) above for the unexpired portion of the predecessor's term of office.
- (g) Subject to subclause (3) (i), a person may be appointed to one or more of the panels of conciliators or arbitrators.
- (h) An employee of the Council shall be eligible for appointment to the panel of conciliators and the panel of arbitrators: Provided that, should the Council have an interest in the dispute to be arbitrated, employees of the Council shall not be eligible to arbitrate the dispute.
- (i) An employee of the Council shall not be eligible for appointment to the panel of senior arbitrators.
- (j) Unless the parties to the dispute have agreed on a member of the relevant panel to conciliate or arbitrate their dispute or on a procedure to allocate disputes to the panel, the General Secretary of the Council or another designated official shall appoint a member of the relevant panel to conciliate or arbitrate the dispute on a rotational basis, with the next available conciliator, arbitrator or senior arbitrator being appointed, as the case may be, should any panel member(s) not be available in terms of such rotation.

#### **(4) Disputes involving non-parties to the Council**

Any dispute contemplated in section 51 (3) of the Act, where any party to the dispute is not a party or a member of a party to the Council shall be resolved by the Council in accordance with the following procedure-

**(a) Referral and conciliation of disputes:**

- (i) Any of the parties to the dispute may refer the dispute in writing to the Council, setting out the nature of the dispute and the outcome sought;
- (ii) the party who refers the dispute to the Council shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute;
- (iii) the General Secretary or other designated official shall appoint a member of the panel of conciliators who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date of the Council's receiving the written referral of the dispute, or any extended period as agreed to in writing by the parties to the dispute;
- (iv) the conciliator may, during conciliation proceedings:
  - (aa) mediate the dispute;
  - (bb) conduct a fact-finding exercise; and
  - (cc) make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arbitration award.
- (v) Representation of a party to the dispute in the conciliation proceedings shall be in accordance with the provisions of the Act in relation to conciliation proceedings at the CCMA.
- (vi) At the end of the thirty (30) day period, referred to in subclause (4) (a) (iii) above or any further period agreed to in writing by the parties to the dispute, the General Secretary or other designated official of the Council shall issue a certificate stating whether or not the dispute has been resolved.
- (vii) Nothing in this part of the Agreement shall prevent an officer or an employee of the Council from investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator.

**(b) Adjudication of disputes referred to the Council for arbitration:**

- (i) If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolved through arbitration if:
  - (aa) the Act requires that the dispute be arbitrated; or
  - (bb) all the parties to the dispute consent to arbitration under the auspices of the Council, irrespective of whether such dispute may be subject to the jurisdiction of the CCMA or labour Court in terms of the Act.
- (ii) Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (iii) Such written request for arbitration shall be made within the time period prescribed in the Act, provided that the arbitrator may permit a late request for arbitration on good cause shown.

- (iv) The General Secretary or other designated official of the Council shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (v) Any party who has a legal interest in the arbitration may apply to the arbitrator to be allowed to intervene in the arbitration. Such intervention may be allowed by the arbitrator, who shall have the power to grant an adverse costs order against that party if such intervention is found by the arbitrator to be frivolous or vexatious.
- (vi) Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of subclause (4)(b)(v) above has been granted by the arbitrator, shall have the right to:
  - (aa) give evidence;
  - (bb) call witnesses;
  - (cc) question the witnesses of any other party;
  - (dd) address arguments to the arbitrator;
  - (ee) be represented in accordance with the provisions of sections 138 and 140 of the Act.
- (vii) The arbitration proceedings shall be conducted in accordance with the provisions of the Code of Conduct for conciliators and arbitrators as agreed to by the Council, sections 138 and 142 and, if applicable sections 139, 140 and 141 of the Act, read with the changes required by the context.
- (viii) Representations at arbitration proceedings shall be in accordance with the provisions of the Act in relation to arbitration proceedings at the CCMA.
- (ix) The arbitrator who has been appointed to resolve the dispute shall have the powers of a Commissioner in terms of sections 138 and 142 of the Act.
- (x) Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute shall be final and binding on the parties to the dispute. The arbitrator shall however, have the power to vary, rescind or amend an award made by him/her on good cause shown or of his own accord; and without limiting the generality thereof, the arbitrator shall have this power if:
  - (aa) the award was erroneously sought or erroneously made in the absence of any party affected by the award;
  - (bb) the award is ambiguous or contains an obvious error or omission;
  - (cc) the award was granted as a result of a mistake common to the parties to the proceedings.
- (xi) The Council shall serve the award, together with any written reasons, on all parties to the dispute.
- (xii) Upon receipt of a written request from a party to the dispute, the General Secretary or other designated official of the Council shall

apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.

**(5) Disputes involving parties to the Council**

- (a) For the purposes of this clause, a party to the Council includes the members of any registered trade union or registered employers' organisation that is a party to the Council.
- (b) If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collective agreement in the Council or in any Regional Chamber, the General Secretary or other designated official shall appoint a member of the panel of conciliators, who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was minuted or referred to the Council, or within any extended period as agreed to in writing by the parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act.
- (c) Any other dispute between parties to the Council, which the Act requires to be arbitrated or which disputes would otherwise be adjudicated by the Labour Court, but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, shall be resolved by the Council in accordance with the procedure set out in subclause (4) above, subject to the proviso in subclause (5) (d) below.
- (d) Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the panel of senior arbitrators to arbitrate the dispute.

**(6) Compliance procedure and enforcement of collective agreements by Council:**

- (a) The Council shall request the Minister to appoint certain identified persons to be the designated agents of the Council to promote, monitor and enforce compliance with this Collective Agreement concluded in the Council.
- (b) Such designated agents shall perform the functions and have the powers set out in the Act, including sections 33 and 33A and Schedule 10 of the Act. It is specifically recorded that such designated agent shall have the power to issue a compliance order.
- (c) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement and with the collective agreements concluded in the Council. If, whether through its own investigations or through any other source, it appears that the provisions of such an agreement may have been breached, then the following procedures shall apply to enforce compliance:
  - (i) The General Secretary of the Council shall appoint a designated agent to investigate the alleged breach and may delegate such powers of appointment to the Secretary of a Regional Chamber;
  - (ii) If, upon completion of the investigation, the designated agent has reason to believe that an agreement has been breached, the agent

may endeavour to secure compliance with the agreement, in terms of guidelines of, or decisions by, the Council, where these exist, by:

- (aa) publicising the contents of the agreement;
  - (bb) conducting inspections;
  - (cc) investigating complaints;
  - (dd) endeavouring to secure compliance with the agreement through conciliation; or
  - (ee) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period.
- (iii) The designated agent shall report all disputes concerning compliance with any provision of a collective agreement to the General Secretary of the Council and a designated official of the Regional Chamber.
- (iv) Upon receipt of the report of an unresolved dispute, the General Secretary or other designated official of the Council or Regional Chamber may refer the unresolved dispute to arbitration.
- (v) The General Secretary or other designated official of the Council or Regional Chamber shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (vi) The General Secretary or other designated agent of the Council or Regional Chamber shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (vii) If a party to such an arbitration is not a party to the Council and objects to the appointment of a member of the panel, the General Secretary or other designated official of the Council or Regional Chamber shall request the CCMA to appoint an arbitrator, in which event the objecting party shall pay the arbitrator's fee to the Council, and the Council shall pay the fee set by the CCMA.
- (viii) The provisions of subclauses (4) (b) (v) to (4) (b) (xii) above shall apply to an arbitration in terms of this clause.
- (ix) In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including:
- (aa) ordering any person to pay any amount owing in terms of a collective agreement;
  - (bb) imposing a fine for a failure to comply with a collective agreement in accordance with Item 29 of Schedule 7 and section 33A (13) of the Act;
  - (cc) charging a party to the arbitration an arbitration fee;
  - (dd) ordering a party to the arbitration to pay the costs of the arbitration;
  - (ee) confirming, varying or setting aside a compliance order issued by a designated agent;

- (ff) any award contemplated in section 138 (9) of the Act;
- (gg) any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collective agreement.
- (x) Subject to the provisions of the Act, an award in an arbitration conducted in terms of this subclause shall be final and binding on the parties to the dispute.
- (xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.
- (xii) The provisions of this procedure stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

**(7) Non-Compliance**

- (a) Outsourcing to non-compliant companies shall not be permitted in the industry.
- (b) The parties shall enter into agreements with all Provincial and Local governments which shall have the effect that their sourcing from the Industry shall include a requirement to only source from companies which hold a valid Certificate of Compliance from the bargaining council.

**(8) Compliance Promotion**

- 8.1 All current non-compliant companies which meet a minimum of 80% of the party-to-party *negotiated wage rate* for current employees, shall be regarded as level B compliant, subject to sub-clause 8.2 below.
- 8.2. All companies described in 8.1 above shall achieve 100% wage compliance within a period of 18 months from 1 September 2012, in 6 monthly equal increments, failing which full compliance enforcement including the execution of writs shall apply to them.
- 8.3. The arrears of non-compliant companies shall be ring-fenced in a 'suspense account' at 100% of the verified arrears value and a written time-bound repayment plan agreed with the bargaining council. They should also sign a legally enforceable acknowledgement of debt.
- 8.4. The current policy that allows for a maximum of 6-months as a repayment period for arrears shall be amended, to allow for a maximum eighteen (18) months repayment period with effect from 1 November 2012.
- 8.5. The arrears will become payable in full should the employer become non-compliant, or default on the repayment plan at any time in future, unless otherwise agreed by the parties.
- 8.6. At every future meeting of the National Bargaining Council, each party shall make one practical concrete suggestion on how to further promote compliance in the industry.
- 8.7. The National Bargaining Council General Secretary shall have unfettered authority to serve any writ of execution upon any employer who fails to

become compliant in terms of the new compliance provisions envisaged in this agreement, unless the parties agree otherwise.

- 8.8. Nothing in this agreement shall have the effect of downward migration of conditions of employment for any current employee.
- 8.9. The Trade Union shall have the unfettered right to embark on industrial action against any company which fails to implement the terms of this agreement.

## 15. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION

- (1) This part of the Agreement shall remain in force until 31 August 2013: Provided that the parties to the Council shall annually negotiate through collective bargaining amendments to this part of the Agreement, unless they agree to negotiate at different intervals: Provided further that no amendment(s) shall take effect before 1 September 2012.
- (2) The parties to the Council, and in the event of this part of the Agreement being extended to non-parties, non-party employers and their employees, shall have the right to pursue industrial action within establishments bound by the provisions of this part of the Agreement, in compliance with the Act, after utilising applicable procedures, in the event of agreement not being reached on any issues in negotiations at the Council on wages and other substantive issues designed to replace or amend the remuneration and/or other substantive provisions of this part of the Agreement.
- (3) The reference to negotiations in sub-clause (2) above shall mean negotiations as contemplated in sub-clause (1) above.
- (4) Section 65 (3) of the Act shall not render industrial action as contemplated in subclause (2) above unprocedural.

## 16. A TYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

- (1) The Council shall conduct a survey on the extent and type of contract work in the clothing industry.
- (2) Every employer shall complete a questionnaire as approved by the Council.
- (3) All employers shall be required to cooperate with the survey.

## 17. TRADE UNION AGENCY SHOP

- (1) Scope- Agency fees will apply to employees who –
- (a) are not members of the trade union party, but are eligible for membership thereof;
  - (b) are not bound by the provisions of the closed shop clause; and
  - (c) fall within the scope of this part of the Agreement.
- (2) **Union membership:** Employees are not compelled to become members of the trade union party.
- (3) **Agency fee deductions:** Every employer to whom this clause applies shall:



- (a) deduct from the wages of an employee an amount equivalent to the union subscription; and
  - (b) pay such monies to the Regional Secretary of the Cape Regional Chamber of the Council, P O Box 1142, Woodstock, 7915, not later than the seventh day of the month of having made such deductions.
  - (c) deduct the agency fee from the wages of an employee without the employee's authorisation as provided for in section 25(4) of the Act.
- (4) **Payment of agency fees:** The Regional Secretary shall pay the received trade union agency fee deductions to the trade union by not later than the end of the month in which the fees were received.
- (5) **Utilisation of agency fees:** No agency fee deducted may be -
- (a) paid to a political party as an affiliate fee;
  - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
  - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.

## 18. PRODUCTIVITY

The Productivity Scheme which was agreed to is:

Contained in Annexure B.

- (1) The bargaining council shall establish a dedicated productivity unit to promote productivity issues in the industry, as part of the NBC's value-added services.
- (2) The bargaining council shall commission a feasibility study for the establishment of a training institute similar to the previous Clothing Industry Training Board (CITB), to be operated under the auspices of the bargaining council as part of the NBC's value-added services.
- (3) Absenteeism
  - (i) The memorandum of Understanding as conclude between the parties on 14 June 2007 and implemented shall remain in effect for the duration of the Agreement only.
  - (ii) Where companies' have introduced the productivity scheme as per the provisions of the absenteeism MOU, such schemes are extended for the duration of this agreement, subject to plant level agreements entered into and signed off.

## 19. INDUSTRY PROTECTION FUND

Contained in Annexure C.

## 20. HIV/AIDS

The Code of Good Practice on Key Aspects of HIV/AIDS and Employment as set out in Annexure A to this agreement shall be policy in the industry.

### **World International HIV/AIDS Day**

The industry acknowledges the importance of creating awareness of the HIV/AIDS pandemic. To this end, employers are encouraged to grant employees on World International HIV/AIDS Day thirty minutes paid time off to participate in awareness activities agreed to at industry level.

## **21. CONTRACT EMPLOYEES**

Contained in Annexure D.

## **22. WORKING IN ARRANGEMENTS**

Employees shall be permitted to work in the time lost due to strike action incurred during the September / October 2009 protected wage strike at normal rates of pay, provided that this is agreed to at plant level and further provided that where agreed, such employees shall be offered a loan equal to between one week and two weeks' wages, deductible from their wages in equal weekly amounts over a 10 week period.

### **ANNEXURE A**

## **CODE OF GOOD PRACTICE ON KEY ASPECTS OF HIV/AIDS AND EMPLOYMENT WITHIN THE CLOTHING MANUFACTURING INDUSTRY OF SOUTH AFRICA**

### **1. INTRODUCTION**

- 1.1. The Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) are serious public health problems, which have socio economic, employment and human rights implications.
- 1.2. It is recognised that the HIV/AIDS epidemic will affect every workplace, with prolonged staff illness, absenteeism, and death impacting on productivity, employee benefits, occupational health and safety, production costs and workplace morale.
- 1.3. HIV knows no social, gender, age or racial boundaries, but it is accepted that socio-economic circumstances do influence disease patterns. HIV thrives in an environment of poverty, rapid urbanisation, violence and destabilisation. Transmission is exacerbated by disparities in resources and patterns of migration from rural to urban areas. Women, particularly are more vulnerable to infection in cultures and economic circumstances where they have little control over their lives.
- 1.4. Furthermore HIV/AIDS is still a disease surrounded by ignorance, prejudice, discrimination and stigma. In the workplace unfair discrimination against people living with HIV and AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and the denial of employee benefits.
- 1.5. One of the most effective ways of reducing and managing the impact of HIV/AIDS in the workplace is through the implementation of an HIV/AIDS policy and programme. Addressing aspects of HIV/AIDS in the workplace will enable employers, trade unions and government to actively contribute towards local, national and international efforts to prevent and control HIV/AIDS. In light of this, the Code has been developed as a guide to employers, trade unions and employees.

1.6. Furthermore the Code seeks to assist with the attainment of the broader goals of:

- eliminating unfair discrimination in the workplace based on HIV status;
- promoting a non-discriminatory workplace in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection;
- promoting appropriate and effective ways of managing HIV in the workplace;
- creating a balance between the rights and responsibilities of all parties.

## 2. OBJECTIVES

2.1. The Code's primary objective is to set out a policy for employers and the trade union within the clothing manufacturing industry to implement so as to ensure individuals with HIV infection are not unfairly discriminated against in the workplace. This includes provisions regarding:

- (i) creating a non-discriminatory work environment;
- (ii) dealing with HIV testing, confidentiality and disclosure;
- (iii) providing equitable employee benefits;
- (iv) dealing with dismissals; and
- (v) managing grievance procedures.

2.2. The Code's secondary objective is to provide a policy for employers, employees and the trade union within the clothing manufacturing industry on how to manage HIV/AIDS within the workplace. Since the HIV/AIDS epidemic impacts upon the workplace and individuals at a number of different levels, it requires a holistic response which takes all of these factors into account. The Code therefore includes principles, which are dealt with in more detail under the statutes listed in item 5.1., on the following:

- (i) creating a safe working environment for all employers and employees;
- (ii) developing procedures to manage occupational incidents and claims for compensation;
- (iii) introducing measures to prevent the spread of HIV;
- (iv) developing strategies to assess and reduce the impact of the epidemic upon the workplace; and
- (v) supporting those individuals who are infected or affected by HIV/AIDS so that they may continue to work productively for as long as possible.

2.3 In addition, the Code promotes the establishment of mechanisms to foster co-operation at the following levels:

- (i) between employers, employees and the trade union in the workplace; and
- (ii) between the workplace and other stakeholders at a sectoral, local, provincial and national level.

## 3. POLICY PRINCIPLES

3.1. The promotion of equality and non-discrimination between individuals with HIV infection and those without, and between HIV/AIDS and other comparable health/medical conditions.

3.2. The creation of a supportive environment so that HIV infected employees are able to continue working under normal conditions in their current employment for as long as they are medically fit to do so.

3.3. The protection of human rights and dignity of people living with HIV or AIDS is essential to the prevention and control of HIV/AIDS.

- 3.4. HIV/AIDS impacts disproportionately on women and this should be taken into account in the development of workplace policies and programmes.
- 3.5. Consultation, inclusivity and encouraging full participation of all stakeholders are key principles which should underpin every HIV/AIDS policy and programme.

#### **4. APPLICATION AND SCOPE**

- 4.1. All employers and employees within the clothing manufacturing industry, and their respective organisations are encouraged to use this Code to develop, implement and refine their HIV/AIDS policies and programmes to suit the needs of their workplaces.
- 4.2. For the purposes of this code, the term “workplace” should be interpreted more broadly than the definition given in the Labour Relations Act, Act 66 of 1995, Section 213, to include the working environment of, amongst others, persons not necessarily in an employer-employee relationship, those working in the informal sector and the self-employed.
- 4.3. This Code, however, does not impose any legal obligation in addition to those in the Employment Equity Act, the Labour Relations Act and this code, or in any other legislation referred to in the Code.
- 4.4. The Code should be read in conjunction with other codes of good practice that may be issued by the Minister of Labour.

#### **5. LEGAL FRAMEWORK**

- 5.1. The Code should be read in conjunction with the Constitution of South Africa Act, No. 108 of 1996, and all relevant Legislation which includes the following:
  - (i) Employment Equity Act, No. 55 of 1998;
  - (ii) Labour Relations Act, No. 66 of 1995;
  - (iii) Occupational Health and Safety Act, No. 85 of 1993;
  - (iv) Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993;
  - (v) Basic Conditions of Employment Act, No. 75 of 1997; and
  - (vi) Medical Schemes Act, No. 131 of 1998.
  - (vii) Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000.
- 5.2. The contents of this code should be taken into account when developing, implementing or reviewing any workplace policies or programmes in terms of the statutes listed above.
- 5.3. The following are selected, relevant sections contained in certain of the above-mentioned legislation. These should be read in conjunction with other legislative provisions.
  - 5.3.1. The Code is issued in terms of Section 54(1)(a) of the Employment Equity Act, No 55 of 1998 and is based on the principle that no person may be unfairly discriminated against on the basis of their HIV status. In order to assist employers and employees to apply this principle consistently in the workplace, the Code makes reference to other pieces of legislation.
  - 5.3.2. Section 6(1) of the Employment Equity Act provides that no person may unfairly discriminate against an employee, or an applicant for employment, in any employment policy or practice, on the basis of his or her HIV status. In any legal proceedings in which it is alleged that any employer has discriminated unfairly, the employer must prove that any discrimination or differentiation was fair.

- 5.3.3. No employee, or applicant for employment, may be required by their employer to undergo an HIV test in order to ascertain their HIV status. HIV testing by or on behalf of an employer may only take place where the Labour Court has declared such testing to be justifiable in accordance with Section 7(2) of the Employment Equity Act.
- 5.3.4. In accordance with Section 187(1)(f) of the Labour Relations Act, No. 66 of 1995, an employee with HIV/AIDS may not be dismissed simply because he or she is HIV positive or has AIDS. However where there are valid reasons related to their capacity to continue working and fair procedures have been followed, their services may be terminated in accordance with Section 188(1)(a)(i).
- 5.3.5. In terms of Section 8(1) of the Occupational Health and Safety Act, No. 85 of 1993; an employer is obliged to provide, as far as is reasonably practicable, a safe workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.
- 5.3.6. An employee who is infected with HIV as a result of an occupational exposure to infected blood or bodily fluids, may apply for benefits in terms of Section 22(1) of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993.
- 5.3.7. In accordance with the Basic Conditions of Employment Act, No. 75 of 1997, every employer is obliged to ensure that all employees receive certain basic standards of employment, including a minimum number of days sick leave [Section 22(2)].
- 5.3.8. In accordance with Section 24(2)(e) of the Medical Schemes Act, No 131 of 1998, a registered medical aid scheme may not unfairly discriminate directly or indirectly against its members on the basis of their "state of health". Further in terms of s 67(1)(9) regulations may be drafted stipulating that all schemes must offer a minimum level of benefits to their members.
- 5.3.9. In accordance with both the common law and Section 14 of the Constitution of South Africa Act, No. 108 of 1996, all persons with HIV or AIDS have a right to privacy, including privacy concerning their HIV or AIDS status. Accordingly there is no general legal duty on an employee to disclose his or her HIV status to their employer or to other employees.

## **6. PROMOTING A NON-DISCRIMINATORY WORK ENVIRONMENT**

- 6.1. No person with HIV or AIDS shall be unfairly discriminated against within the employment relationship or within any employment policies or practices, including with regard to:
- (i) recruitment procedures, advertising and selection criteria;
  - (ii) appointments, and the appointment process, including job placement;
  - (iii) job classification or grading;
  - (iv) remuneration, employment benefits and terms and conditions of employment;
  - (v) employee assistance programmes;
  - (vi) job assignments;
  - (vii) training and development;
  - (viii) performance evaluation systems;
  - (ix) promotion, transfer and demotion;
  - (x) termination of services.
- 6.2. To promote a non-discriminatory work environment based on the principle of equality, employers and the trade union should adopt appropriate measures to ensure that

employees with HIV and AIDS are not unfairly discriminated against and are protected from victimisation through positive measures such as:

- (i) preventing unfair discrimination and stigmatisation of people living with HIV or AIDS through the development of HIV/AIDS policies and programmes for the workplace;
- (ii) awareness, education and training on the rights of all persons with regard to HIV and AIDS;
- (iii) mechanisms to promote acceptance and openness around HIV/AIDS in the workplace;
- (iv) providing support for all employees infected or affected by HIV and AIDS; and
- (v) grievance procedures and disciplinary measures to deal with HIV-related complaints in the workplace.

## **7. HIV TESTING, CONFIDENTIALITY AND DISCLOSURE**

### **7.1. HIV Testing**

7.1.1. No employer may require an employee, or an applicant for employment, to undertake an HIV test in order to ascertain that employee's HIV status. As provided for in the Employment Equity Act, employers may approach the Labour Court to obtain authorisation for testing.

7.1.2. Whether s 7(2) of the Employment Equity Act prevents an employer-provided health service supplying a test to an employee who requests a test, depends on whether the Labour Courts would accept that an employee can knowingly agree to waive the protection in the section. This issue has not yet been decided by the courts. <sup>1[1]</sup>

7.1.3. In implementing the sections below, it is recommended that parties take note of the position set out in item

7.1.4. Authorised testing

Employers must approach the Labour Court for authorisation in, amongst others, the following circumstances:

- (i) during an application for employment;
- (ii) as a condition of employment;
- (iii) during procedures related to termination of employment;
- (iv) as an eligibility requirement for training or staff development programmes; and
- (v) as an access requirement to obtain employee benefits.

7.1.5. Permissible testing

(a) An employer may provide testing to an employee who has requested a test in the following circumstances:

- (i) As part of a health care service provided in the workplace;
- (ii) In the event of an occupational accident carrying a risk of exposure to blood or other body fluids;

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<sup>1[1]</sup> The Employment Equity Act does not make it a criminal offence for an employer to conduct a test in violation of s 7(2). However an employee who alleges that his or her right not to be tested has been violated may refer a dispute to the National Bargaining Council for conciliation, and if this does not resolve the dispute, to the Labour Court for determination.

- (iii) For the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.
- (b) Furthermore, such testing may only take place within the following defined conditions:
- (i) At the initiative of an employee;
  - (ii) Within a health care worker and employee-patient relationship;
  - (iii) With informed consent and pre- and post-test counselling, as defined by the Department of Health's National Policy on Testing for HIV; and
  - (iv) With strict procedures relating to confidentiality of an employee's HIV status as described in clause 7.2 of this Code.
- 7.1.6 All testing, including both authorised and permissible testing, should be conducted in accordance with the Department of Health's National Policy on Testing for HIV issued in terms of the National Policy for Health Act, No. 116 of 1990.
- 7.1.7. Informed consent means that the individual has been provided with information, understands it and based on this has agreed to undertake the HIV test. It implies that the individual understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.
- 7.1.8. Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles regarding such research.<sup>2[2]</sup> Where such research is done, the information obtained may not be used to unfairly discriminate against individuals or groups of persons. Testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the results.

## **7.2. Confidentiality and Disclosure**

- 7.2.1. All persons with HIV or AIDS have the legal right to privacy. An employee is therefore not legally required to disclose his or her HIV status to their employer or to other employees.
- 7.2.2. Where an employee chooses to voluntarily disclose his or her HIV status to the employer or to other employees, this information may not be disclosed to others without the employee's express written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose his or her status.
- 7.2.3. Mechanisms should be created to encourage openness, acceptance and support for those employers and employees who voluntarily disclose their HIV status within the workplace, including:
- (i) encouraging persons openly living with HIV or AIDS to conduct or participate in education, prevention and awareness programmes;
  - (ii) encouraging the development of support groups for employees living with HIV or AIDS; and
  - (iii) ensuring that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatised.

## **8. PROMOTING A SAFE WORKPLACE**

<sup>2[2]</sup> See amongst others the Department of Health's National Policy for Testing for HIV and the Biological Hazardous Agents Regulations.

- 8.1 An employer is obliged to provide and maintain, as far as is reasonably practicable, a workplace that is safe and without risk to the health of its employees.
- 8.2 The risk of HIV transmission in the workplace is minimal. However occupational accidents involving bodily fluids may occur, particularly in the health care professions. Every workplace should ensure that it complies with the provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents, and that its policy deals with, amongst others:
- (i) the risk, if any, of occupational transmission within the particular workplace;
  - (ii) appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace;
  - (iii) providing appropriate equipment and materials to protect employees from the risk of exposure to HIV;
  - (iv) the steps that must be taken following an occupational accident including the appropriate management of occupational exposure to HIV and other blood borne pathogens, including access to post-exposure prophylaxis;
  - (v) the procedures to be followed in applying for compensation for occupational infection;
  - (vi) the reporting of all occupational accidents; and
  - (vii) adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are being met.

## **9. COMPENSATION FOR OCCUPATIONALLY ACQUIRED HIV**

- 9.1. An employee may be compensated if he or she becomes infected with HIV as a result of an occupational accident, in terms of the Compensation for Occupational Injuries and Diseases Act.

Employers should take reasonable steps to assist employees with the application for benefits including:

- (i) providing information to affected employees on the procedures that will need to be followed in order to qualify for a compensation claim; and
  - (ii) assisting with the collection of information which will assist with proving that the employees were occupationally exposed to HIV infected blood.
- 9.2. Occupational exposure should be dealt with in terms of the Compensation for Occupational Injuries and Diseases Act. Employers should ensure that they comply with the provisions of this Act and any procedure or guideline issued in terms thereof.

## **10. EMPLOYEE BENEFITS**

- 10.1. Employees with HIV or AIDS may not be unfairly discriminated against in the allocation of employee benefits
- 10.2. Employees who become ill with AIDS should be treated like any other employee with a comparable life threatening illness with regard to access to employee benefits.
- 10.3. Information from benefit schemes on the medical status of an employee should be kept confidential and should not be used to unfairly discriminate.
- 10.4. Where an employer offers a medical scheme as part of the employee benefit package it must ensure that this scheme does not unfairly discriminate, directly or indirectly, against any person on the basis of his or her HIV status.



## **11. DISMISSAL**

- 11.1. Employees with HIV/AIDS may not be dismissed solely on the basis of their HIV/AIDS status.
- 11.2. Where an employee has become too ill to perform their current work, an employer is obliged to follow accepted guidelines regarding dismissal for incapacity before terminating an employee's services, as set out in the Code of Good Practice on Dismissal contained in Schedule 8 of the Labour Relations Act.
- 11.3. The employer should ensure that as far as possible, the employee's right to confidentiality regarding his or her HIV status is maintained during any incapacity proceedings. An employee cannot be compelled to undergo an HIV test or to disclose his or her HIV status as part of such proceedings unless the Labour Court authorised such a test.

## **12. GRIEVANCE PROCEDURES**

- 12.1. Employers should ensure that the rights of employees with regard to HIV/AIDS, and the remedies available to them in the event of a breach of such rights, become integrated into existing grievance procedures.
- 12.2. Employers should create an awareness and understanding of the grievance procedures and how employees can utilise them.
- 12.3. Employers should develop special measures to ensure the confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private.

## **13. MANAGEMENT OF HIV IN THE WORKPLACE**

- 13.1. The effective management of HIV/AIDS in the workplace requires an integrated strategy that includes, amongst others, the following elements:
  - 13.1.1. An understanding and assessment of the impact of HIV/AIDS on the workplace; and
  - 13.1.2. Long and short term measures to deal with and reduce this impact, including:
    - (i) An HIV/AIDS Policy for the workplace
    - (ii) HIV/AIDS Programmes, which would incorporate:
      - (a) Ongoing sustained prevention of the spread of HIV among employees and their communities;
      - (b) Management of employees with HIV so that they are able to work productively for as long as possible; and
      - (c) Strategies to deal with the direct and indirect costs of HIV/AIDS in the workplace.

## **14. ASSESSING THE IMPACT OF HIV/AIDS ON THE WORKPLACE**

- 14.1. Employers and the trade union should develop appropriate strategies to understand, assess and respond to the impact of HIV/AIDS in their particular workplace and sector. This should be done in cooperation with sectoral, local, provincial and national initiatives by government, civil society and non-governmental organisations.
- 14.2. Broadly, impact assessments should include:
  - (i) Risk profiles; and
  - (ii) Assessment of the direct and indirect costs of HIV/AIDS;

- 14.3. Risk profiles may include an assessment of the following:
- (i) The vulnerability of individual employees or categories of employees to HIV infection;
  - (ii) The nature and operations of the organisation and how these may increase susceptibility to HIV infection (e.g. migrancy or hostel dwellings);
  - (iii) A profile of the communities from which the organisation draws its employees;
  - (iv) A profile of the communities surrounding the organisation's place of operation; and
  - (v) An assessment of the impact of HIV/AIDS upon their target markets and client base.
- 14.4. The assessments should also consider the impact that the HIV/AIDS epidemic may have on:
- (i) Direct costs such as costs to employee benefits, medical costs and increased costs related to staff turnover such as training and recruitment costs and the costs of implementing an HIV/AIDS programme;
  - (ii) Indirect costs such as costs incurred as a result of increased absenteeism, employee morbidity, loss of productivity, a general decline in workplace morale and possible workplace disruption;
- 14.5. The cost effectiveness of any HIV/AIDS interventions should also be measured as part of an impact assessment

## **15. MEASURES TO DEAL WITH HIV/AIDS WITHIN THE WORKPLACE**

### **15.1. A Workplace HIV/AIDS Policy**

15.1.1. Every workplace should develop an HIV/AIDS policy<sup>3[3]</sup>, in order to ensure that employees affected by HIV/AIDS are not unfairly discriminated against in employment policies and practices. This policy should cover:

- (i) the organisation's position on HIV/AIDS;
- (ii) an outline of the HIV/AIDS programme;
- (iii) details on employment policies (e.g. position regarding HIV testing, employee benefits, performance management and procedures to be followed to determine medical incapacity and dismissal);
- (iv) express standards of behaviour expected of employers and employees and appropriate measures to deal with deviations from these standards;
- (v) grievance procedures in line with item 12 of this Code;
- (vi) set out the means of communication within the organisation on HIV/AIDS issues;
- (vii) details of employee assistance available to persons affected by HIV/AIDS;
- (viii) details of implementation and coordination responsibilities; and
- (ix) monitoring and evaluation mechanisms.

15.1.2. All policies should be developed in consultation with key stakeholders within the workplace including the trade union, employee representatives, occupational health staff and the human resources department.

15.1.3. The policy should reflect the nature and needs of the particular workplace.

15.1.4. Policy development and implementation is a dynamic process, so the workplace policy should be:

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<sup>3[3]</sup> This policy could either be a specific policy on HIV/AIDS, or could be incorporated in a policy on life threatening illness.

- (i) communicated to all concerned;
- (ii) routinely reviewed in light of epidemiological and scientific information; and
- (iii) monitored for its successful implementation and evaluated for its effectiveness.

## **15.2. Developing Workplace HIV/AIDS Programmes**

15.2.1. It is recommended that every workplace works towards developing and implementing a workplace HIV/AIDS programme aimed at preventing new infections, providing care and support for employees who are infected or affected, and managing the impact of the epidemic in the organisation.

15.2.2. The nature and extent of a workplace programme should be guided by the needs and capacity of each individual workplace. However, it is recommended that every workplace programme should attempt to address the following in cooperation with the sectoral, local, provincial and national initiatives:

- (i) hold regular HIV/AIDS awareness programmes;
- (ii) encourage voluntary testing;
- (iii) conduct education and training on HIV/AIDS;
- (iv) promote condom distribution and use;
- (v) encourage health seeking behaviour for STD's;
- (vi) enforce the use of universal infection control measures;
- (vii) create an environment that is conducive to openness, disclosure and acceptance amongst all staff;
- (viii) endeavour to establish a wellness programme for employees affected by HIV/AIDS;
- (ix) provide access to counselling and other forms of social support for people affected by HIV/AIDS;
- (x) maximise the performance of affected employees through reasonable accommodation, such as investigations into alternative sick leave allocation;
- (xi) develop strategies to address direct and indirect costs associated with HIV/AIDS in the workplace, as outlined under item 14.4
- (xii) regularly monitor, evaluate and review the programme.

15.2.3. Employers should take all reasonable steps to assist employees with referrals to appropriate health, welfare and psycho-social facilities within the community, if such services are not provided at the workplace

## **16. INFORMATION AND EDUCATION**

16.1. The National Bargaining Council should ensure that copies of this code are available and accessible.

16.2. Employers and employer organisations should include the Code in their orientation, education and training programmes of employees.

16.3. The trade union should include the Code in their education and training programmes of shop stewards and employees.

## GLOSSARY

<b><i>Affected employee</i></b>	an employee who is affected in any way by HIV/AIDS e.g. if they have a partner or a family member who is HIV positive
<b><i>AIDS</i></b>	AIDS is the acronym for “acquired immune deficiency syndrome”. AIDS is the clinical definition given to the onset of certain life-threatening infections in persons whose immune systems have ceased to function properly as a result of infection with HIV.
<b><i>Epidemiological</i></b>	The study of disease patterns, causes, distribution and mechanisms of control in society.
<b><i>HIV</i></b>	HIV is the acronym for “human immuno deficiency virus”. HIV is a virus which attacks and may ultimately destroy the body’s natural immune system.
<b><i>HIV testing</i></b>	taking a medical test to determine a person’s HIV status. This may include written or verbal questions inquiring about previous HIV tests; questions related to the assessment of ‘risk behaviour’ (for example questions regarding sexual practices, the number of sexual partners or sexual orientation); and any other indirect methods designed to ascertain an employee’s or job applicant’s HIV status.
<b><i>HIV positive</i></b>	having tested positive for HIV infection.
<b><i>Infected employee</i></b>	an employee who has tested positive for HIV or who has been diagnosed as having HIV/AIDS.
<b><i>Informed consent</i></b>	a process of obtaining consent from a patient which ensures that the person fully understands the nature and implications of the test before giving his or her agreement to it.
<b><i>Policy</i></b>	a document setting out an organisation’s position on a particular issue.
<b><i>Pre and post test counselling</i></b>	a process of counselling which facilitates an understanding of the nature and purpose of the HIV test. It examines what advantages and disadvantages the test holds for the person and the influence the result, positive or negative, will have on them.
<b><i>Reasonable Accommodation</i></b>	means any modification or adjustment to a job or to the workplace that is reasonably practicable and will enable a person living with HIV or AIDS to have access to or participate or advance in employment.
<b><i>STDs</i></b>	acronym for “sexually transmitted diseases”. These are infections passed from one person to another during sexual intercourse, including syphilis, gonorrhoea and HIV.
<b><i>Surveillance Testing</i></b>	This is anonymous, unlinked testing which is done in order to determine the incidence and prevalence of disease within a particular community or group to provide information to control, prevent and manage the disease.

**ANNEXURE B****PRODUCTIVITY**

The following provisions shall be applicable to the plant level productivity incentive schemes:

- (1) Employers shall pay an amount of 0.5% of the weekly wage into a dedicated productivity incentive bank account. This must be done on a weekly basis or on the date that wages is normally paid, if it is paid at a time other than weekly.
- (2) The money in this productivity incentive bank account is ringfenced for the introduction of plant level productivity incentive schemes only.
- (3) This productivity incentive scheme bank account shall be opened and authorised on the basis of co-signatures, as follows: a person nominated by management plus a SACTWU shop steward (where there are no shop stewards at a workplace, a representative nominated by the workers shall be the second signatory).
- (4) With effect from 1 September 2008, each workplace shall have a period of 2 months within which they must reach agreement between management and the union about how the productivity incentive scheme at that workplace will function and how the incentives are to be paid.
- (5) If there is no productivity incentive scheme agreement reached by 1 November 2008, all the monies in the productivity bank account must be paid out to the workers as part of their wages, until an agreement on an appropriate productivity incentive scheme is reached.
- (6) The productivity incentive scheme agreements reached must ensure that all workers covered by the terms of this agreement, not just some, shall benefit from the incentive scheme.
- (7) All productivity scheme agreements reached must be registered with the National Bargaining Council for the Clothing Manufacturing Industry, within 1 month after agreement has been reached.
- (8) Productivity incentive scheme agreements shall not contain any provisions, which have the effect of downward variation of any term or condition of employment.
- (9) The productivity incentive scheme envisaged in this agreement shall be in addition to and not in place of any existing productivity incentive scheme, which may currently exist.
- (10) If the workplace closes or is liquidated, all the money left in the productivity incentive bank account must be paid out to the employees at that workplace and who are covered by the terms of this agreement.

**ANNEXURE C****INDUSTRY PROTECTION FUND**

- (1) In terms of section 28 (1) (g) of the Act, read with clause 3.6 and 3.7 of the Council's Constitution, a fund to protect the fashion industry from further job losses and decline, which shall be known as the Fashion Industry Protection Fund (hereinafter referred to as "the Fund") is hereby established.
- (2) The objects of the Fund shall be to provide financial support to campaigns and programmes engaged in by the parties to the Bargaining Council, where such programmes are aimed at protecting the Industry in the respective Region.
- (3) The Fund shall commence on such date as decided by the parties to the Regional Council and shall continue to operate until such date as the Regional Chamber and the parties thereto may decide.
- (4) Every employer shall, each week, deduct from the wages of each of his employees for whom wages are prescribed in this part of the Agreement, an amount of 10 cents.
- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of sub-clause (4) above, contribute an amount of 12 cents per week.
- (6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the payment date specified in the relevant part of the Agreement and in the form and manner specified in relevant clause of each part of the Agreement.
- (7) The moneys collected by the Regional Chamber shall be paid monthly by the Regional Chamber into a bank account styled "Fashion Industry Protection Fund" opened by the Regional Chamber of the Bargaining Council for the purpose of receiving these funds and for disbursing them for the purpose for which they are intended.
- (8) The moneys collected shall be used by the Regional Chamber to finance the following bona fide strategies in pursuit of the objects of the Fund as set out in sub-clause (2), and including
  - (a) "Buy Local" campaigns;
  - (b) Combating customs fraud and illegal imports; or
  - (c) for such other strategies as meet the objectives of the Fund.
- (9) During the period of operation of the Fund, should the Southern African Clothing & Textile Workers' Union (SACTWU) and/or the Regional Employers' Associations who are members of the Bargaining Council become or wish to become engaged in additional strategies or bona fide activities in pursuit of the objectives of the Fund other than those specified in sub-clause (8), they may apply in writing to the Regional Chamber for the activities in question to be recognised by the Regional Chamber as an authorised strategy or activity which can be financed in terms of the Fund's provisions. The decision as to whether to recognise the strategy or activity in question shall be at the sole discretion of the Regional Chamber and shall be recorded as a resolution of the Regional Chamber.

- (10) The Fund's moneys shall be used to meet all reasonable expenses incurred in pursuit of the authorised activities in regard to the strategies referred to above and may not be used for any unauthorised purpose or activity.
- (11) If SACTWU or the Regional Employers' Association is in doubt about whether contemplated expenditure of the Fund's moneys qualifies as expenditure on an authorised activity, SACTWU or the Regional Employers' Association, as the case may be, may request confirmation in advance from the Regional Chamber in this regard.
- (12) No moneys of the Fund shall be disbursed by the Regional Chamber until the Fund has been established by this part of the Agreement and SACTWU, the Regional Employers' Association and the Regional Chamber have signed a written agreement.
- (13) Any interest that is earned on Fund moneys at any time shall be used for the benefit of the activities and purposes authorised in terms of the Fund.
- (14) SACTWU and the Regional Employers' Association shall, as the need arises, provide the Regional Chamber with a financial plan of how the funds will be utilised towards achieving the objectives of the Fund. The plan shall be submitted to the Regional Chamber for approval.
- (15) Expenditure incurred by the parties shall be paid by the Fund against invoices or vouchers submitted to the Regional Secretary of the Regional Chamber, provided he or she is satisfied that the expenditure-
- (a) is in terms of the approved plan;
  - (b) is clearly classified by strategy, activity and the nature of the expense; and
  - (c) has been authorised by the Regional Secretary or National Secretary of SACTWU, or the Executive Director of the Regional Employers' Association.

Should the Regional Secretary of the Regional Chamber deem it necessary, such approved expenditure shall be presented to the Regional Chamber for approval prior to payment.

- (16) Any expenses that have been incurred by SACTWU or the Regional Employers' Association for unauthorised purposes or activities and which have been paid or reimbursed to SACTWU or the Regional Employers' Association, may be recovered by the Regional Chamber from SACTWU or the Regional Employers' Association, as the case may be.
- (17) The Regional Secretary of the Regional Chamber shall be obliged to account to the Regional Chamber every two months in relation to income and expenditure of the Fund. This accounting to the Regional Chamber shall include, but not be limited to, providing a schedule summarising the expenses incurred on authorised activities in pursuance of the objects of the Fund and in respect of which payment is claimed.
- (18) SACTWU and the Regional Employers' Association shall be obliged to report back to the Regional Chamber every two months after the establishment of the Fund on the activities undertaken by their organisation in pursuance of the objects of the Fund and for which funds have been disbursed.
- (19) In the event that there is a disagreement between the parties as to whether any activity or expenditure or proposed activity or expenditure falls within the objects of the Fund, either party may refer a dispute in this regard for conciliation in terms of clause 15.5 of the Council's Constitution and, if it remains unresolved after conciliation, the proposing party may request the Regional Chamber in writing that the

dispute be resolved through arbitration in accordance with clause 15.4.2.1.2 of the Council's Constitution.

- (20) Each party to this part of the Agreement has a pre-emptive right to require all undertakings or commitments between the parties, not only those referred to in this resolution, to be reduced to writing.



**ANNEXURE D**

**CONTRACT EMPLOYEES**

- (1) Those contract employees with 12 months' or more employment with the same employer shall be converted into permanent employees.
- (2) All contract employees shall be entitled to receive a pro-rata share of all statutory payments due to permanent employees.
- (3) All contract employees who are in employ as at the end of November each year shall be entitled to full payment for all public holidays which fall during the annual shutdown period.
- (4) Employees who have completed a learnership shall not be placed on a further contract period after the completion of such a learnership, but shall be employed as a permanent fulltime employee.
- (5) Where there are more beneficial arrangements (other than those set out in sub-clauses (1) to (4) above) governing the employment of contract workers, such provisions shall remain effective.