



# NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY

## HEAD OFFICE

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### NATIONAL MAIN COLLECTIVE AGREEMENT

#### PART H: PROVISIONS FOR THE WESTERN CAPE REGION (KNITTING)

Herewith follows the preamble and Part H 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 31/08/08	R.1053	30443	09.11.2007
Correction Notice	R.28	30681	25.01.2008
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.

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**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY  
NATIONAL MAIN COLLECTIVE AGREEMENT  
PART H: PROVISIONS FOR THE WESTERN CAPE REGION (KNITTING)**

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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 8 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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**SICELO NDUNA**  
General Secretary

## **PART H : PROVISIONS FOR THE WESTERN CAPE REGION (KNITTING)**

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

- (1) The terms of this part of the Agreement shall be observed in the Knitting Division of the Clothing Industry -
  - (a) by the employers and the employees who are members of the employers' organisations and the trade union respectively;
  - (b) in the Magisterial Districts of The Cape, Wynberg, Simon's Town, Goodwood and Bellville, including those portions of the Magisterial Districts of Wynberg, Simon's Town, Goodwood and Bellville that were used to create the Magisterial Districts of Mitchell's Plain on 2 March 1992, Somerset West, Strand, Malmesbury and George.
- (2) Notwithstanding the provisions of subclause (1), the terms of this part of the Agreement shall -
  - (a) only apply in respect of employees for whom wages are prescribed in this part of the Agreement;
  - (b) not apply to employees and working directors whose wages are more than the amount referred to in clause 1(2)(b) of the Main Collective Agreement of the Council.
- (3) Clauses 1(1)(a), 2, 11(4)(b), 14(1), 19B, 26(13)(a) to (13)(g)(v) and 37(5) of this part of the Agreement shall not apply to employers and employees who are not members of the employers' 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**

Any expressions used in this part of the Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, any reference to an Act shall include any amendment of such Act, and unless the contrary intention appears, words importing the masculine gender shall include females and the singular shall include the plural and vice versa; further, unless inconsistent with the context:

**"Act"** means the Labour Relations Act, 1995;

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

**"casual employee"** means an employee who is employed by an employer on not more than three days in any week and who is engaged in one or more of the following duties or capacities;

- (a) general gardening work;
- (b) loading or unloading;
- (c) clearing bush;
- (d) washing vehicles or windows;

**"clerk"** means an employee who is engaged in -

- (a) writing, typing and filing;
- (b) operating a calculating or a punch card machine;
- (c) any other form of clerical work;

and includes a cashier, despatch clerk, mannequin, storeman, telephone switchboard operator and work study clerk 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;

**"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 buttonholes, 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;

**"Council"** means the National Bargaining Council for the Clothing Manufacturing Industry registered in terms of section 29 of the Labour Relations Act, 1995;

**"day worker"** means an employee who is not a shift worker;

**"dealer"** or **"general dealer"** means a person or persons holding a licence under item 3 of the First Schedule to the Registration and Licensing of Businesses Ordinance;

**“dependant”** means, for the purposes of the Cape Clothing Industry Health Care Fund, any of the following persons:

- (a) The declared spouse of the contributor living at the same address;



- (b) the unmarried children under the age of 18 of the contributor, including natural offspring, stepchildren or adopted children;
- (c) the unmarried children of the contributor, including natural offspring, stepchildren or adopted children, over the age of 18 but under the age of 25, who are at school or who are full-time students at a tertiary institution or who are physically or mentally disabled;

whose admittance to membership of the Fund is at the sole discretion of the Health Care Fund Management Committee;

**"despatch clerk"** means an employee who is responsible for the packing or the despatch of goods for transport or delivery and who may supervise the assembling, checking, mass-measuring, packing, marking, addressing or despatching of goods or packages;

**"despatch packer"** means an employee engaged in making up parcels, cartons or bales in readiness for transport, delivery or posting;

**"establishment"** means any premises in or in connection with which one or more employees are employed in the Knitting Division;

**"experience"** means -

- (a) category (1) - in relation to clerks and factory clerks, the total period or periods of employment which such employees have had as clerks and factory clerks, as the case may be, irrespective of the trade in which such experience was gained;
- (b) category (2) - in relation to employees other than clerks, factory clerks, motor vehicle drivers, boiler attendants, despatch packers, travellers' drivers, watchmen or caretakers, labourers and general workers, the total period or periods of employment of employees in the Clothing Industry and/or Knitting Division in any capacity other than that of clerks, factory clerks, motor vehicle drivers, boiler attendants, despatch packers, travellers' drivers, watchmen or caretakers, labourers and general workers;
- (c) category (3) - in relation to supervisors, quality controllers and instructors, the total period or periods of employment which such employees have had in the Clothing Industry and/or Knitting Division as supervisors, quality controllers and instructors;
- (d) category (4) - in relation to pattern graders and pattern makers, the total period or periods of employment which such employees have had in the Clothing Industry and/or Knitting Division as pattern graders and pattern makers;

Provided that where any employee with less than one year's experience has not been re-employed in the Industry within a period of five years from the date on which he was last employed in the Industry, any experience gained shall be ignored for the purpose of calculating the minimum wage at which he may commence service;

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

- (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;

**"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;

**"general worker"** means an employee engaged in one or more of the following duties or capacities:

- (a) Carrying, moving or stacking articles;
- (b) delivering letters, messages or goods outside the factory premises on foot or by means of a bicycle, tricycle or hand-propelled vehicle;
- (c) folding and/or inserting mail, affixing post stamps or labels for posting;
- (d) making tea or similar beverages, snacks or sandwiches and washing cups, saucers and kitchen utensils;
- (e) marking, branding, stenciling or affixing labels on boxes, bales or other containers by hand;
- (f) opening or closing doors, unpacking boxes, packages, bales or other containers;
- (g) operating a duplicating and/or addressograph and/or franking machine;

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

- (a) **"batching machine operator"** means an employee who rolls fabric onto roller at correct tension in preparation for dyeing by high temperature pressure machine;
- (b) **"bonding machine operator"** means an employee who operates a bonding machine (bonding fabric by fusing two or more pieces of fabric);

- (c) **"colour weigher"** means an employee who prepares chemicals, colouring materials and dyes according to given formulae for subsequent use in various processes;
- (d) **"embossing machine operator"** means an employee who operates an embossing machine;
- (e) **"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;
- (f) **"head warper"** means an employee who exercises control and supervision over two or more warpers;
- (g) **"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;
- (h) **"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;
- (i) **"presser"** means an employee engaged in the pressing of finished garments by machine, but excludes the ironing of garments;
- (j) **"stenter machine operator"** means an employee who operates a stenter machine (drying and setting of fabric);
- (k) **"warp knitter"** means an employee operating one or a set of warp knitting machines and capable of correcting faults, changing and/or straightening needles, filling bars, making minor adjustments and shall include a threader and needle fixer;
- (l) **"mercerizing machine operator"** means an employee who operates a mercerizing machine.

#### **Screen printing operations**

- (m) **"negative maker"** means an employee who prepares photographic negatives, separates colours in a design, paints onto clear film sheet in repeat with exact reference marks, as part of the preparation of screens for screen printing;
- (n) **"screen maker (engraver)"** means an employee who engraves and cures screens;
- (o) **"screen printer"** means an employee engaged in -
  - (i) carrying out checks for faults;
  - (ii) checking the base fabrics to ensure correct face and quality;
  - (iii) examining screens from wash bays to ensure that they are in a satisfactory condition;
  - (iv) operating a screen printing machine;
  - (v) positioning colour in correct sequence to ensure that colour combination matches the master feeler and colour card;

- (vi) selecting squeegees to give the penetration and definition required for a quality print, bearing in mind the texture of the fabric;
  - (vii) setting up screens in sequence of colour to be printed on fabric;
  - (viii) squaring off and testing that screens fit according to master feeler;
  - (ix) supervising the handling of screens to and from wash bays;
  - (x) supervising the operations of the colour thrower;
- (p) **"transfer printing machine operator"** means an employee who operates a transfer printing machine in the process of transferring designs from paper to rolls of material and checks the rolls of material during the operation;

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

- (a) **"assistant batching machine operator"** means an employee who assists a batching machine operator;
- (b) **"assistant bonding machine operator"** means an employee who assists a bonding machine operator;
- (c) **"assistant colour weigher"** means an employee who assists a colour weigher;
- (d) **"assistant stenter machine operator"** means an employee who assists a stenter machine operator;
- (e) assistant to handyman;
- (f) **"assistant transfer printing machine operator"** means an employee who assists a transfer printing machine operator;
- (g) **"assistant warp knitter"** means an employee who watches fabric for flaws, feeds machines with yarn, removes fabric from machines, and can stop and start a machine, all under the general supervision of a knitter and shall include a threaderhand and doffer;
- (h) **"brusher"** means an employee who operates one or more raising or teasing machines;
- (i) **"chaser"** means an employee who searches and locates garments or orders in an establishment and who may organise orders through the establishment;
- (j) **"cook"** means an employee engaged in preparing meals and cooking;
- (k) **"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;

- (l) **"dry-cleaning machine operator"** means an employee who operates a dry-cleaning machine;
- (m) **"dye-house machine operator"** means an employee who operates a dye-house machine;
- (n) **"embroidery machinist"** means an employee who operates an embroidery machine and who threads up, adjusts tension, checks and/or examines work under needles;
- (o) embroidering and/or beading by hand;
- (p) **"fabric inspector"** means an employee who measures fabric and operates an inspection machine;
- (q) **"factory shop assistant"** means an employee who serves and assists customers and who may select, wrap and receive payment for goods sold;
- (r) **"ironer"** means an employee engaged in ironing and folding garments;
- (s) **"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;
- (t) **"knitting machine hand operator"** means an employee who operates a hand operated knitting machine;
- (u) **"knitting shaper"** means an employee who cuts semi-fashioned garments (body or sleeve blanks) individually or collectively;
- (v) **"laboratory assistant"** means an employee who prepares samples and who make initial and routine tests and record the results thereof;
- (w) **"linker"** means an employee engaged in operating a linking machine;
- (x) **"machinist"** means an employee who performs by sewing machine any operation in the making of clothing;
- (y) **"mender"** means an employee who examines knitted garments, other than berets, for defects and rectifies such defects;
- (z) **"order checker"** means an employee who checks assembled orders;
- (aA) **"padder machine operator"** means an employee who operates a padding machine (finishing fabric-hardening or softening by addition of chemicals);
- (aB) **"passer"** means an employee who examines the finished off garment or parts thereof for flaws and faults;
- (aC) **"re-cutter"** means an employee engaged in cutting of repairs and/or replacements, including time spent in searching for and matching up cloth;
- (aD) **"ringer"** means an employee who places a ring into a beret preparatory to drying in a steam box;
- (aE) **"seamer"** means an employee engaged in joining material by means of a seaming machine;

- (aF) **"shearer"** means an employee shearing away the teased fibre to give a velvet or felt finish to a beret or to a continuous length of fabric;
- (aG) **"shrinking press operator"** means an employee who operates a shrinking press;
- (aH) sorting, mass-measuring, marking, stacking bales of fabric or knitting yarn, all under the general supervision of a clerical employee;
- (aI) **"tumbling machine operator"** means an employee who operates a tumbling machine;
- (aJ) **"assistant mercerizing machine operator"** means an employee who assists a mercerizing machine operator;

#### **Screen printing operations**

- (aK) **"assistant screen maker (engraver)"** means an employee who assists a screen maker (engraver);
- (aL) **"assistant screen printer"** means an employee who assists a screen printer, and who may screen print by hand;
- (aM) **"dark room assistant"** means an employee who makes photographic positives of clear sheets of design colours and masks positives for repeat;
- (aN) **"mixing and filtering operator"** means an employee engaged in -
- (i) cleaning and preparing drums returned from printing machines;
  - (ii) cleaning mixing equipment;
  - (iii) ensuring thorough mixing and blending of dyes and auxiliaries;
  - (iv) filtering mixed dyes;
  - (v) handling drums from mixers to filter machines;
  - (vi) operating a high speed stirrer;
  - (vii) operating a tub washer;
  - (viii) removing solid or foreign articles from print paste;
  - (ix) supplying clean drums to colour weighers;
  - (x) transferring identifying labels to drums of dye;
- (aO) **"oven and curing operator"** means an employee engaged in drying and curing parts of garments after the printing operation;
- (aP) **"screen controller"** means an employee engaged in -
- (i) applying masking tape set for automatic printing machines;
  - (ii) checking for faults and rectifying same;
  - (iii) clearing blockages by means of a high pressure gun;
  - (iv) painting in any open motif pinholes;
  - (v) painting in masking and making trial print proof;
  - (vi) placing screens in the rack ready for use;
  - (vii) putting end rings into rotary screens;
  - (viii) retouching screens;
- (aQ) **"screen preparer"** means an employee engaged in -
- (i) coating screens;
  - (ii) fitting gauze to frames;
  - (iii) operating a stretching machine;
  - (iv) placing screens in conditioning chamber;
  - (v) preparing and checking screen frames;

- (vi) removing grease from screens;
- (aR) **"squeegee preparer"** means an employee who makes and prepares squeegees;
- (aS) **"steamer operator"** means an employee engaged in -
  - (i) preparing fabric ready for fixation;
  - (ii) carrying out checks to establish the fixation of dyes;
  - (iii) controlling fabric flow through steamer;
  - (iv) operating a steamer;

and shall include an employee 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:

- (a) Bar filler;
- (b) bar transferer;
- (c) **"bias binding cutter"** means an employee engaged in cutting bias binding;
- (d) **"bobbin-winder"** means an employee engaged in winding bobbins;
- (e) **"box assembler"** means an employee engaged in folding cardboard into containers for garments;
- (f) **"button coverer"** means an employee engaged in covering buttons by hand or machine;
- (g) **"cleaner"** means an employee engaged in cutting or trimming off loose ends of cotton or cloth left on garments or parts of garments by previous operators;
- (h) draw-thread operator;
- (i) drawn-thread mender;
- (j) **"fabric slitter"** means an employee engaged in slitting open continuous lengths of fabric on a pre-determined line;
- (k) **"folder"** means an employee engaged in folding and/or buttoning up garments;
- (l) **"folding machine operator"** means an employee who operates a folding machine;
- (m) forming (including boarding, calendaring and setting);
- (n) hand sewer;
- (o) **"label printer"** means an employee engaged in printing or writing labels;
- (p) **"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;
- (q) **"make-up sorter"** means an employee who moves semi-processed cloth from one point to another and joins cloth together to dyelots;

- (r) **"marker"** means an employee engaged in marking the position of pockets, flaps, vents, buttons or button holes;
- (s) mending berets, i.e. darning holes in berets;
- (t) **"packer"** means an employee engaged in -
  - (i) attaching belts to garments;
  - (ii) assembling garments into bundles or orders prior to their being sent to the despatch department;
  - (iii) attaching swing or identification tickets to garments;
  - (iv) bagging garments;
  - (v) packing garments into boxes or other suitable wrapping;
  - (vi) sorting garments;
- (u) **"parts examiner"** means an employee engaged in examining cut and/or uncut parts of lays;
- (v) re-ironing ribbons and light pressing of bulky knits;
- (w) **"sloper"** means an employee engaged in marking and trimming the shape of necks of garments;
- (x) sock trimmer;
- (y) **"sorter"** means an employee engaged in -
  - (i) sorting and bagging dye-lots prior to dyeing;
  - (ii) sorting out for various operations;but excluding sorting parts from the cut lay;
- (z) **"spotter"** means an employee who removes spots and stains;
- (aA) **"stamper"** means an employee stamping sizes and/or identifying work numbers on garments or parts of garments;
- (aB) **"swatch cutter"** means an employee engaged in cutting travellers' swatches;
- (aC) **"ticket sewer"** means an employee engaged in stitching tickets on garments by machine;
- (aD) toe-closing by machine;
- (aE) **"transferer"** means an employee engaged in transferring or stencilling garments, parts of garments or panels by hand or machine;
- (aF) **"turner"** means an employee engaged in turning garments or parts of garments;
- (aG) **"warper"** means an employee who prepares warps from cones or bobbins for a warp knitting or similar machine and prepares the beam;



- (aH) wax-ring maker;
- (aI) **"winder"** means an employee engaged in operating a yarn winding machine;
- (aJ) zip machine operator;
- (aK) glueing cover over hat band after joining by means of thermal glue gun;
- (aL) glueing hat band on to hat by means of thermal glue gun;
- (aM) glueing pompons on to caps by means of thermal glue gun;
- (aN) **"fringe threader"** means an employee threading and knotting strands of thread into ends of scarves and trimming the fringe after threading;
- (aO) **"fuser"** means an employee who fuses motifs onto garments'

**"hourly rate" or "hourly wage"** means the weekly wage prescribed in clause 4(1) read with clause 4(10), divided by -

- 60 in the case of a watchman or caretaker;
- 46 in the case of a boiler attendant;
- 42½ in the case of all other employees;

**"incapacity"** means the inability to work owing to any sickness or injury of an employee, other than sickness or injury caused by the employee's own misconduct: Provided that any such inability to work caused by an accident or a scheduled disease for which compensation is payable under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No 130 of 1993), shall be regarded as incapacity only during any period in respect of which no disablement payment is payable in terms of that Act;

**"instructor"** means an employee who is responsible for training employees in any 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;

**"labourer"** means an employee engaged in one or more of the following duties or capacities;

- (a) Binding, wiring or strapping boxes or bales or other containers;
- (b) cleaning and/or washing premises, plant, machinery, vehicles, tools and/or other articles;
- (c) fitting and mending machine belts; cleaning, oiling and greasing machines; moving tools, equipment and machines; changing needles; cleaning cotton and/or cloth from underneath throat plate;
- (d) general gardening work;
- (e) loading or unloading vehicles, trailers or international standard containers;

**"layer-up"** means an employee engaged in laying up material and may include slitting the ends and sides and/or who sorts parts from the cut lay;

**"learner"** means an employee whose period or periods of employment do not entitle him to be paid the wage specified in this part of the Agreement for a qualified employee of his class;

**"main collective agreement"** means the Main Collective Agreement for the Western Cape Region of the Council which prescribes wages for employees employed in the Industry, other than in the Magisterial Districts of George and Worcester and those employed in the Knitting Division;

"**monthly wage**" means the weekly wage multiplied by four and one third;

"**motor vehicle driver**" means an employee engaged in driving a motor vehicle, scooter or fork lift, 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 vehicle or the load and all periods during which he is obliged to remain at his post in readiness to drive;

"**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;

"**patent machine**" means a button, buttonhole, padding or felling machine;

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

"**pattern grader**" means an employee 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 engaged in designing and/or making master patterns;

"**piece-work**" means any system by which earnings are calculated upon the quantity or output of work performed;

"**qualified**" means that an employee has completed his learnership in terms of this part of the Agreement;

"**quality controller**" means an employee, other than a passer, who carries responsibility for quality control in a factory or any department of a factory, i.e. ensuring that the quality of any garment or part of any garment, whether in a finished or unfinished state, meets the standard of quality determined by the employer;

"**Regional Chamber**", for purposes of this part of the Agreement, means the Cape Chamber (Western Cape Sub-Regional Chamber) of the Council;

"**set leader**" means an employee who is responsible for the work executed by the employees composing a set or team under his charge and who takes an active part in the operation of a set;

"**set of workers**" (sometimes referred to as a "set") means a team of employees numbering three or more, engaged in performing sectional operations in the making up of garments, usually under the direction of a leader;

"**shop steward**" means an employee at any establishment who has been duly elected as a shop steward in terms of the constitution of the trade union and who has been recognised by the employer as a shop steward;

"**short-time**" means a temporary reduction in the number of ordinary weekly hours of work in an establishment due to slackness of work or other exigencies of trade;

"**storeman**" means an employee in general charge of stores and/or finished products and who is responsible for receiving, storing, packing or unpacking goods in a store or a warehouse and/or delivering goods from a store or warehouse to the consuming departments in an establishment or for despatch;

"**supervisor**" means an employee who carries the responsibility for the correct and efficient execution of the work entrusted to the care of such employee in a factory or a department of a factory;

"**task-work**" means the setting by an employer (or his representative) to an employee of a stated number of garments or parts of garments to be completed by such employee within a specified time;

"**trade union funds**" includes, without limiting the generality of its meaning, trade union subscriptions and levies;

"**traveller's driver**" means an employee 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;

"**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 license in respect of motor vehicles: Provided that in the case of two or three-wheeled motor cycle, motor scooter or auto-cycle or a cycle fitted with an auxiliary engine the unladen mass shall be deemed not to exceed 1 360 kg;

"**wage**" means the amount of money paid to an employee in terms of clause 4(1), read with clause 4(10), in respect of his ordinary hours of work as specified in Clause 9:

Provided that -

- (i) if an employer regularly pays an employee in respect of such ordinary hours of work, an amount higher than that specified in clause 4(1), read with clause 4(9), it means such higher amount;
- (ii) the first proviso shall not be construed so as to refer to, or include, such remuneration which an employee who is employed on any basis provided for in clause 7 received over and above the amount which he would have received had he not been employed on such basis;

"**watchman or caretaker**" means an employee engaged in guarding premises, buildings or other property;

In classifying an employee for the purposes of this part of the Agreement, he shall be deemed to be in that class in which he is wholly or mainly engaged.

#### **4: WAGES**

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

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
<b>Part A - Cutting Department</b>					
Pattern Maker:					
(a)	Qualified	1 576.50	1 261.00	1583.00	1266.50
(b)	Learner				
	First year				
	First six months of experience	883.00	706.50	886.50	709.00
	Second six months of experience	975.00	780.00	978.50	783.00
	Second year				
	First six months of experience	1 067.00	853.50	1072.00	857.50
	Second six months of experience	1 165.00	932.00	1171.00	937.00
	Third year				
	First six months of experience	1 270.50	1 016.50	1275.50	1020.50
	Next four months of experience	1 371.50	1 097.00	1377.50	1102.00
	Thereafter, the wage specified in (a), i.e.	1 576.50	1 261.00	1583.00	1266.50
Pattern Grader					
(a)	Qualified	1 272.00	1 017.50	1277.00	1021.50
(b)	Learner				
	First year				
	First six months of experience	830.50	664.50	835.00	668.00
	Second six months of experience	883.00	706.50	886.50	709.00
	Second year				
	First six months of experience	935.00	748.00	940.00	752.00
	Second six months of experience	1 002.00	801.50	1006.50	805.00
	Third year				
	First six months of experience	1 067.00	853.50	1072.00	857.50
	Next four months of experience	1 136.00	909.00	1141.50	913.00
	Thereafter, the wage specified in (a), i.e.	1 272.00	1 017.50	1277.00	1021.50
Football Jersey Cutter					
(a)	Qualified	884.00	707.00	888.00	710.50
(b)	Learner				
	First year				
	First six months of experience	663.50	531.00	666.50	533.00
	Second six months of experience	703.50	563.00	706.50	565.00
	Second year				
	First six months of experience	740.50	592.50	744.00	595.00
	Second six months of experience	779.50	623.50	783.50	627.00
	Third year				
	First four months of experience	818.00	654.50	821.00	657.00
	Thereafter, the wage specified in (a), i.e.	884.00	707.00	888.00	710.50
Layer-up					
(a)	Qualified	762.00	609.50	765.50	612.50

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
(b)	Learner				
	First year				
	First six months of experience	642.00	513.50	644.50	515.50
	Second six months of experience	663.50	531.00	666.50	533.00
	Second year				
	First six months of experience	693.50	555.00	696.50	557.00
	Thereafter, the wage specified in (a), i.e.	762.00	609.50	765.50	612.50
<b>Part B - Factory Operatives</b>					
Grade A employee:					
(a)	Qualified	975.00	780.00	978.50	783.00
(b)	Learner				
	First year				
	First six months of experience	686.00	549.00	689.00	551.00
	Second six months of experience	739.50	591.50	742.50	594.00
	Second year				
	First six months of experience	790.00	632.00	793.00	634.50
	Second six months of experience	830.50	664.50	835.00	668.00
	Third year				
	First four months of experience	884.00	707.00	888.00	710.50
	Thereafter, the wage specified in (a), i.e.	975.00	780.00	978.50	783.00
Grade B employee:					
(a)	Qualified	833.00	666.50	837.00	669.50
(b)	Learner				
	First year				
	First six months of experience	675.50	540.50	679.50	543.50
	Second six months of experience	711.50	569.00	714.00	571.00
	Second year				
	First six months of experience	747.00	597.50	750.50	600.50
	Thereafter, the wage specified in (a), i.e.	833.00	666.50	837.00	669.50
(c)	If advanced to Grade A employee:				
	First six months from date of advancement	833.00	666.50	837.00	669.50
	Second six months from date of advancement	857.50	686.00	861.50	689.00
	Third six months from date of advancement	884.00	707.00	888.00	710.50
	Thereafter, the wage specified for a qualified Grade A employee, i.e.	975.00	780.00	978.50	783.00
Grade C employee:					
(a)	Qualified	739.50	591.50	742.50	594.00

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
(b)	Learner				
	First year				
	First six months of experience	662.50	530.00	665.50	532.50
	Second six months of experience	681.50	545.00	684.50	547.50
	Thereafter, the wage specified in (a), i.e.	739.50	591.50	742.50	594.00
(c)	If advanced to Grade B employee:				
	First six months from date of advancement	739.50	591.50	742.50	594.00
	Next six months from date of advancement	747.00	597.50	750.50	600.50
	Thereafter, the wage specified for a qualified Grade B employee, i.e.	833.00	666.50	837.00	669.50
<b>Part C - Clerical employees</b>					
Clerk					
(a)	Qualified	1 073.50	859.00	1079.00	863.00
(b)	Learner				
	First year	792.00	633.50	795.50	636.50
	Second year	861.00	689.00	865.50	692.50
	Third year				
	First four months of experience	941.00	753.00	945.00	756.00
	Thereafter, the wage specified in (a), i.e.	1 073.50	859.00	1079.00	863.00
Factory Clerk					
(a)	Qualified	806.00	645.00	810.50	648.50
(b)	Learner				
	First year	642.00	513.50	644.50	515.50
	Second year	683.50	547.00	687.00	549.50
	Third year				
	First four months of experience	739.50	591.50	742.50	594.00
	Thereafter, the wage specified in (a), i.e.	806.00	645.00	810.50	648.50
<b>Part D - General</b>					
	Boiler attendant	765.00	612.00	768.50	615.00
	Despatch packer	790.00	632.00	793.00	634.50
	General Worker	739.50	591.50	742.50	594.00
	Labourer	747.00	597.50	750.50	600.50
Motor vehicle driver of a vehicle, the unladen mass of which, together with the unladen mass of any trailer or trailers drawn by such vehicle -					
(a)	does not exceed 1 360 kg	790.00	632.00	793.00	634.50
(b)	exceeds 1 360 but not 2 720 kg	820.00	656.00	824.00	659.00

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
(c)	exceeds 2 720 kg	935.00	748.00	940.00	752.00
	Supervisor, quality controller and instructor	1 002.00	801.50	1006.50	805.00
	Traveller's driver	820.00	656.00	824.00	659.00
Watchman or caretaker, whose ordinary hours of work are -					
(a)	less than 60 hours per week	852.50	682.00	856.50	685.00
(b)	60 hours per week	894.50	715.50	899.00	719.00
<p><b>NB: All employers who employed staff on 2011/2012 New Entry Wage Dispensation, must with the coming into operation of this agreement, increase the Weekly Wage for those employees by 6.5% Across-the-Board.</b></p>					

## (2) New Employees

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

2.1.1 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.

2.1.2 The provision is only applicable to compliant companies.

2.1.3(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.

(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

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

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

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

- 2.1.7(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 2.1.3, 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 2.1.3* 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.
- 2.1.8 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to employ employees at the rates specified in sub-clause 2.1.3 (a) above.
- 2.1.9 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.
- 2.1.10 Qualified employees shall be employed at the qualified new entry rate, subject to sub-clause 2.1.1.
- 2.1.11 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.
- (3) Incentivised Wage Rates

The "new entry wage rates" provisions as specified in clause 4(2), shall be abolished and be replaced with the following incentivised wage rate provisions, **applicable to new employees only:**

- 3.1 With 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:
- 3.2 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
- 3.3 The guaranteed wage rate as specified in sub-clause 3.1 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.

- 3.4 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 3.5 below.
- 3.5 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.

- 3.6 All other provisions of the Industry's Main Agreement shall be applicable to new employees.
- 3.7 The closed shop shall be applicable to all new employees.
- 3.8 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 3.1 above.
- 3.9 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.
- 3.10 Qualified employees shall be employed at the qualified rate, subject to sub-clause 3.2 above.
- 3.11 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 6.23%, 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.
- 3.12 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.
- 3.13 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 3.3 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.

- 3.14 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.
- 3.15 Should the 80% dispensation fall away in consequence of the provision in sub-clause 3.14 above, new employees employed on the incentive wage provisions should be paid 100% of the applicable agreed rate.
- 3.16 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.
- (4) **Set Leaders:** In addition to the wages computed in terms of subclause (1), any employee when called upon to perform the duties of a set leader shall receive and be paid and additional R4 per week whilst so employed.
- (5) **Basis of Contract:** For the purposes of this clause the contract of employment of an employee, other than a casual employee and a twilight shift worker, shall be on a weekly basis, and an employee shall be paid in respect of a week not less than the full weekly wage prescribed in subclause (1), read with subclause (5) and subclause (9) for an employee of his class, whether he has in that week worked the maximum number of ordinary hours of work applicable to him in terms of clause 9, or less, and subject to the provisions of clause 30, each contract of service shall be deemed to have been continuous from the time the employee entered the employer's service until the time such service is legally terminated: Provided that the remuneration payable to a twilight shift worker shall accrue at an hourly rate.
- (6) **Incremental Dates:** 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 the respective periods.
- (c) In calculating whether an employee qualifies for an increment, all periods of absence from work shall be counted, 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 Regional Chamber within 14 days of the employee's resuming work.
- (7) **Differential rates:** An employer who requires or permits a member of one class of his employees to perform for longer than one hour in the aggregate on any day, either in addition to his own work or in substitution therefore, work of another class for which either-

- (a) a wage higher than that of his own class; or
- (b) a rising scale of wages terminating in a wage higher than that of his own class:

is prescribed in subclause (1), shall pay such employee in respect of that day-

- (i) in the case referred to in paragraph (a), not less than the daily wage calculated on the higher weekly rate: and
- (ii) in the case referred to in paragraph (b), not less than the daily wage calculated on the basis of the highest weekly wage prescribed in subclause (1) for the higher class:

Provided that where the difference between classes is, in terms of subclause (1), based on experience, the provisions of this subclause shall not apply.

- (8) **Shift Allowance:** In addition to the wage specified in sub-clause (1), read with sub-clause (10), a normal shift worker shall, in respect of his shift hours worked in any week, be paid an additional 12,5% on such wage.
- (9) In an establishment where a supervisor is not employed any employee (other than a set leader) who is responsible for the work performed by other employees, shall be entitled to and be paid not less than the wage prescribed for a supervisor in subclause (1) read with subclause (9).
- (10) **Casual employee:** A casual employee shall be paid in respect of every day or part of a day of employment not less than one fifth of the weekly wage prescribed for a labourer in subclause (1) read with subclause (9).
- (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 2.0% of his annual basic prescribed wage (excluding overtime earnings and production bonuses) calculated from 1 January to 31 December. A pro rata share thereof shall be paid to an employee who leaves employment before 31 December.

The bonus is inclusive of and not additional to any annual bonus paid by an employer and 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.

- (12) 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 receipt of a wage higher than that specified for the class of work in 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 not less than the difference between the wage as agreed by the Parties as at 1 September 2012 and the wage specified for the same class of work in the agreement in force immediately prior to that date.
- (13) (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.

- (14) **2001 Allowance:** In addition to the wage specified in sub-clause (1), each employee for whom wages are prescribed in this part of the Agreement, shall be paid an allowance equal to 1,28% of the wage prescribed in the Agreement published under Government Notice No R.112 of 9 February 2001 plus an amount of 20 cents: Provided that this sub-clause shall not apply to an employee who, by virtue of the operation of clause 1(2)(b), previously fell outside the provisions of the Agreement published under Government Notice No R.112 of 9 February 2001 and provided further that in the event of an employee who has been exempted from contributing to the Cape Clothing Industry Provident Fund, this allowance will be reduced to an amount of 20 cents i.e. discarding the 1,28% portion thereof.

## 5: PAYMENT OF WAGES

- (1) Nothing in this part of the Agreement shall operate to reduce the wage which was being paid immediately prior to or to which any employee was entitled at the date of the commencement of this part of the Agreement whilst such employee is employed by the same employer. The provisions of this subclause shall also apply in the case of any employee whose services are terminated by such employer subsequent to the date of commencement of this part of the Agreement and who is re-engaged by such employer.

For the purposes hereof, 'Agreement' shall include any amendment thereto.

- (2) (a) The wages due to an employee, other than a normal shift worker or a casual employee, shall be paid in cash each Friday during working hours, but not later than 17h30, at the place and time specified in the notice posted up in the establishment.

Any time which may elapse after the normal hours of work and the time at which payment is made shall be deemed to be overtime. If a pay-day falls upon a public holiday, payment shall be made during working hours on the day preceding such holiday.

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.

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.

- (b) Employees engaged upon a monthly basis shall be paid not later than the last day in each calendar month, or on the termination of employment if this should take place before the ordinary pay-day of the employee.
- (c) Where the contract of employment is terminated on any working day other than the ordinary pay-day in the establishment, all wages or other moneys due to the employee shall be paid immediately upon termination of employment, and where this is not done the employee shall also be entitled to his normal wages for any period up to the time at which payment is made.
- (d) A casual employee shall be paid in cash for each day worked not later than the usual closing time of the establishment.

- (3) **Wage envelopes:** Any wages must be handed to employees in sealed envelopes which bear the name of the employee, his factory number, the name of the employer, the number of hours worked by the employee, his prescribed weekly wage rate, deductions made in terms of subclause (4) and clause 12 (i.e. short-time), and the period in respect of which payment is made.
- (4) No deductions of any description, other than the following, shall be made from the amount due to an employee:
- (a) except where otherwise provided in this part of the Agreement, whenever an employee is absent from work and such absence is not at the request or on the instructions of his employer, a pro rata deduction for actual time lost;
  - (b) with the written consent of the employee, deductions for savings and/or holiday funds: Provided that the commencement or continuance of a savings and/or holiday fund is subject to the approval of the Regional Chamber, after the employer has agreed to deposit such moneys deducted from his employee's wages in a trust fund under the supervision of the Regional Chamber;
  - (c) levies in terms of clause 22, Health Care Fund contributions in terms of clause 26 of this part of the Agreement, and provident fund contributions in terms of clause 6 of the Provident Fund Agreement;
  - (d) any amount paid by an employer compelled by law, ordinance or legal process to make payment on behalf of an employee;
  - (e) where scissors have been provided by an employer to his employee, a weekly installment not exceeding R2,00 may be deducted until the cost incurred by the employer has been repaid, but in the event of the employee returning the scissors to his employer he shall be entitled to a refund of the total amount he has paid;
  - (f) deductions in respect of tea (or other beverage) in terms of clause 13 of this part of the Agreement;
  - (g) where no work is available to an employee on account of breakdown of machinery or other cause beyond the control of the management, the employer may make a pro rata deduction for any time lost in excess of two hours;
  - (h) deductions for contributions to trade union funds;
  - (i) deductions for cash advanced against wages;
  - (j) deductions in respect of repayments on housing loans provided for in clause 8 (4) of the Provident Fund Agreement of the Regional Chamber;
  - (k) where overalls have been provided by an employer to his employee at his request, a weekly installment not exceeding R2,00 may be deducted until the cost thereof has been repaid, but in the event of the employee leaving or absconding before the full cost of an overall has been paid, the outstanding amount may be deducted from his wages;
  - (l) deductions for contributions to pension funds approved by the Registrar of Pension Funds;
  - (m) deductions in respect of payments to local authorities for housing loans, rentals and rates;

- (n) deductions from the wages of monthly-paid employees in respect of life insurance premiums;
  - (o) deductions in respect of clipcards for bus or train travel.
- (5) Employers who supply their employees with goods of any kind whatsoever, shall not deduct the amounts owing thereon from the wage of such employees. Wages must at all times be paid in full except as is provided for in subclause (4) and clause 12 and no deduction shall be made in respect of goods that may have been accidentally spoilt during the manufacturing process.
  - (6) Where work of any nature whatsoever is performed in an establishment by employees organised in sets or teams, each individual employee in the said sets or teams shall be paid his wage by the employer or his representative in the establishment where the work is performed.
  - (7) No employer shall charge, nor shall he accept, any premium, monetary or other compensation 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.
  - (8) Whenever work ceases or is interrupted in the whole or part of an establishment owing to damage caused by fire, storm or flooding, an employer shall pay all employees affected thereby wages up to a maximum of two weeks: Provided that such payment shall include any payment in respect of notice of termination of service which may be due in terms of clause 18 of this part of the Agreement; Provided further that where work in a part or the whole of the establishment is resumed within two weeks from the date on which work was so ceased or interrupted, the payment due shall be only in respect of the actual time lost by the employees affected.  
  
The provisions of this subclause shall also apply to any employee who as at the date of such fire, storm or flood is employed on trial in terms of clause 18 (8) of this part of the Agreement.
  - (9) Subclause (8) shall not apply to a casual employee.

## **6: TIME RECORDS**

- (1) Every employer shall provide, to the satisfaction of the Regional Chamber, a semi-automatic time recording clock or other recording system and shall establish beyond reasonable doubt the actual time each individual employee has attended at the establishment.
- (2) Every employee shall, unless prevented by sickness or other unavoidable cause, register day by day the actual periods of his attendance at the establishment.
- (3) Every employee shall register in person, in accordance with the method employed in the establishment, and no employee may register for any other employee in such establishment.
- (4) All time cards or other types of records shall, in accordance with the requirements of section 205(1) and (2) of the Act, be kept for a period of three years subsequent to the date of the record and on request shall be available for inspection by the designated agent of the Council or Regional Chamber.

## **7: WAGE INCENTIVES, PIECE-WORK AND TASK-WORK**

- (1) Task-work is prohibited and employees who are required to produce a given number of units of production shall be placed under a piece-work or incentive system as provided for in this clause.
- (2) No employer shall employ any employee on piece-work or any other form of wage incentive except in accordance with the following conditions:
  - (a) No employee shall be paid in any week less than the minimum wage to which he would have been entitled in terms of clause 4 of this part of the Agreement if he had been employed purely as a time-worker.
  - (b) The Regional Secretary of the Regional Chamber must within seven days of the introduction of any piece-work or other form of wage incentive be notified of the introduction thereof.
  - (c) A schedule of the piece-work rates and, in the case of any other form of wage incentive, a statement clearly illustrating how bonus payments will be calculated, must forthwith be exhibited and kept posted in a conspicuous place readily accessible to the employees and such schedule and/or statement shall be signed in situ by a designated agent of the Council or Regional Chamber.
  - (d) The employees affected by any wage incentive scheme other than straight piece-work shall have the right to elect a works committee of two (or such additional numbers as may be agreed to by the employer) and in the event of a works committee being appointed, full details of the actual operation of the scheme shall be made available to the committee.
  - (e) Full details of the wage incentive scheme showing the operations covered, work values and allowances made in calculating work values, must be maintained by the employer, and where any changes are effected the record of the previous system must be retained for a period of one year after such change.
  - (f) No details of the wage incentive scheme may be changed to reduce the earnings of the employees affected without the consent of the works committee (if any), and in the event of any dispute arising, the matter shall be referred to the Regional Chamber: Provided that this shall not apply to any changes effected during the trial period of three months after the coming into operation of the scheme.  
  
Piece-work rates shall not be reduced without the consent of the Regional Chamber.
  - (g) No wage incentive system may be continued for a period exceeding one month after a trial period of three months without a certificate of permission having been obtained from the Regional Chamber.

#### **8: PROPORTION OR RATIO OF EMPLOYEES**

- (1) Knitters - An employer shall not employ an unqualified knitter unless he has in his employ a qualified knitter and for each qualified knitter not more than three unqualified knitters shall be employed.
- (2) For the purposes of subclause (1), an employer who is wholly or mainly engaged in the work of a knitter may be deemed to be a qualified knitter: Provided that an employer may not be so deemed in more than one establishment.

#### **9: ORDINARY HOURS OF WORK, MEAL INTERVALS AND REST INTERVALS**

- (1) **Ordinary hours of work:** An employer shall not require or permit an employee to work more ordinary hours than -
- (a) in the case of an employee, other than a normal shift worker or a twilight shift worker, boiler attendant, casual employee and watchman or caretaker -
    - (i) 42½ hours, excluding meal intervals, but including rest intervals, in any week from Monday to Friday, inclusive;
    - (ii) eight and a half hours on any day between 07h30 and 18h00;
  - (b) in the case of normal shift worker -
    - (i) 42½ hours, excluding meal intervals, but including rest intervals, in any week from Sunday to Saturday, inclusive;
    - (ii) nine hours on any day where two shifts are employed daily and eight hours on any day where three shifts are employed daily;

Provided that an employer may make mutual arrangements with his normal shift workers to work 42½ hours on night shift, excluding meal intervals but including rest intervals, in any week from Monday to Thursday (four-day week);

- (c) in the case of a boiler attendant, the weekly hours may be 46 and the daily hours nine and a quarter;
- (d) in the case of a watchman or caretaker, the weekly hours may be 60 and the daily hours 12 (five-day week) or 10 (six-day week);
- (e) in the case of casual employees, the weekly hours may be 25½ and the daily hours 8½;
- (f) In the case of a twilight shift worker, the daily hours may only be any time between 16h30 and 23h00 on any day from Monday to Friday.

- (2) **Hours of work to be consecutive:** All working hours in any day shall, except for meal intervals and rest intervals as provided for in this clause, be consecutive;

- (3) **Rest intervals:** An employer shall grant to each of his employees a rest interval of not less than -

- (a) 15 minutes as near as practicable to the middle of each morning work period;
- (b) 10 minutes as near as practicable to the middle of each afternoon work period;

Provided that this sub-clause shall not apply to a traveller's driver, a motor vehicle driver, a watchman or caretaker, or an employee engaged in delivering goods or messages outside the establishment of his employer: Provided further that where three normal shifts are employed daily or a twilight shift of longer than three hours duration is employed in an establishment, such rest intervals need not be granted to a normal or a twilight shift worker, provided he is supplied free of charge with one cup of tea as near as practicable to the middle of each normal or twilight shift, as the case may be, such tea to be taken while at his post.

- (4) **Meal intervals:** An employer shall not require or permit an employee to work for more than five hours continuously without a meal interval of not less than one hour during which interval such employee shall not be required or permitted to perform any work: Provided that -



- (a) periods of work interrupted by intervals of less than one hour shall be deemed to be continuous;
  - (b) if such interval be for longer than one hour, the period in excess of one hour shall be deemed to be hours of work;
  - (c) where two or three shifts are employed daily in any establishment, a normal shift worker shall be granted two meal intervals of not less than 15 minutes per shift or one meal interval of not less than 30 minutes per shift during which intervals such employee shall not be required or permitted to perform any work;
  - (d) an employer may conclude an agreement with his employees, other than normal shift workers, to shorten such employees' meal intervals to not less than 30 minutes daily;
  - (e) this sub-clause shall not apply to a twilight shift worker.
- (5) **Savings:** The provisions of this clause shall not apply to travellers' drivers and watchmen or caretakers: Provided that, in the case of a watchman or caretaker, he shall not be required or permitted to work for more than six days consecutively without being granted a day off duty on full pay: Provided further, that the employer may, in lieu of granting his watchman or caretaker any such day off, pay the employee concerned the wage which he would have received if he had not worked on such day, plus an amount of not less than his daily wage in respect of such day not granted. The provisions of subclauses (2), (3) and (4) shall not apply to an employee engaged on emergency work or in the overhauling and repair of machinery which cannot be performed during the ordinary working hours.

#### (6) **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.
  - (i) 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.
  - (ii) 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.

## 10: OVERTIME

- (1) **Overtime:** All time worked by employees other than normal shift workers and twilight shift workers -

- (a) in excess of the ordinary daily hours specified in clause 9(1); or
- (b) before 07:30 and after 18:00 from Monday to Friday, except in the case of boiler attendants, watchmen, caretakers, canteen employees or employees engaged in cleaning premises;

shall be deemed to be overtime.

- (c) **Shift workers:** All time worked by normal shift workers in excess of the ordinary daily or weekly hours specified in Clause 9(1)(b) shall be deemed to be overtime.
- (d) **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 9(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.

- (2) **Limitation of overtime -**

- (a) **Weekly and daily limits:** No employer shall require or permit an employee to work overtime for more than -
  - (i) 10 hours in any week;
  - (ii) three hours on any day.

- (b) **Notice of working of overtime to be given to employees:** No overtime in excess of one hour in any day may be required or permitted of an employee unless the employer -
- (i) has given notice thereof to such employee the previous day; or
  - (ii) provides such employee with an adequate meal before he has to commence overtime; or
  - (iii) pays such employee an allowance of R5.00 to enable the employee to obtain a meal before the overtime is due to commence.
- (c) Overtime shall be voluntary.
- (d) Before overtime is commenced on any day (Monday to Friday), the employer shall grant his employees a 10 minute paid meal interval (regarded as part of the overtime hours) or an unpaid meal interval of 30 minutes duration, depending on the wishes of the majority of the employees concerned.
- (e) An employee shall not be required to work overtime without his consent and an employee shall not be dismissed by reason of his refusal to work overtime.
- (3) An employee shall be deemed to be working in the employment of an employer in addition to any period during which he is actually working -
- (a) during any period during which, in accordance with the requirements of his employer, he is present upon or in any premises in which the Industry is being carried on;
  - (b) during any period during which he is present on or in any such premises; and
  - (c) during any period during which he is in charge of any vehicle used in the Industry, whether or not it is being driven: Provided that if it is proved that during any portion of any such period as is referred to in paragraph (b) or (c) any such employee did not actually work in his employment, the presumption established by this subclause shall not apply in respect of that employee in relation to that period.
- (4) Overtime accrues daily and shall be reckoned as time worked outside of the ordinary working hours as specified in Clause 9. All overtime of a lesser period than 15 minutes shall be paid for as a quarter of an hour overtime.
- (5) **Day of rest:** An employer shall grant to each of his shift workers one full day of rest in any week: Provided that if an employer requires or permits such an employee to work on his day of rest, the hours so worked shall be deemed not to be part of the ordinary hours of work specified in clause 9 (1) (b);
- (6) Overtime shall apply to all employees in an establishment except travellers' drivers.
- (7) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.

#### **11: PAYMENT FOR OVERTIME AND WORK ON SATURDAYS, SUNDAYS AND PUBLIC HOLIDAYS**

- (1) **Overtime:** An employer shall pay his employee, other than a twilight shift worker, in respect of all overtime worked by him, not less than:-

- (a) in the case of an employee other than a boiler attendant, watchman or caretaker and casual employee, one and a half times his wage divided by 42½ for each hour or part of an hour so worked;
- (b) in the case of a boiler attendant, one and a half times his wage, divided by 46, for each hour or part of an hour so worked;
- (c) in the case of a watchman or caretaker, one and a half times his wage, divided by 60, for each hour or part of an hour so worked;
- (d) in the case of a casual employee, one and a half times his daily wage, divided by 8½, for each hour or part of an hour so worked.

(2) **Saturday work:**

- (a) No work shall be performed on any Saturday without the prior permission of the Regional Chamber which may impose such conditions as it may deem fit;
- (b) Subject to subclause (c) hereof, any time worked on a Saturday shall be deemed to be overtime and be paid for as follows:
  - (i) all work performed in excess of 4,25 hours or after 12:00 at a rate of double an employee's hourly wage for every hour or part of an hour so worked;
  - (ii) all other work in accordance with sub-clause (1).
- (c) Where an employee is required or permitted to work on a Saturday, his employer shall pay the employee concerned a travelling allowance of not less than R1.75.
- (d) The provisions of this subclause shall not apply to normal shift workers.
- (e) A twilight shift worker may not be required to work on a Saturday.
- (f) A twilight shift worker may not be required to work on a Sunday.

(3) **Sunday work:** No work shall be performed on a Sunday without the permission of the Regional Chamber, and whenever an employee, other than a normal shift worker, is required or permitted to work on a Sunday, his employer shall either -

- (a) 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 at a rate of not less than double his ordinary rate of pay, in respect of the total period worked on such Sunday, or the wage which is not less than double the ordinary wage payable in respect of the period ordinarily worked by him on a week-day, whichever is the greater; or
- (b) pay the employee not less than one and a half times his ordinary hourly wage in respect of each hour worked on such Sunday and grant him within seven days of such Sunday, one work-day, i.e. a day other than a Saturday or Sunday, as a holiday, and pay him in respect thereof not less than eight and a half hours remuneration: Provided that for the purposes of this subclause,

a piece worker shall be paid not less than the equivalent amount to which he would have been entitled had he been employed as a time-worker.

(4) **Public holidays:**

- (a) An employee, other than a casual employee, shall be entitled to leave on full pay in respect of the following public holidays, and where he is required or permitted to work on such holiday he shall be paid, in addition to his normal wage in respect of such holiday, wages at straight time in respect of the hours so worked:

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 and Day of Goodwill.

- (b) Notwithstanding the provisions of this subclause, an employee who absents himself from work on any ordinary working day immediately preceding and/or immediately following any public holiday, shall not be paid for such public holiday unless such absence is on account of medically certificated sickness;

- (5) Remuneration payable in terms of any of the provisions of this clause shall be paid to the employee concerned not later than the pay-day next succeeding the period in respect of which such remuneration becomes payable.

- (6) **Easter week-end:** No work shall be performed after 13h00 on the day immediately preceding Good Friday and the employees shall be granted the afternoon off as a paid half-holiday.

The employee shall receive for such afternoon full pay in respect of the hours normally worked on Thursday afternoons. Where work is performed on such paid half-holiday, the employee shall, in addition to payment for such half-holiday receive payment for time worked after 13h00 at overtime rates.

No employer shall require or permit his employees to work in time at ordinary rates of pay or at overtime rates in substitution for the morning work period of the day immediately preceding Good Friday.

This subclause shall not apply to a casual employee;

- (7) The provisions of subclause (3) shall *mutatis mutandis* apply to a normal shift worker who works on his day of rest;
- (8) Overtime shall apply to all employees in an establishment, except travellers' drivers.

## 12: SHORT-TIME

- (1) An employer shall, prior to the day on and from which he intends to work short-time, notify all employees concerned by posting up a notice, or notices, in a prominent position well known and easily accessible to employees in any section or department of the establishment concerned;
- (2) Any employee who has not been given notice in terms of subclause (1) shall, on attending at the establishment, be entitled to be employed for a full working day, or be paid full wages in lieu thereof;
- (3) An employee, who on any day attends at the establishment on the instructions of the employer or his representative shall be entitled to be employed for at least four hours on such day or to receive four hours' pay at his ordinary rate of pay in terms of clause 4(1) read with clause 4(9).

- (4) Consultation with the Trade Union shall take place prior to the introduction of short-time.

### **13: PROVISION OF TEA AND OTHER BEVERAGES**

- (1) Where tea (or other beverage) is provided by the employer, a deduction of not more than one cent per cup may be made from the wages of the employees: Provided that the majority of employees in any establishment has agreed to accept tea (or other beverage).

Reference to "tea" in this subclause shall include the provision of milk and sugar for mixing with such tea (or other beverage).

- (2) Where tea or other beverage is not provided, the employer shall, at his own expense, provide and have immediately available to his employees at the commencement of each rest interval, and also at lunch time, a sufficient supply of boiling water and the necessary utensils for the making of tea.

### **14: 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 Regional Chamber within fourteen days of month-end in which the deductions fall due. 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 by not later than the end of the month in which the fees were received.

- (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 not be applicable to:

- (a) clerks; or
- (b) any employee to whom, in the opinion of the Regional Chamber, membership of the trade union has been refused without good and sufficient cause and the applicant has applied to the Council or Regional Chamber within 30 days of such refusal for exemption from the operation of this sub-clause; or

- (c) an immigrant during the first five years after the date of his/her entry into the Republic of South Africa, provided that if any immigrant has at any time after the first 90 days of commencement of his/her employment in the Industry refused any invitation from the trade union to become a member of it, the provisions of this clause shall immediately come into operation; or
  - (d) 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.

### **15: ANNUAL LEAVE AND PAID PUBLIC HOLIDAYS**

- (1) **Annual leave:** Subject to the provisions of subclause (7), every employee shall between 15 December of each year and 14 January of the following year be granted at least three consecutive weeks' and one working day's annual leave and shall, in respect of such leave be paid as follows:

- (a) no employee referred to in this subclause shall be paid less than three weeks' wages as annual leave pay-
  - (i) 13 ordinary working days leave and shall, in respect of such leave, be paid for 15 ordinary working days at full wage; plus
  - (ii) Christmas Day, Day of Goodwill and New Year's Day as paid public holidays in accordance with clause 11 (4) of this part of the Agreement published under Notice No. R. 627 of 28 May 1999; and
  - (iii) when Day of Reconciliation falls within the period of annual leave, it shall in accordance with clause 11 (4) of this part of the Agreement published under Notice No. R. 627 of 28 May 1999, also be observed as a paid public holiday thus extending the annual leave period by one day;
- (b) in the case of an employee who on the date of closing of the establishment for the specified annual leave period, has not completed one year's continuous employment with his employer and whose employment has not been terminated -
  - (i) for each completed month of employment in that year an amount equal to one day's pay; plus
  - (ii) for any of the following public holidays falling within the period during which the establishment is closed for the annual holiday period - Day of Reconciliation, Christmas Day, Day of Goodwill and New Year's Day - an amount equal to one day's pay in respect of each such holiday:

Provided that upon termination of employment an employee shall receive payment in lieu of leave calculated as follows :

One day's pay in respect of each completed month of employment calculated from 15 December of the previous year or from the date of engagement, whichever is the shorter period: Provided further that an employer shall not set off against such days of paid leave any days of paid leave granted such employee in excess of the number of day's paid leave he was required to pay the employee in terms of this subclause.

- (2) **Paid public holidays:**

- (a) In addition to the paid public holidays normally falling within the period of annual leave, i.e. Christmas Day, Day of Goodwill and New Year's Day, each employee shall be entitled to and be granted leave on full pay on Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day and Day of Reconciliation;
- (b) Where an employee's employment terminates immediately before any of the paid public holidays referred to in subclause (2) (a), he shall be entitled to payment for such public holidays, provided that they fall within an extended period calculated as follows :

One working day in respect of each completed month of employment (calculated from the day on which the employee last became entitled to leave or from date of engagement, whichever is the shorter period) shall be added to the date on which the employee's employment terminates, and if any paid public holiday falls within such added period it shall be paid for: Provided that

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- (i) where the employment of an employee is terminated by his employer at any time during December of any year for reasons other than dismissal without notice for any good cause recognised by law as sufficient, as referred to in clause 18 (1) (a), such employee, shall be paid one day's pay in respect of each of the public holidays referred to in subclause (1) (a) which falls after the date of termination of employment;
- (ii) where an employee gives notice to his employer of his intention to terminate employment at any time during December of any year, such employee shall not be entitled to payment in respect of the paid public holidays referred to in subclause (1) (a) unless such paid public holidays fall within an extended period calculated in the manner set out herein;
- (c) Whenever an employee works on 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 or Day of Goodwill, his employer shall pay him not less than his ordinary hourly wage in respect of the total period worked on such day, or an amount equal to at least the wage payable to the employee in respect of the time (excluding overtime) ordinarily worked by the employee on that day of the week, whichever amount is the greater, in addition to the remuneration to which he would have been entitled had he not so worked.
- (d) In the event of a paid holiday falling upon a Sunday, it shall be observed the following day
- (i) The Western Cape collective agreement to be amended to reflect the wording of the KwaZulu Natal metro agreement wording on payment of public holidays falling during the shutdown of the industry. This parity dispensation shall become binding with effect from the 2011/2012 annual leave period.
- (ii) Consequent to the implementation of the provisions of sub-clause (i) above, Western Cape employees shall be paid an additional two (2) days' paid leave for the 2011/2012 annual leave period.
- (e) In the event of any of the paid holidays referred to in subclause (1) (a) (ii) and in paragraph (a) hereof falling on Saturday, an employer shall pay his employee who does not work on such day five and a half hours' wage in addition to the remuneration which is due to him for time worked from the Monday to the Friday immediately preceding such Saturday;



- (f) Whenever an employee works on a paid holiday falling upon a Saturday, payment for any such day shall be in terms of paragraph (e) hereof, plus, in addition, one and a half times his hourly rate of wage for each hour worked on such Saturday;
- (3) **Payment for leave:** The employer shall pay his employee to whom leave is granted in terms of subclause (1) hereof, his pay in respect of leave not later than the last working day before the commencement of the said period and any amount paid to an employee in terms of subclause (1) or (2) shall be calculated at the rate of pay which the employee was receiving immediately prior to the date upon which the leave became due or his employment terminated, as the case may be; and whenever an employee is paid on a basis other than in accordance with the time actually worked by him, his ordinary rate of pay shall, for the purposes of this clause, be calculated as though he were paid by the hour and shall be ascertained at any date by dividing his total wage during the three months immediately preceding that date, or during the total period of his employment by the employer concerned, whichever is the shorter, by the number of hours worked during the period in respect of which such wage was paid;
- (4) For the purposes of this clause, 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 an employee who has, in accordance with the previous Agreement, been granted leave of absence on full pay, became entitled to such leave in terms of such Agreement, whichever may be the later;
- (5) Short-time shall not be deducted by an employer when computing the period of employment qualifying for annual leave in terms of subclause (1);
- (6) Where an employee has absented himself from work for any reason, other than that referred to in subclause (9), such period of absence shall not be considered as employment in terms of subclause (1);
- (7) **Annual leave at periods other than the specified leave period** - An employer may make mutual arrangements with his -
- (a) clerks, factory shop assistants, maintenance staff and watchmen or caretakers, to take their annual leave at a period other than between 15 December and the ensuing 14 January, and in that event such employees shall be entitled to not less than three consecutive week's leave to be granted not later than within that period up to and including Good Friday of the year immediately succeeding the year of employment to which it relates;
- (Maintenance staff means employees who are engaged in making repairs or adjustments to machinery or equipment, including the installation of such machinery or equipment, and who may effect cleaning, repairs or renovations to buildings, fixtures and fittings);
- (b) employees engaged in making samples, to take not more than 10 days annual leave at a period other than between 15 December and the ensuing 14 January and in that event such employees shall be entitled to not less than two consecutive weeks leave or such lesser period of leave as might be due to the employees concerned, to be granted not later than within that period up to and including Good Friday of the year immediately succeeding the year of employment to which it relates: Provided that in the case of employees making samples, an employer shall be permitted to work 10 employees, or a minimum of 5 per cent of his labour force, whichever is the greater;

- (c) shift workers engaged in knitting and finishing fabric to take their annual leave at a period other than between 15 December and the ensuing 14 January, and in that event such employees shall be entitled to not less than the leave due to them in terms of subclause (1), to be granted not later than within that period up to and including Good Friday of the year immediately succeeding the year of employment to which it relates: Provided that the employer shall notify the Council in writing of his intention to work shift employees during the leave period specified in subclause (1);
  - (d) employees, by agreement, to allow for two consecutive weeks' leave, inclusive of public holidays, to be taken in the period December to January each year, with the balance to be taken before the end of June of the following year: Provided that the terms of any such agreement reached by an employer with his employees shall be referred to the Regional Chamber for record purposes.
- (8) **Leave and notice not to be concurrent:**
- (a) Notice of termination of a contract of employment given by an employer shall-
    - (i) not be given during any period of leave to which the employee is entitled in terms of this part of the Agreement; and
    - (ii) not run concurrently with any period of leave to which the employee is entitled in terms of this part of the Agreement.
  - (b) Nothing in this section affects the right -
    - (i) of a dismissed employee to dispute the lawfulness or fairness of the dismissal in terms of Chapter VIII of the Act, or any other law; and
    - (ii) of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law.
  - (c) Payment instead of notice: Instead of giving an employee notice, an employer may pay the employee the remuneration the employee would have received, calculated in accordance with this part of the Agreement, if the employee had worked during the notice period.
- (9) Any period during which an employee -
- (a) is on leave in terms of subclause (1); or
  - (b) is absent on military service, not exceeding four months, undergone in that year; or
  - (c) is absent from work on the instructions or at the request of the employer; or
  - (d) is absent from work owing to illness or by reason of the fact that no female shall work in an establishment and no employer shall require or permit any female to work in his establishment during the period commencing four weeks prior to the expected date of her confinement and ending eight weeks after birth (if the child is stillborn or dies before the expiration of eight weeks after birth, the provisions of this subclause shall cease to apply as from the date fixed by the Regional Chamber);
- shall be deemed to be employment for the purposes of subclauses (1) and (2):

Provided that -

- (i) the provisions of paragraph (d) shall not apply in respect of any period of absence owing to illness of more than three consecutive days, if the employee, not being an employee referred to in proviso (ii), fails, after a request for such certificate by the employer, to submit to the employer a certificate by a medical practitioner that he was prevented by illness from doing his work, or in respect of that part of any total period of absence during any 12 months of employment which is in excess of 30 days;
  - (ii) an employee whose employer is required in terms of any Act of Parliament to provide for the care and treatment of such employee when sick or injured, shall not be required to submit a certificate by a medical practitioner in respect of any period of absence referred to in proviso (i);
- (10) **Advance notice of annual leave period:** At least one calendar month's notice of the actual date of the end of the year leave period shall be given by the employer by exhibition of an appropriate notice in the factory in a conspicuous place readily accessible to his employees;
- (11) **Extension of annual leave period:** An employer shall not be entitled to extend the period of annual leave referred to in subclause (1) without the prior permission of the Regional Chamber which may impose such conditions as it may deem fit.
- (12) This clause shall not apply to a casual employee.

#### **16: ENGAGEMENTS, TERMINATIONS, ABSENCES FROM WORK AND TRANSFERS IN OCCUPATION**

- (1) **Service record cards to be produced on engagement:**
- (a) Subject to the provisions of subclause (7), an employer shall, before engaging an applicant for work, require an applicant to produce a service record card issued by the Regional Chamber in the form and manner specified by the Regional Chamber.  
  
In addition to issuing a service record card the Regional Chamber shall issue a certificate of service reflecting the employee's employment history.
  - (b) The employer shall forthwith upon engagement enter in the space provided for "subsequent experience" the name of his factory, the date of engagement, occupation and wage on engagement and shall retain the card in safe-keeping so that it can in due course be dealt with in terms of subclause (2) upon termination of service of the employee.
  - (c) No employer shall engage any employee who is in terms of this part of the Agreement entitled to possess a service record card unless such employee has produced to the employer such service record card issued by the Regional Chamber.
  - (d) No employer shall engage any employee who is in terms of this part of the Agreement entitled to possess a Health Care Fund card unless such employee has produced to the employer such membership card issued by the Clothing Industry Health Care Fund in proof of membership of that Fund by such employee.

- (e) The employer shall forthwith upon engagement of such employee enter in the space provided on such card the name of the factory and the date of engagement, and shall immediately thereafter hand the card back to the employee.
- (f) Upon termination of such employee's services the employee shall on the day such termination takes place produce to the employer the said membership card issued by the Health Care Fund and the employer shall in the space provided enter the date of termination and shall initial such date in the space provided.
- (g) If the service record card shows that the employee is re-entering the Industry after confinement, the employer shall not permit the employee to commence work until a post-natal examination certificate has been produced in terms of subclause (7).

- (2) **Service record card to be returned to employee on termination of service or retained if on maternity leave:** Upon termination of service of an employee, the employer shall complete the remaining details on the employee's service record card, i.e. date of leaving, wage at date of leaving and length of employment. The completed card shall thereafter be initialed and handed to the employee on termination of service.

If the employee is ceasing employment due to confinement, this shall be endorsed on the card by the words "Due to Confinement" being written on the line on which the "Date of Leaving" is recorded.

If the employee is proceeding on maternity leave, the words "Maternity leave" and the date from which the employee proceeds on maternity leave must be written on the card on the line on which the "Date of Leaving" is recorded and the card retained by the employer.

- (3) **Procedure when employee does not produce a service record card:** The employer shall forthwith upon engagement cause an application in the form and manner specified by the Regional Chamber, including a Provident Fund nomination of beneficiary form, to be completed by the prospective employee and shall attach same to the weekly return of engagements referred to in subclause (4).
- (4) **Weekly returns of engagements, terminations, absences from work and transfers in occupation:** Not later than on Friday of each week the employer shall complete and transmit to the Regional Chamber a record, in the form and manner specified by the Regional Chamber, of all engagements, terminations, the first or last dates of absences from work for four or more consecutive pay weeks and transfers in occupation of employees in respect of that week: Provided that where in any week no changes have been effected, a "Nil" return shall be submitted.
- (5) **Dependants to be registered:** Every employer shall, when the Minister declares this part of the Agreement binding and thereafter at the engagement of each employee, determine if an employee has dependants and ensure that such dependants are registered with the Health Care Fund, and every employer shall, if an employee's dependants have not previously been registered with the Health Care Fund, inform the Regional Chamber of the Dependants of each of his employees within five days of the end of each calendar month in the form and manner specified by the Regional Chamber. In the event of no dependants having to be registered in respect of the calendar month, a 'Nil' return shall be submitted.

An employee who can prove to the satisfaction of his employer that his dependants are covered by a registered medical aid scheme need not register his dependants with the Health Care Fund. Proof of such medical aid scheme membership must be available for inspection purposes.

An employer shall forward the service record card of each employee with dependants to Regional Chamber to enable the Regional Chamber to record the fact that an employee has dependants on such card unless the employee's card already reflects such information.

- (6) **Notice of termination of service to be given in writing by employer or employee:**
- (a) An employer shall, when giving notice of his intention to terminate an employee's employment, give his employee written notice in the form and manner specified by the Regional Chamber.
  - (b) An employee shall, when giving notice of his intention to terminate his employment, give his employer written notice in the form and manner specified by the Regional Chamber.
- (7) **Procedure where employee proceeds on maternity leave or leaves employment due to confinement and on re-employment thereafter:**
- (a) Where an employee resigns when proceeding on maternity leave, this fact must be recorded on her service record card as provided for in subclause (2) above.
  - (b) Where an employee leaves work due to confinement, the employer must still record the date of ceasing work due to confinement.
  - (c) Not later than on the date of such termination or ceasing of work or commencement of maternity leave as the case may be, the employer shall provide the employee with a blank "post-natal examination certificate", and neither the same employer nor any new employer shall permit the employee to recommence employment or to start fresh employment unless the employee produces a properly completed "post-natal examination certificate" of her fitness for employment.
  - (d) Where such certificate shows that the employee requires further treatment, the Secretary of the Health Care Fund must be notified thereof and the certificate forwarded to him by registered post.
  - (e) Supplies of the blank "post-natal examination certificates" may be obtained from the Secretary of the Fund.
- (8) **Procedure where an employee withdraws notice:** An employee may only withdraw notice of his intention to terminate his contract of employment within two (2) working days of having tendered such notice and the employer shall require the employee concerned to acknowledge and confirm such withdrawal in the form and manner specified by the Regional Chamber.
- (9) **Duplicate service record cards:** Duplicate service record cards may be issued by the Regional Chamber upon the payment of an amount determined by the Regional Chamber from time to time.
- (10) This clause shall not apply to a casual employee.

## 17: RECORD CARDS AND AGREEMENT

- (1) **Record cards:** Every employer shall maintain a record card in respect of each of his employees, other than casual employees, showing the following particulars:
- (a) Factory number of employee;

- (b) name;
  - (c) sex;
  - (d) address;
  - (e) age;
  - (f) occupation;
  - (g) starting date;
  - (h) previous experience;
  - (i) number of service record card;
  - (j) commencing wage;
  - (k) increments and dates;
  - (l) transfers in occupation and dates.
- (2) **Exhibition of Agreement:** Every employer shall affix and keep affixed in his establishment in a conspicuous place readily accessible to his employees, in the form prescribed in the regulations under the Act, a legible copy of this part of the Agreement in at least two official languages: Provided further that every employer on whom the collective agreement, arbitration award, or determination is binding must -
- (a) keep a copy of that collective agreement, arbitration award or determination available in the workplace at all times;
  - (b) make that copy available for inspection by any employee; and
  - (c) give a copy of that collective agreement, arbitration award or determination -
    - (i) to an employee who has paid the prescribed fee; and
    - (ii) free of charge, on request, to an employee who is a trade union representative or a member of a workplace forum.
- (3) **Administration of Agreement:** The Regional Chamber shall be the body responsible for the administration of this part of the Agreement, and may issue expressions of opinion not inconsistent with its provisions for the guidance of employers and employees.

## 18: TERMINATION OF EMPLOYMENT

- (1) **Period of notice:** Subject to -
- (a) the right of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law as sufficient;
  - (b) the provisions of any written agreement between the employer and his employees which provides for a period of notice of equal duration on both sides and for longer than one week or one month, as the case may be;
  - (c) the provisions of subclause (8);
- an employer and his employee shall, in the case of a weekly paid employee, give not less than one week's notice and in the case of a monthly-paid employee, not less than one month's notice, of his intention to terminate the contract of employment.
- (2) **Payment or forfeiture in lieu of notice:** In the event of an employer or an employee failing to give notice as provided for in subclause (1), an employer shall pay the employee or the employee shall pay and/or forfeit to the employer:
- (a) in the case of a weekly-paid employee, one week's wages;
  - (b) in the case of a monthly-paid employee, one month's wages;

calculated at the rate of pay which such employee was receiving immediately before the date of such termination.

In the above regard absence from work without prior permission for a period of six consecutive days shall constitute a termination of the contract of employment unless within six days the employee has furnished to this employer a medical certificate certifying his inability to perform his/her usual work, in which case the employer shall, within three days of receipt of such certificate, advise the employee that it will keep his/her employment open until the employee is able to work or tender to such employee written notice of termination of service. Any employer who fails to keep the employee's employment open or to tender notice within such three days shall be required to pay the employee in lieu of such notice: Provided that where an employee has submitted a medical certificate to his employer and subsequently returns to resume service and his employer elects to summarily terminate his employment, his date of termination shall be the date of summary termination and not the date on which he last worked.

For the purpose of this sub-clause, where an employee attends work on a Friday, the period of absence from work shall commence from the next succeeding Monday, i.e. the intervening Saturday and Sunday shall be ignored in calculating the six consecutive calendar days' period of absence.

Nothing contained in this subclause shall in any way limit the rights and protection afforded to employees in terms of Chapter VIII of the Act.

- (3) Notwithstanding anything to the contrary in this part of the Agreement, should any money owing by an employer to an employee by way of wages be insufficient to meet the full amount of forfeiture referred to in subclause (2), the employer shall be entitled to retain such amount from other benefits (if any) which were in the process of accrual to such employee at the time of termination of his contract of employment.

For the purposes of this subclause, any payment which may be due to an employee in terms of clause 15 (1), (2) and (3) of this part of the Agreement shall also be regarded as a benefit in the process of accrual.

- (4) When an agreement is entered into in terms of subclause (1), the payment or forfeiture in lieu of notice shall be proportionate to the period of notice agreed upon.
- (5) **Date of coming into operation of notice to terminate employment:**
- (a) **Weekly paid employees:** Notice shall be given on any working day and shall operate from the following day.
- (b) **Monthly-paid employees:** Notice shall be given at any time prior to the usual closing time of the establishment on the last working day of the calendar month and shall operate from the first day of the succeeding month.
- (6) For the purposes of this clause, a week's notice shall mean a working week of not more than the number of hours ordinarily worked by the employee, or a full week's pay in lieu thereof, and the same proviso shall apply to the period of notice specified or mutually agreed upon in terms of subclause (4).
- (7) Where short-time is worked in an establishment, notice to terminate employment shall be in terms of (a) and (b) hereof :
- (a) An employee may terminate his contract of employment by giving his employer notice equivalent to the number of days worked in the week preceding the notice week; and

- (b) an employer working short-time shall give like notice to an employee to terminate his contract of employment.
- (8) **Trial periods:**
- (a) **Weekly employees** - The provisions of this clause shall not apply during the first four weeks of employment. Such four weeks shall be deemed to be period of trial during which the employment may be terminated by the employer or the employee on 24 hours' notice.
  - (b) **Monthly employees** - The provisions of this clause shall not apply during the first six weeks of employment. Such six weeks shall be deemed to be a period of trail during which the employment may be terminated by the employer or the employee on 24 hours' notice.
- (9) This clause shall not apply to a casual employee.

## 19: 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 lodgment 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 a 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 costs 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 or 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, in the case of Embroidery Employers.
- 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) (b) (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.

## **20: SEATING ACCOMMODATION**

Seats with suitable back rests, approved of by the Regional Chamber, shall be provided for all female employees.

## **21: TOOLS AND MATERIALS**

The employer shall, free of charge, supply to the employees all tools (other than scissors), materials and requisites for the manufacture of clothing.

## **22: EXPENSES OF THE COUNCIL AND REGIONAL CHAMBER**

- (1) The employer and the employee NBC Levy contribution shall be converted to a percentage-based contribution.
- (2)
  - (a) For the purpose of meeting the expenses of the Council and Regional Chamber, every employer shall deduct from the earnings of each of his employees for whom minimum wages are prescribed in clause 4 of this part of the Agreement, an amount equal to 0.22% of each employee's wages per week, calculated at the qualified machinist's rate of pay, payable by means of a deduction from the employee's wages maximum of R1,84 per week.
  - (b) To the amount so deducted, the employer shall add an amount equal to 0.32% of each employee's wages per week, calculated at the qualified machinist's rate of pay, payable by the employer maximum of R2,96 per week and forward, month by month, and not later than the 14th day of each month, the total sum to the Regional Secretary of the Regional Chamber.
- (3)
  - (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.
- (4) This clause shall not apply to a casual employee.

## **23: TRADE UNION REPRESENTATIVES ON THE REGIONAL CHAMBER**

Every employer shall give to any of his employees who are representatives on the Council every reasonable facility to attend to their duties in connection with the work of the Council or Regional Chamber: Provided that in establishments employing 5 or fewer employees, the trade union shall give the employer 5 days' written notice of its request for time off for its representative in terms of this clause.

## **24 : POWERS OF DESIGNATED AGENTS WHEN ATTEMPTING TO RESOLVE DISPUTES AND SECURE COMPLIANCE OF AND IN TERMS OF THIS PART OF THE AGREEMENT**

- (1) One or more persons shall be appointed by the Council or Regional Chamber as agents to assist in enforcing the terms of the Council's or Regional Chamber's Collective Agreements.
- (2) The Council may, in terms of Section 33 of the Act, request the Minister of Labour to appoint any person as a designated agent of the Council or Regional Chamber.
- (3) A designated agent shall have all the powers conferred on a Commissioner by Section 142 of the Act, except the powers conferred by Section 142(1)(c) and (d) of the Act.
- (4) A designated agent who has been appointed to attempt to resolve a dispute or investigate any alleged contravention and for purposes of routine inspections to enforce compliance with this part of the Agreement in terms of clause 36 or the Disputes Procedure in terms of clause 37 of this part of the Agreement may :
  - (a) subpoena for questioning any person who may be able to give information or whose presence at the conciliation or arbitration proceedings may help to resolve the dispute ;
  - (b) subpoena any person who is believed to have possession or control of any book, document object relevant to the resolution of the dispute, to appear before the agent or be questioned or to produce that book, document or object;
  - (c) administer an oath or accept affirmation from any person called to give evidence or be questioned;
  - (d) at any reasonable time, but only after obtaining the necessary written authorisation: -
    - (i) enter and inspect any premises on or in which any book, document or object, relevant to the resolution of the dispute is to be found or is suspected on reasonable grounds of being found there; - and
    - (ii) examine, demand the production of, and seize any book, document or object that is on or in those premises and that is relevant to the resolution of the dispute; - and
    - (iii) take a statement in respect of any matter relevant to the resolution of the dispute from any person on the premises who is willing to make a statement : - and
  - (e) inspect, and retain for a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the agent.
- (5) A subpoena issued for any purpose in terms of subclause (4) shall be signed by a designated agent and shall -
  - (a) specifically require the person named in it to appear before the designated agent;
  - (b) sufficiently identify the book, document or object to be produced; - and
  - (c) state the date, time and place at which the person is to appear.
- (6) The written authorisation referred to in subclause (4) (d) -
  - (a) if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to the Constitution of the Republic of South

Africa, 1996, and then only on the application of the agent and/or any appointed person setting out under oath or affirmation the following information -

- (i) the nature of the dispute;
  - (ii) the relevance of any book, document or object to the resolution of the dispute;
  - (iii) the presence of any book, document or object on the premises; - and
  - (iv) the need to enter, inspect or seize the book, document or object; - and
- (b) in all other cases, may be given by the General Secretary of the Council or Regional Secretary of the Regional Chamber.
- (7) The owner or occupier of any premises that an agent and/or any other appointed person is authorised to enter and inspect, and every person employed by that owner or occupier, must provide any facilities that an agent or such person requires to enter those premises and to carry out the inspection or seizure.
- (8) The agent and/or appointed person must issue a receipt for any book, document or object seized in terms of subclause (4).
- (9) The law relating to privilege, as it applies to a witness subpoenaed to give evidence or to produce any book, document or object before a court of law, applies equally to the questioning of any person or the production or seizure of any book, document or object in terms of this clause.
- (10) The agent and/or appointed person must pay the witness fee specified from time to time in terms of Section 208 of the Act to each person who appears before him in response to a subpoena issued, where such fee has been specified by the Minister of Labour or, in the absence of a fee being specified by the Minister, as may be determined by the Council from time to time.
- (11) A person commits contempt of the Designated Agent -
- (a) if, after having been subpoenaed to appear before him, the person without good cause does not attend at the time and place stated in the subpoena;
  - (b) if, after having appeared in response to a subpoena, that person fails to remain in attendance until excused by the agent and/or appointed person;
  - (c) by refusing to take the oath or to make an affirmation as a witness when an agent and/or appointed person so requires;
  - (d) by refusing to answer any question fully and to the best of that person's knowledge and belief subject to subclause (8);
  - (e) if the person, without good cause, fails to produce the book, document or object specified in a subpoena to an agent and/or appointed person;
  - (f) if the person willfully hinders an agent and/or appointed person in performing any function conferred by or in terms of this Act;
  - (g) if the person insults, disparages or belittles an agent and/or appointed person, or prejudices or improperly influences an investigation or improperly anticipates the agent and/or appointed person's recommendations;

- (h) by willfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings
  - (i) by doing anything else in relation to the agent and/or appointed person which, if done in relation to a court of law, would have been contempt of court.
- (12) The designated agent may on recommendation of the Council or Regional Chamber refer any contempt to the Labour Court for an appropriate order.

#### **25: OUTWORK AND DISCLOSURE OF EMPLOYERS' PATTERNS ETC.**

- (1) Every employer giving out work on contract shall at all times keep a record showing:
- (a) the name and address of the person to whom the work has been given out;
  - (b) a description of the type and quantity of work given out; and
  - (c) the dates upon which the work was given out and the dates upon which it was received back.

For the purposes of this subclause, 'giving out work' shall include the issue of materials for the purpose of having such materials made up into garments or parts of garments.

- (2) Every employer shall retain such record for a period of three years subsequent to the occurrence of that event and shall, on demand by a designated agent of the Council or Regional Chamber made at any time during the said period of three years, produce the said record for inspection.
- (3) Every employer shall within 14 days of the end of each quarter (i.e. for the periods ending 31 March, 30 June, 30 September and 31 December) forward a return of outwork to the Regional Chamber in the form and manner specified by the Regional Chamber.
- (4) No employee in the employ of an employer shall disclose to any other employer or person any cutting patterns or templates used by his employer.
- (5) No employer shall induce any employee of another employer to disclose any cutting patterns or templates used by such employee's employer.

#### **26: CLOTHING INDUSTRY HEALTH CARE FUND**

- (1) The Fund established under Government Notice No 43 of 9 January 1948, and known as the "Clothing Industry Health Care Fund" (formerly the "Cape Clothing Industry Sick Fund" and "Cape Clothing Industry Sick Benefit Fund") and hereinafter referred to as the "Fund" is hereby continued.
- (2) The administration of the Fund shall be vested in a Management Committee which shall be appointed at a duly constituted meeting of the Regional Chamber, in terms of the Council's Constitution, and shall consist of six employers' representatives and six employee representatives, with the Chairman and the Vice-Chairman of the Regional Chamber, as *ex officio* members. A paid secretary, who shall also be the Secretary of the Fund, shall be appointed by the Committee.
- (3) One copy of this Collective Agreement, Clause 26 of which shall represent the Rules of the said Fund, and any amendments thereof, shall be kept by the General Secretary of the Council and Regional Secretary of the Regional Chamber.



- (4) (a) The purpose of the Fund is to provide medical and related benefits for employees and their dependants and for such purpose 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 and who has worked irrespective of the time so worked (hereinafter referred to as a 'contributor'), the following amount:

Group 1 In the case of a contributor earning R3,00 per week or less in excess of the wage rate specified for a Qualified Grade B employee in clause 4 (1) (a) of this Part of the Agreement:

without dependants: R 20,78

with dependants: R 25,48

Group 2 In the case of a contributor earning R3,01 per week and more in excess of the wage specified for a Qualified Grade B employee in clause 4 (1) (a) of this Part of the Agreement:

without dependants: R 22,78

with dependants: R 29,48

- (b) An employer shall, in respect of each contributor from whose wages deductions are made in terms of paragraph (a) above, contribute per week the amounts set out below:

Group 1 In the case of a contributor earning R3,00 per week or less in excess of the wage rate specified for a Qualified Grade B employee in clause 4 (1) (a) of this Part of the Agreement: R7,65;

Group 2 In the case of a contributor earning R3,01 per week and more in excess of the wage specified for a Qualified Grade B employee in clause 4 (1) (a) of this Part of the Agreement: R9,13.

- (c) (i) The total sum representing the employer's contributions and the contributor's contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22(2) of this part of the Agreement.
- (ii) 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 first 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.
- (iii) 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.

- (d) Upon receipt of the first eight payments to the Fund in respect of each contributor, the Secretary of the Fund shall allocate a Fund number to each contributor and prepare a membership card reflecting:
- (i) the full name of the employer;
  - (ii) the full name of the contributor;
  - (iii) the Fund number of the contributor.
- The Secretary of the Fund shall thereafter either notify the contributor to call and the card shall be handed to the contributor after the contributor has signed the card in the presence of an official of the fund, or transmit the card to the employer to hand it to the contributor, in which event it shall be the duty of such employer to ensure that the contributor signs the card immediately on receipt thereof and furnishes a receipt thereof which the employer shall, thereafter, transmit to the secretary of the Fund within seven days.
- (e) All the moneys received by the Fund shall be deposited in a banking account for the Fund which shall be opened by the Regional Chamber, in the name of the "Clothing Industry Health Care Fund": Provided that the Management Committee may from time to time authorise investments of funds in terms of the Act.
- (f) The Management Committee shall appoint an auditor for the Fund, who shall be a registered accountant, and determine his remuneration, which shall be paid out of the Fund. The accounts of the Fund shall be audited annually for the 12 months ending 31 December each year from the year commencing 1 January 2003. A copy of the audited financial statements, approved by the Management Committee, shall be signed by the Chairperson of the Management Committee and the Regional Secretary of the Regional Chamber, and a copy provided to the General Secretary of the Council who shall transmit a copy to the Registrar: Labour.
- (g) Disbursements from the fund shall cease whenever the amount to the credit of the Fund falls below R50 000.
- (h) The employer shall each week notify the Fund of all contributors who have been absent without pay for four or more consecutive pay-weeks in the manner specified in clause 16(4) of this part of the Agreement.
- (5) (a) The contributor shall be liable for any benefits paid to him or obtained by him as a result of his misrepresentation of the facts or as a result of an error in the calculation of such benefits, and the Management Committee may set off the incorrect amount paid to the contributor against any further benefits due to him or recover the amount from the contributor.
- (b) If a contributor leaves his employment in the Industry for the purpose of taking employment outside the Industry, he shall forfeit all claims to the Fund.
- (c) Maternity benefits:
- (i) Subject to the provisions of this part of the Agreement a female contributor who-
    - (aa) has continuously contributed to the Health Care Fund for no less than one year; and
    - (ab) has continuously been employed in the Industry for no less than one year;

as at the date of ceasing employment because of her pregnancy shall be entitled to the maternity benefits set out in (iii) below. Female contributors entitled to maternity benefits shall include the following:

- (A) A female contributor who becomes unemployed through no fault of her own because of retrenchment or closure or liquidation of her employer's establishment, regardless of the stage of her pregnancy at the time of becoming unemployed; and
  - (B) a female contributor who resigns, subject to her pregnancy, at date of resignation, being 22 weeks or more.
- (ii) For the purposes of this subclause, non-contributing periods owing to illness and/or short time shall be deemed to be periods of contribution.
- (iii) Any employee who is entitled to maternity benefits shall receive a lump sum payment equal to 25 per cent of such employee's weekly wage earned at the time of ceasing employment because of her pregnancy, multiplied by 13: Provided that no such payment shall be made to the employee-
- (aa) earlier than four weeks prior to the expected date of her confinement; which expected date shall be determined by a recent medical certificate signed by a medical practitioner indicating the number of weeks' pregnancy and the expected date of confinement; or
  - (ab) in the event of a prematurely born child which is alive at birth, unless she produces a birth certificate; or
  - (ac) in respect of a miscarriage, abortion or still-born child that occurs during the first 35 weeks of pregnancy; or
  - (ad) if the employee dies prior to claiming the benefit due to her in terms of this subclause, until such time as the Master of the High Court has decided to whom such benefit should be paid.
- (6) All contributors from whose wages eight or more consecutive weekly deductions have been made in terms of subclause (4) (a) shall be entitled to the following benefits:
- (a) the services of a medical officer appointed by the Fund;
  - (b) consultations with specialists appointed by the Fund;
  - (c) free medicines prescribed and dispensed by the medical officers or specialists appointed by the Fund;
  - (d) the benefits provided for in subclause (7), (8) and (9).
  - (e) medical and related benefits as determined by the Management Committee, for their registered dependants.

The benefits provided for in this subclause shall cease eight weeks after the date of termination as a contributor in the Industry.

The cost of medical attention or pharmaceutical supplies rendered or dispensed by medical officers appointed by the Management Committee in respect of a contributor shall be paid by the Fund which shall also pay the cost of operating the Assisted

Optical Scheme referred to in subclause (8) and the dental surgeries referred to in subclause (9).

Such costs shall be payable in respect of a period not exceeding three weeks in any cycle of one calendar year and shall be subject to such further conditions as may from time to time be decided by the Management Committee.

Where a contributor withdraws the money standing to his credit from the Cape Clothing Industry Provident Fund, and provided such payment is made due to the employee leaving the Industry as a result of serious ill health or incapacity prior to reaching the age for retirement from the Cape Clothing Industry Provident Fund, such employee shall be entitled to free medical treatment from any one of the Fund's medical officers and free medicines supplied by such medical officer during the period of 26 weeks calculated from the date on which such employee leaves the Industry.

Pregnancy shall not be regarded as an 'illness' for the purpose of benefits and only one visit to the doctor shall be allowed at the expense of the Fund.

- (7) **Gynaecological clinics:** Reasonable facilities shall be afforded to employees to attend the Health Care Fund clinic and upon production of a certificate from the Health Care Fund sister that an appointment has been made, the employer shall pay for time lost by the employee in attending the clinic up to a maximum of two hours in any week.
- (8) **Optical clinic:** The Fund shall provide and equip an optical clinic where employees may be tested by means of an Ortho-rater or similar machine. Where such test shows that further attention is needed, the Fund shall, in consultation with the employer, arrange an appointment with an ophthalmologist and the employee shall be notified of such appointment. The employer shall pay for the time lost by the employee in attending the clinic and for the purpose of keeping the appointment with the ophthalmologist, up to a maximum of two hours in any week. Before an appointment is made with such specialist on behalf of an employee, the employee shall lodge with the Health Care Fund such amount as may from time to time be determined by the Management Committee as being the employee's contribution towards the cost of spectacles. Such contribution shall be in respect of standard type frames, as approved by the Management Committee. Where a more expensive frame is desired, the additional costs involved shall be borne by the employee.
- (9) **Dental surgeries:**
- (a) The Fund shall provide and equip one or more dental surgeries for the benefit of contributors.
  - (b) A contributor shall pay not more than the following percentages of the charge submitted by a dental technician for dentures, partial dentures or repairs to dentures which have been prescribed by the Fund's dental surgeon:
    - (i) contributors who have completed 10 years membership of the Fund; 60 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures;
    - (ii) contributors who have completed five years' membership of the Fund: 80 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures;
    - (iii) contributors who have completed less than five years' membership of the Fund: 100 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures.

- (c) The Management Committee may determine the contributor's payment towards the cost of any other dental treatment: Provided that no contributor shall be required to pay towards the cost of the treatment of dental caries or X-rays taken, as prescribed by the Fund's dental surgeon.
- (d) The Fund shall, in consultation with a contributor, arrange an appointment with the dental surgeon for treatment and the employer shall be notified of the appointment. The employer shall pay the contributor for time lost by the contributor in attending the dental surgery for the purpose of keeping such appointment, up to a maximum of two hours in any week.
- (10) In the event of the expiration of this part of the Agreement by effluxion of time or cessation for any other cause, the Fund shall continue to be administered by the Management Committee until it be either liquidated or transferred by the Council or Regional Chamber to any other fund constituted for the same purpose as that for which the original Fund was created: Provided that the Fund shall be liquidated by a person appointed by the Council or Regional Chamber unless an Agreement providing for the continuation of the Fund or for the transfer of its moneys as aforesaid is entered into within 12 months of date of expiration of this part of the Agreement.
- (11) In the event of dissolution of the Council or Regional Chamber, or in the event of its ceasing to function during any period in which this part of the Agreement is binding in terms of the Act, the Management Committee shall continue to administer the Fund and the members of the Management Committee existing at the date on which the Council or Regional Chamber, as the case may be, ceases to function or is dissolved shall be deemed to be members thereof for such purpose: Provided, however that any vacancy occurring on the Management Committee may be filled by the Registrar 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 Management Committee. In the event of such Management 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, he may appoint a trustee or trustees to carry out the duties of the Management Committee and who shall possess all the powers of the Management Committee for such purpose.
- In the event of there being no Council or Regional Chamber in existence, the Fund shall be liquidated upon the expiration of this part of the Agreement in the manner set forth in subclause (12), and if upon the expiration of the Agreement the affairs of the Council or Regional Chamber, as the case may be, have already been wound up and its assets distributed, the balance of the Fund shall be distributed as provided for in Section 59(5) of the Act and the Council's Constitution as if it formed part of the general funds of the Council.
- (12) Upon liquidation of the Fund in terms of subclause (10), the moneys remaining to the credit of the Fund after payment of all claims against the Fund, including administration and liquidation expenses, shall be paid into the general funds of the Council or Regional Chamber.
- (13) (a) An employer shall grant an employee who is absent from work through incapacity:
- (i) in the case of an employee who regularly works not more than five days a week, not less than 10 working days; or
  - (ii) in the case of any other employee, not less than 12 working days;
- sick leave in the aggregate on full pay during each period of 12 consecutive months commencing 1 July 1997 and on each July 1<sup>st</sup> thereafter, for which

the employee is employed by him (hereinafter referred to as the 'sick leave cycle'):

Provided that during the first 12 consecutive months of employment an employee shall not be entitled to sick leave on full pay at a rate of more than, in the case of an employee who regularly works not more than five days in a week, one working day in respect of each completed period of five weeks of employment and, in the case of any other employee, one working day in respect of each completed month of employment. The sick leave cycle of such employees shall commence on the next July 1<sup>st</sup> so as to ensure a common Industry Anniversary date of 1 July for sick leave.

- (b) The amount to be paid in terms of paragraph (a) to an employee in respect of a day's sick leave on full pay shall not be less than the wage payable to him in respect of the time (excluding overtime) ordinarily worked by him on that day of the week.
- (c) An employer shall not be bound in terms of paragraph (a) to pay to an employee an amount in respect of any absence from work for a period covering more than two consecutive days, unless the employee produces a certificate signed by a medical practitioner stating the nature and duration of the employee's incapacity:

Provided that if an employee has during any period of up to eight weeks received payment in terms of paragraph (a) on two or more occasions without having produced such a certificate to his employer, his employer shall during the period of eight weeks immediately succeeding the last such occasion not be bound to pay the said amount to the employee in respect of any absence from work, unless he produces such a certificate.

- (d) Where an employer is by or under a provision of any law required to pay fees for hospital or medical treatment in respect of an employee and he pays such fees in respect of any incapacity of an employee, the employer may set off the amount so paid against any payment which he has to pay in terms of paragraph (a) to the employee in respect of sick leave because of such incapacity.
- (e) The provisions of paragraph (a) shall not apply in respect of any period of incapacity of an employee in respect of which the employer is by or under a provision of any law required to pay the employee an amount of not less than the equivalent of his wage.
- (f) For the purpose of this subclause:
  - (i) any period during which an employee:
    - (aa) is on leave by virtue of clause 15;
    - (ab) is on sick leave by virtue of paragraph (a);
    - (ac) is absent from work on the instruction or at the request of his employer; or
    - (ad) is undergoing military training,

amounting in the aggregate in any sick leave cycle to not more than 30 weeks in respect of the periods referred to in sub-items (aa), (ab) and (ac), plus up to 12 months of any period of military training referred to in sub-item (ad) undergone in that sick leave cycle, shall be deemed to be employment with his employer;

- (ii) any continuous employment which an employee has had with the same employer at the date from which the Minister declares this part of the Agreement binding shall be taken into account, and any sick leave on full pay granted by the employer to that employee during that period of continuous employment shall be deemed to have been granted under this subclause: Provided that the provisions of this paragraph shall apply only to employees exempted from the provisions of subclauses (1) to (12).
- (g) For the purpose of this subclause-
- (i) the provision in paragraph (a) shall apply irrespective of whether or not an employee has exceeded the 30 days (or 36 days - as the case may be) under his incomplete 36-month cycle as at 30 June 1997 in terms of the previous agreement;
  - (ii) any employee who had not been paid by his employer for sick leave taken since 1 July 1997 in terms of the previous agreement, shall be entitled to payment for those days up to a maximum of his new 10-day (or 12 days - as the case may be) entitlement in terms of this part of the Agreement;
  - (iii) sick leave not taken in one year cannot be carried forward to the next year and the following year's paid leave of 10 days (or 12 days - as the case may be) may not be taken in advance. This, however, does not detract from an employee's right to unpaid sick leave when the 10 days (or 12 days - as the case may be) per year limit has been exceeded;
  - (iv) all employees who have been certified as having an illness of 10 days or more (or 12 days - as the case may be) in any period of 36 consecutive months employment with an employer, commencing 1 July 1997 and ending on 30 June 2000, and on 1 July of every 36-month period thereafter, may apply to the Health Care Fund Management Committee referred to in subclause (2) for paid sick leave up to a maximum of 30 days (or 36 days, where more than five days per week are regularly worked), or any balance exceeding 10 days (or 12 days, as the case may be) and still remaining in such period of 36 months: provided that on receipt of such application, the Health Care Fund Management Committee may exercise its right to decide on the merits of the application and rule whether or not the employer should pay for such extended sick leave. The provision is referred to as the "Serious Illness or Injury Provision";
  - (v) employees and employers shall have the right to dispute a decision of payment or non-payment and they may use the dispute resolution procedures of the Bargaining Council to resolve same. These dispute procedures may be applied where an employee or employer objects to the ruling of the Health Care Fund Management Committee or where the Management Committee is unable to make a ruling for whatever reason.
  - (vi) all parents employed in the Industry will be entitled to use all or part of their annual paid sick leave entitlement (10 or 12 days, as the case may be) in terms of this part of the Agreement or the provisions of the Basic Conditions of Employment Act 1997 (Act No 75 of 1997), whichever may be applicable under the circumstances, for the purposes of caring for ill dependent children on condition that -

- (aa) an ill dependent child must have been diagnosed and certified at a Health Care Facility of the Fund as seriously ill or injured and that the parent's presence is necessary during the period of the child's recovery or part thereof; and
- (ab) prior appointment for consultation at a Health Care Facility of the Fund has been made or prior notification to the principal member's employer and/or where the principle member has reported to a Health Care Facility of the Fund:

Provided that the mere presence of the principal member with an ill child at a Health Care Facility of the Fund shall not automatically entitle such member to a certificate for sick leave payment. All certificates will be issued at the sole discretion of the Medical Officer or other professional staff of the Fund. In such cases, the Medical Officer or other professional staff of the Fund shall endorse the certificate with the appropriate wording determined by the Management Committee of the Fund.

Provided further that a principal member parent who presents a certificate for a child which has been issued by a Public Funded Hospital shall be eligible for benefits under this arrangement only in instances where the Fund's own professional staff have confirmed the diagnosis and requirements in terms of this provision.

For purposes hereof, a Public Funded Hospital shall mean any of those larger State Hospitals which usually provide a 24-hour service.

Provided also that employees in the Industry who fall within the jurisdiction of the Regional Chamber and who have been exempted from contributing to the Fund shall be entitled to attend a Health Care Fund facility of the Fund for purposes of obtaining the required certification in respect of an ill dependent child. Such an arrangement however, shall, not entitle the employee or his dependents to any medical attention.

- (14) **Indemnity:** The members of the Management Committee and their alternates shall not be liable for any loss to the Fund arising by any reason of any act in their bona fide administration of the Fund or by reason of the negligence or fraud of any agent or employee who may be employed by the Fund although the employment of such agent or employee was not strictly necessary or by reason of any act or omission made in good faith by such members or alternates or by such local representatives or by reason of any other matter or thing save individual willful or fraudulent wrongdoing on the part of such members or alternates or on the part of such local representatives who are sought to be made liable. Any such member or alternate and any such local representative shall be reimbursed by the Fund for any liability incurred by him in defending any proceedings, whether civil or criminal, arising out of an allegation involving bad faith in which judgment is given in favour or in which he is acquitted.
- (15) **Millinery Industry (Cape):** The provisions of this clause shall *mutatis mutandis* apply to the employers and the employees subject to the Agreement for the Millinery Industry, Cape, published under Government Notice R. 1162 of 8 June 1979, or the corresponding provisions of any agreement superseding that Agreement.
- (16) The Management Committee shall decide from time to time upon the form and manner in which claims shall be lodged and benefits paid in terms of this clause.



- (17) This clause shall not apply to a casual employee.

## **27: TRADE UNION SUBSCRIPTIONS**

- (1) An employer shall deduct trade union subscriptions and levies weekly from the remuneration of trade union members on their written authorisation, other than where an exemption has been granted by the Council or Regional Chamber or by the Independent Exemptions Body: Provided such moneys have been determined in terms of the Union's Constitution. The employer shall forward such amounts so deducted to the Regional Secretary of the Regional Chamber, for transmission to the Union.
- (2) Each month the total amount of such deductions together with a list showing the names and service record card numbers of the employees and the amounts deducted each week for each employee shall be forwarded to the Regional Secretary of the Regional Chamber by no later than the fourteenth day of the month succeeding the month in which they were deducted.
- (3) Every employer must, in respect of each trade union member employed by him contribute towards the trade union bursary fund at the rate of 29 cents per week.
- (4) Every employer shall, in respect of each of his employees for whom contributions are paid in terms of clause 22 of this part of the Agreement, contribute towards the trade union's HIV/AIDS project at the rate of 42 cents per week.
- (5) Each month the total sum representing trade union subscriptions of employees, bursary fund and HIV/AIDS project contributions by the employer shall be recorded in the manner specified in clause 22(2) of this part of the Agreement and shall then be forwarded to the Regional Secretary of the Regional Chamber.

## **28: REGISTRATION OF EMPLOYERS**

- (1) Every employer on whom this part of the Agreement is binding and who has not already done so in terms of a previous agreement shall within seven days of the date on which this part of the Agreement becomes binding on him furnish to the Regional Secretary of the Regional Chamber the particulars set out in the form and manner specified by the Regional Chamber.
- (2) In the event of any change in the name under which or the address or addresses at which business is carried on, or among the partners, or if the employer is a company, in the name of its secretary or among its directors or managers or, if the employer is a close corporation, among its members, or in the event of the sequestration of the employer's estate or, if the employer is a company or close corporation, of the winding up of the company or close corporation, or in the event of the transfer or abandonment of the business carried on, or the acquisition or commencement of any other business carried on, or the acquisition or commencement of any other business which is subject to this part of the Agreement, every employer shall furnish to the Regional Secretary of the Regional Chamber within seven days notice of the change, sequestration, winding up, transfer, abandonment, acquisition or commencement by means of a written statement setting forth full particulars of the change, sequestration, winding up, transfer, abandonment, acquisition or commencement, as the case may be.

## **29: WAGE GUARANTEE**

- (1) (a) Every employer who enters the Industry after the date of coming into operation of this part of the Agreement shall, within seven days of the date on which such

employer commences operations in the Industry, lodge with the Regional Chamber a guarantee acceptable to the Regional Chamber.

- (b) Every employer who entered the Industry prior to the date of coming into operation of this part of the Agreement and who was required to lodge an acceptable wage guarantee with the Regional Chamber shall likewise and in the same manner lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.
  - (c) Where the guarantee lodged by any employer in accordance with the provisions of any previous agreement is no longer valid, the employer concerned shall on demand by the Regional Chamber lodge with the Regional Chamber a fresh guarantee as specified in paragraph (a) hereof.
  - (d) Where any employer ceases operations in the Industry and subsequently resumes operations in the Industry, he shall be regarded as a new employer and shall likewise and in the same manner lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.
  - (e) Notwithstanding the provisions of subclause (1) (a) of this clause, where any employer fails to pay levies/contributions due to the Regional Chamber and its funds for a period of two months or more within the periods specified, the employer concerned shall on demand by the Regional Chamber lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.
- (2) (a) Where the guarantee lodged by an employer is deemed to be inadequate by the Regional Chamber, the employer shall on demand by the Regional Chamber increase the amount of such guarantee to an amount deemed adequate by the Regional Chamber.
  - (b) An employer shall be permitted to reduce the amount of his guarantee where a reduction in the number of employees engaged by such employer warrants a deduction: Provided that no increase or reduction of the amount of any guarantee shall be required or permitted at intervals of less than six months.
- (3) The Regional Chamber shall be entitled to utilize any guarantee lodged by an employer with the Regional Chamber in terms of subclause (1) to pay any amount which may be due to the Regional Chamber by such employer in respect of levies and contributions or to pay any wages and/or leave pay which may be due to any one or more employees of such employer, where the Regional Chamber is satisfied that such wages and/or leave pay is due and payable to the employees concerned by the employer involved. Provided that the total claim in respect of any one or more employees shall not exceed the total amount of the guarantee lodged with the Regional Chamber.

### **30: MATERNITY LEAVE**

- (1) Subject to the provisions of this part of the Agreement a female employee who -
  - (a) has continuously worked for the same employer for not less than one year; and
  - (b) whose employer has been continuously registered with the Regional Chamber for not less than one year;

at the date of commencing her maternity leave shall be entitled to maternity leave not exceeding six months for any one pregnancy.

A female contributor who, has less than one year's continuous service with the same employer and whose employer has not been registered with the Regional Chamber, nor operating in the Industry, for less than one year, shall not qualify for the maternity leave set out in this sub-clause but shall instead be entitled to the maternity leave provisions as provided for in Section 25(1) of the Basic Conditions of Employment Act No. 75 of 1997 and all other provisions related to maternity leave in this clause shall apply to such employees.

- (2) During the period of maternity leave all the rights and obligations that the employee and the employer may have under the employment contract shall be suspended and no benefit shall accrue to the employee during this period except that -
- (a) provided she has complied with subclause (3)(a), (b), (c) and (d) hereunder, her service will be regarded as uninterrupted;
  - (b) the employer shall continue to pay - in the case of a Health Care Fund contributor, all Health Care Fund contributions as provided for in this part of the Agreement of the Council and, in the case of a Provident Fund contributor, all Provident Fund contributions as provided for in the collective agreement of the Provident Fund of the Regional Chamber - in respect of himself and of any employee on maternity leave while such employee is on such leave until -
    - (i) the employee breaches the provisions of this part of the Agreement by failing to notify her employer of her intended date of return to work as provided for in subclause (3)(b) below, unless good cause for such failure is shown; or
    - (ii) the employee breaches the provisions of this part of the Agreement by failing to return to work on the date as provided for in subclause 3(a) and (b) below, unless good cause for such failure is shown; or
    - (iii) the employee returns to work;

whichever occurs first.

Provided that an employer shall not be required to make the contributions outlined in sub-clause (2)(b) above, for an employee who has worked for the same employer for less than one continuous year and whose employer has not been registered with the Regional Chamber, nor operating in the Industry for less than one year. Such employees shall, for the duration of their maternity leave, be entitled to utilise a Health Care Fund operated facility and shall also not be prejudiced with regard to any benefit to which they may be entitled to in terms of the Collective Agreement of the Provident Fund of the Regional Chamber.

- (3) At the end of the period of maternity leave the employee shall be entitled to resume her work in a position identical or similar, but not less favourable, to the one which she held prior to her taking maternity leave. This obligation on the employer to re-engage the employee shall be subject to and conditional upon the employee having complied with the following:
- (a) Completing a form as specified for such purpose by the Regional Chamber, at least one month before the date of commencement of her maternity leave: Provided that this requirement shall not apply in the event of the employee having to stop work, due to medical reasons, earlier than anticipated; and
  - (b) notifying her employer at least four weeks prior to her intended date of return to work of her intention to so return to work by completing a form as specified for such purpose by the Regional Chamber, or by any other written

notification, and forwarding such form or notice to her employer per registered mail or by delivering such notice or form to a responsible officer of the employer and obtaining a written acknowledgment of receipt thereof; and

- (c) returning to work and resuming her normal duties on the date stipulated in the form referred to in subclause 3(a), or by showing good cause why it was not possible to return to work on the stipulated date; and
  - (d) commencing her maternity leave not earlier than at 22 weeks of pregnancy and returning to work within the six month period or, where the maternity leave period expires during the employer's annual leave period or the return day falls on a public holiday, by returning to work on the first working day after the annual leave period or the public holiday.
- (4) Subject to the provisions of this part of the Agreement, no employer shall require or permit any female employee to work during the period commencing four weeks prior to the expected date of her confinement and ending eight weeks after the date of her confinement.
  - (5) An employer shall be entitled to fill a position which has become vacant due to an employee having gone on maternity leave by employing another person on a fixed-term contract until the return of the employee from maternity leave. The fixed-term contract shall contain the provisions set out in the form specified for such purpose by the Regional Chamber, and shall be signed by both the employer and the temporary employee. The latter shall be remunerated at the wage prescribed in this part of the Agreement for the class in which he is employed.
  - (6) Although the contract of employment of an employee may be terminated if she fails to comply with the provisions of subclause 3(a), (b), (c) and (d) above, such termination will not in any way whatsoever change the temporary nature of the fixed-term contract of employment of any other employee who may have been employed to fill her position.

### **31: NEGOTIATION OF PROCEDURES AT INDIVIDUAL ESTABLISHMENTS**

- (1) An employer shall, at the request of the Trade Union, negotiate with the Trade Union at his establishment on procedures relating to-
  - (a) grievances;
  - (b) discipline;
  - (c) retrenchment;
  - (d) health and Safety.
- (2) The negotiations referred to in subclause (1) shall commence within 15 working days of the date of receipt of any such request.
- (3) This clause shall not detract from the right of an employer to act in a fair manner relating to the above matters, in the absence of negotiated procedures. This clause equally shall not detract from the right of an employee to be treated in a fair manner.

### **32: ACCESS**

- (1) Trade Union officials shall be entitled to be granted reasonable access to establishments provided that prior permission, which shall not be unreasonably withheld is obtained from an official designated by the employer concerned.
- (2) If the designated official should be absent from the establishment for a period of four hours or longer the most senior official of the employer who may be present shall be deemed to be the designated official as from the beginning of the four-hour period.

- (3) Access shall be subject to any existing written access agreements signed by both the Trade Union and the individual employer concerned.
- (4) 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.

### **33: SHOP STEWARDS**

- (1) An employer shall recognise the right of the Trade Union to have shop stewards elected by its members at his establishment.
- (2) A shop steward recognition agreement at an establishment shall, on request by the Trade Union or the employer, be negotiated between the Trade Union and the employer. Negotiations shall commence within 15 working days of the date of receipt of such request.
- (3) Provided that an outline of each such training course has been lodged with Regional Chamber, and is available on request to any employer, shop stewards shall be entitled to four days' paid leave per annum per shop steward to attend shop stewards' training courses if such attendance falls within normal working hours.
- (4) In addition to the leave granted in (3) 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 six 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.
- (5) Shop stewards at all establishments shall be granted reasonable facilities to enable them to carry out their legitimate trade union duties, provided that prior permission, which shall not be unreasonably withheld, shall be obtained from management.
- (6) 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.

### **34: RETRENCHMENT BENEFITS**

- (1) An employer shall 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 this clause.
- (2) An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer is not entitled to severance pay in terms of subclause (1).
- (3) The payment of severance pay in compliance with this clause shall not affect an employee's right to any other amount payable according to law.
- (4) If there is a dispute only about the entitlement to severance pay in terms of this clause, the employee may refer the dispute in writing to the Regional Chamber, if the parties to the dispute fall within the registered scope of the Regional Chamber.
- (5) An employee who refers the dispute to the Regional Chamber shall satisfy the Regional Chamber that a copy of the referral has been served on all the other parties to the dispute.

- (6) The Regional Chamber shall attempt to resolve the dispute through conciliation.
- (7) If the dispute remains unresolved, the employee may refer it to arbitration.

### **35: PATERNITY LEAVE**

Male employees, regardless of marital status, shall be entitled, subject to prior arrangement, to a maximum of three days' unpaid paternity leave per annum. The employer shall be entitled to require proof of paternity.

### **36. PROCEDURE TO ENFORCE COMPLIANCE WITH THIS PART OF THE AGREEMENT**

- (1) The Council or Regional Chamber shall take all reasonable steps necessary to ensure compliance with this part of the Agreement. If, whether through its own investigations or through any other source, it appears as if the provisions of this part of the Agreement has been breached then the following procedure shall apply to enforce compliance:
  - (a) The General Secretary or Regional Secretary or relevant official of the Council or Regional Chamber shall appoint a designated agent to investigate the alleged breach and / or refer the matter to the Regional Chamber's Disputes Committee.
  - (b) If, upon completion of the investigation the designated agent or Disputes Committee has reason to believe that this part of the Agreement has been breached, the agent or Disputes Committee may endeavour to secure compliance with the agreement through conciliation.
  - (c) At the end of the conciliation process the designated agent or Disputes Committee shall submit a report to the Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary of the Council as to the result of the investigation, the steps taken to secure compliance with this part of the Agreement through conciliation and the outcome thereof.
  - (d) Upon receipt of the report, the Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary of the Council may:
    - (i) require the designated agent to make further investigations; or
    - (ii) refer the matter to arbitration in terms of this part of the Agreement; or
    - (iii) take such other steps as may be deemed reasonable.
  - (e) If the Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary of the Council decides to refer the matter to arbitration, he must appoint an arbitrator to hear and determine the alleged breach of this part of the Agreement.
  - (f) The arbitrator, in consultation with all the parties who may have a legal interest in the outcome of the arbitration, shall decide the date, time and venue of the arbitration hearing.
  - (g) The Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary of the Council shall serve notices of the date, time and venue of the arbitration on all the parties who may have a legal interest in the outcome of the arbitration.

- (h) Any party who has a legal interest in the outcome of the arbitration shall have the right to:
- (i) give evidence;
  - (ii) call witnesses;
  - (iii) question the witnesses of any other party;
  - (iv) address concluding arguments to the arbitrator;
  - (v) be represented by:
    - (aa) a legal practitioner; or
    - (ab) an office bearer or official of his registered trade union or employers organisation and, if the party is a juristic person, by a director or employee thereof.
- (i) The arbitrator shall have the following powers:
- (i) to determine whether there has been a breach of the agreement;
  - (ii) to make any appropriate award that gives effect to the collective agreement and ensures compliance therewith;
  - (iii) to determine the appropriate form of and the procedure to be followed at the arbitration proceedings;
  - (iv) to make any order as to costs that he deems appropriate and where the Act provides for such an order to be made or for the Council or Regional Chamber to recover its costs of providing the arbitration service, provided that :
 

where the Council's or Regional Chamber's Disputes Committee or accredited conciliator has made an advisory award in terms of clause 37(3)(c) which is substantially the same as the award made by the arbitrator, the arbitrator shall make a costs order against the party concerned which shall, as a minimum, cover the Council's and/or Regional Chamber's cost of dealing with the dispute.
  - (v) to make an award in the absence of a party who is alleged to have breached the agreement if -
    - (aa) the party fails to appear in person or be represented at the arbitration proceedings; and
    - (ab) proof is presented that such party has been notified of the proceedings. Notice of the arbitration proceedings shall be deemed to have been given if proof is presented that written notification has been forwarded to such party; and
    - (ac) prima facie evidence has been presented to the arbitrator that the party in question has failed to comply with this part of the Agreement.
  - (vi) vary, rescind or amend any arbitration award made by him or any other arbitrator on good cause shown. Without limiting the generality hereof the arbitrator shall have this power if:

- (aa) the award was erroneously sought or erroneously made in the absence of any party effected by the award;
  - (ab) the award is ambiguous or contains an obvious error or omission, but only to the effect of that ambiguity, error or omission;
  - (ac) the award was granted as a result of a mistake common to the parties to the proceedings.
- (j) Any award made by the arbitrator together with any reasons shall be served on all interested parties by the Council or Regional Chamber.
  - (k) The General Secretary of the Council or Regional Secretary of the Regional Chamber may apply to make the arbitration award an order of the Labour Court in terms of Section 158(1) of the Labour Relations Act. This shall in no way limit the rights of any Party in terms of the Act, in the absence of a decision of the Council or Regional Chamber.

### **37: DISPUTE PROCEDURE**

- (1) Unless otherwise provided in the Council's Constitution or in this Collective 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 do likewise.
  - (ii) The lists prepared by the parties shall be exchanged, and the union 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 shall be filled by appointing the nominees most preferred by the 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 panel of conciliators or arbitrators or senior 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) Representation 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 subdauses (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.

### **38 : 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 Regional Chamber, which programmes are aimed at protecting the industry in the Western Cape Sub-Chamber of the Cape Chamber of the Council, and jobs within it by improving its competitiveness in the fashion industry.
- (3) The Fund shall commence on 1 July 2001 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 12 cents.
- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of sub-clause (4), contribute an amount of 18 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 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22(2) of this part of the Agreement.
- (7) The monies 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 for the purpose of receiving these funds and for disbursing them for the purpose for which they are intended.
- This account will be administered by the Regional Chamber.
- (8) The monies 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) -
- (a) 'Buy Local' campaigns;
  - (b) Combating customs fraud and illegal imports.
- or for such other strategies that 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 Cape Clothing Association (CCA) 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 and subject to approval by the Registrar : Labour.
- (10) The Fund's monies 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 CCA is in doubt about whether contemplated expenditure of the Fund's monies qualifies as expenditure on an authorised activity, SACTWU or the CCA, as the case may be, may request confirmation in advance by the Regional Chamber in this regard.
- (12) No monies 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 CCA and the Regional Chamber have signed a written agreement, acceptable to the Registrar : Labour, to secure compliance with the provisions of the Fund as set out herein.
- (13) Any interest that is earned on Fund monies at any time shall be used for the benefit of the activities and purposes authorised in terms of the Fund.
- (14) SACTWU and the CCA shall, annually, by the second month of the Regional Chamber's financial year, provide the Regional Chamber with a financial plan of how the funds will be utilised towards achieving the objectives of the Fund. The plan will be submitted to the Regional Chamber for approval.
- (15) Expenditure incurred by the Parties will be paid by the Fund against invoices or vouchers submitted to the Regional Secretary of the Regional Chamber, provided he 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 Organising Secretary or National Organising Secretary of SACTWU, or the Executive Director of the CCA.

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

- (16) Any expenses that have been incurred by SACTWU or the CCA for unauthorised purposes or activities and which have been paid or reimbursed to SACTWU or the CCA, may be recovered by the Regional Chamber from SACTWU or the CCA, 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 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 CCA 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.
- (19) In the event that there is a disagreement between the Parties as to whether any activity or expenditure or proposed activity 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.

### **39 : TRADE UNION CAPACITY BUILDING FUND**

- (1) A Trade Union Capacity Building Fund, hereinafter referred to as "the Fund" is hereby established.
- (2) The Fund shall be administered by the Regional Chamber, or its successor in name and title, for and on behalf of the union and its members in terms of the rules of the Fund as approved by the Registrar : Labour.
- (3) Every employer shall, in respect of each employee for whom wages are prescribed in the Council's Main, Knitting Division and Country Areas Collective Agreements for the Western Cape Region, contribute an amount of 34 cents per week.
- (4) The total sum representing the employer's contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22(2) of this part of the Agreement.
- (5) All monies received by the Regional Chamber for and on behalf of the Fund, shall be paid monthly by the Regional Chamber into a banking account styled, the "Trade

Union Capacity Building Fund” opened and administered by the Regional Chamber for the purpose of reimbursing it to the Union in terms of the rules of the Fund.

- (6) Monies in the Fund’s banking account not required to meet the current reimbursements may be invested by the Regional Chamber as per the requirements of the Act.
- (7) Any interest that is earned on Fund monies shall accrue to the Fund and be used in terms of the rules of the Fund.
- (8) The accounts of the Fund shall be annually audited in terms of generally accepted auditing standards by the Council’s auditors.
- (9) The Regional Secretary of the Regional Chamber shall report to the Regional Chamber on a quarterly basis on all expenditure of the Fund, including, but not limited to providing a schedule detailing the income collected and authorized reimbursements made to the Union and matters incidental thereto as may be requested by the Regional Chamber from time to time. The Union shall provide the Regional Secretary of the Regional Chamber, on a monthly basis, with the details of the expenditure incurred in this regard.
- (10) The audited annual financial statements of the Fund shall be signed by the Chairperson and Regional Secretary of the Regional Chamber and a relevant Union official and be submitted to the Department of Labour as per the requirements of the Act or any other regulations and conditions that may be set by the Registrar : Labour upon approval of the Fund’s rules, or from time to time.

#### **40 : COLLECTIVE BARGAINING/DISPUTE RESOLUTION LEVY**

- (1) The parties to this part of the Agreement recognise that the Cape Clothing Association ("the CCA") is the majority employers' organisation in the region covered by the Western Cape Sub-Chamber of the National Bargaining Council for the clothing manufacturing industry ("the region"), that it incurs significant expenses during annual collective bargaining and by participating in dispute resolution, and that employers who are not its members derive a benefit from these activities without contributing to the cost thereof. Accordingly the parties agree that every employer in the region, who is subject to this part of the Agreement, shall pay a monthly fee in an amount calculated in terms of sub clause (2) hereunder, on the following basis -
  - a. every employer that belongs to the CCA shall pay its membership fee directly to the CCA;
  - b. every employer that does not belong to the CCA shall pay a monthly levy equal to the membership fee, that the employer would have paid if it were a member of the CCA, to the Regional Secretary of the Regional Chamber on or before the 14<sup>th</sup> day of each month, together with a breakdown of the amount so paid.
- (2) The amount of the monthly levy shall be as determined at a the general meeting of the CCA from time to time, which shall be identical to the monthly membership fee for ordinary members of the CCA.
- (3) The Regional Secretary of the Regional Chamber shall deposit all monies received in terms of this clause into a separate, dedicated banking account in the name of the “CCA levy account”.
- (4) The Regional Chamber shall disburse monies from the account to the CCA on receipt of acceptable proof by the CCA of disbursements incurred by it as contemplated by clause 5 below.

- (5) The monies received in terms of the provisions of this clause may be used only for expenditure incurred by the CCA in respect of:
- (a) collective bargaining; and
  - (b) dispute resolution,
- and may not be:
- (c) paid to a political party as an affiliation fee; or
  - (d) contributed in cash or kind to a political party or a person standing for election to any political office.
- (6) The CCA shall arrange for an annual audit of the "CCA levy account" within six months of its financial year by an auditor who:
- (a) shall be independent;
  - (b) shall conduct the audit in accordance with generally accepted auditing standards;
  - (c) shall report in writing to the CCA and to the Regional Chamber expressing an opinion as to whether or not the CCA has complied with the provisions of its constitution relating to financial matters and the provisions of sub clause (5).
- (7) Any person may inspect the auditor's report submitted to the Regional Chamber in terms of sub clause (6) at the Regional Chamber's offices at Industria House, 350 Victoria Road, Salt River, Cape Town.
- (8) The Regional Chamber shall provide a certified copy of, or extract from, the auditor's report to any person requesting such copy or extract.
- (9) The Regional Chamber's exemption committee may on application from an employer who conscientiously objects to associating with persons other than those who share his religious beliefs or who shows good cause, grant an exemption from the provisions of this clause.
- (10) Any dispute about the application, enforcement, or interpretation of the provisions of this clause shall be referred to a conciliator and arbitrator agreed on by the parties to the dispute. Provided that if no agreement is reached within 30 days of the lodging of the dispute, the conciliator and arbitrator shall be appointed by the Regional Chamber from its list of accredited conciliators / arbitrators.
- (11) No payment of levies by non-members shall be made in terms of this clause for any period that the CCA does not represent the employers who employ the majority of employees in the region for whom wages are prescribed in this part of the Agreement. The Regional Chamber shall forthwith inform all concerned if this should occur.
- (12) Despite the fact that this clause may have ceased to be operative or that the CCA may have lost its majority, the funds in the "CCA levy account" may continue to be disbursed until they have been exhausted.

#### 41: 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.

#### 42: ATYPICAL 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.

#### 43: EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

Persons under the age of 15 years: No employer shall employ any person under the age of 15 years.

#### 44: 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 Regional Chamber within fourteen days of month-end in which the deductions fall due.
  - (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.

#### **45: 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.

#### **46: 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.

#### **47: CONTRACT EMPLOYEES**

Contained in Annexure D.

**48: 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;
- (ix) training and development;
- (x) performance evaluation systems;
- (xi) promotion, transfer and demotion;
- (xiii) 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;
- (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.

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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.

- 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

- 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.

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

## **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:

- (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;

<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.

- (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 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.