



# NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY

## HEAD OFFICE

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## NATIONAL MAIN COLLECTIVE AGREEMENT

### PART B: PROVISIONS FOR THE FREE STATE AND NORTHERN CAPE REGION

Herewith follows the preamble and Part B of the Agreement published under Government Notice No R.252 in Government Gazette No 37509 of 14 April 2014.

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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 B: PROVISIONS FOR THE FREE STATE AND NORTHERN CAPE REGION

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## GOVERNMENT NOTICE

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DEPARTMENT OF LABOUR

No. R. 252

14 April 2014

LABOUR RELATIONS ACT, 1995

**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY:  
EXTENSION OF COLLECTIVE AGREEMENT TO NON-PARTIES**

I, **MILDRED NELISIWE OLIPHANT**, Minister of Labour, hereby in terms of section 32 (2), read with section 32(5)(a) and (b) 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 14 March 2014 and for the period ending 31 August 2017.

**M N OLIPHANT**  
**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

<sup>1</sup>\*South African 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.

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<sup>1</sup> \*This Employer association has not signed the 2013/2014 Party-to-Party Agreement, however, remains an Employer Party to the Bargaining Council and, hence, is reflected on this page.

## 1. SCOPE OF APPLICATION

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

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

## 2. PERIOD OF OPERATION OF THIS AGREEMENT

- (1) This agreement is binding on the parties hereto from 1 September 2013 until 31 August 2017 unless the parties agree otherwise in writing.
- (2) The parties record that they intend to request the Minister of Labour to extend this agreement to non-parties in the Clothing Industry in terms of section 32 of the Labour Relations Act 66 of 1995. The period of operation of this agreement in respect of non-parties will be determined by the Minister.

Original Agreement signed at **CAPE TOWN** on behalf of the Parties the **24<sup>TH</sup>** day of **FEBRUARY** **2014**.

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**FREDA OOSTHUYSEN**  
Chairperson

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**MARTHIE RAPHAEL**  
Vice-Chairperson

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**SICELO NDUNA**  
General Secretary

**PART B : PROVISIONS FOR THE FREE STATE & NORTHERN CAPE REGION****1. SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT**

- (1) The terms of this part of the Agreement shall be observed in the Clothing Industry-
- (a) by all employers who are members of the employers' organisation and who are engaged in the Clothing Industry, and by all employees who are members of the trade union and who are employed in the Industry;
- (b) in the Magisterial Districts of Bloemfontein, Frankfort, Kimberley, Kroonstad, Parys and Vredefort.
- (2) Clauses 1 (1) (a), 2, 23A(1) to 23A(3), 23A(5) and 34(5) of this Collective Agreement shall not apply to employers and employees who are non-members of the employers' organisation and trade union, respectively.
- (3) The Table of Contents of this Part B of the Main Collective Agreement is as follows:

<b>CLAUSE NO:</b>	<b>DESCRIPTION</b>
1.	Scope of Application of this part of the agreement .....
2.	Period of operation of this part of the agreement.....
3.	Definitions.....
4.	Remuneration.....
5.	Incentive Bonus Scheme .....
6.	Short Time.....
7.	Payment of Amounts due to Employees.....
8.	Proportion of Ratio of Employees .....
9.	Hours of Work .....
10.	Overtime and Sunday work.....
11.	Outwork.....
12.	Registration of an Employer.....
13.	Paid Holidays and Annual Leave .....
14.	Termination of Employment .....
15.	Premiums .....
16.	Tools.....
17.	Contracts.....
18.	Engagement, Transfer and Termination Forms .....
19.	Exemptions.....
20.	Council Funds .....
21.	Medical Benefit Society.....
22.	Extract from Wage Registers .....
23.	Trade Union Labour .....
24.	Powers of Designated Agents.....

25.	Prohibition of Employment of Children and of Forced Labour .....
26.	Exhibition of Agreement .....
27.	Overalls .....
28.	Safeguard of Workers' Earnings .....
29.	Provident Fund .....
30.	Administration and Interpretation of Agreement .....
31.	Severance Pay .....
32.	Maternity Benefits .....
33.	Procedure to Enforce Compliance with this Part of the Agreement.....
34.	Dispute Procedure .....
35.	Industry Protection Fund .....
36.	Frequency of Negotiations and Industrial Action .....
37.	Atypical Work, Outsourcing and Subcontracting.....
38.	Productivity (Annexure B) .....
39.	HIV/AIDS (Annexure A) .....
40.	Contract Employees (Annexure D) .....
41.	Working In Arrangements .....

## 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 the Act, any reference to an Act shall include any amendment of such Act. and unless the contrary appears, words importing the masculine gender shall include the feminine 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 who, under the supervision of a foreman or factory manager, is responsible for maintaining the water level and steam pressure of a boiler in a workplace and who may stoke, rake' slice and draw the fire in such boiler and who removes ashes;

"**checker/examiner/passers**" means an employee who is responsible for checking and/or examining finished and unfinished garments for faults or defects during production, excluding the final passing of garments which shall be the responsibility of the quality controller;

"**chopper-out**" means an employee who is engaged in cutting out garments or portions of garments by hand or machine from one or more layers of materials that have already been marked;

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

"**cloakroom supervisor**" means an employee who is in charge of a change room in which an employee may change or store his clothing or of lockers in which an employee may store his effects. and who may supervise the cleaning of the change rooms, toilets and/or kitchen premises;

**"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, brassiers, 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 person undertaking work on behalf of such employers and any of their employees;
- (f) fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery;
- (g) screen process printing on garments and parts of garments performed in a clothing, textile and/or knitting establishment;
- (h) tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or on the responsibility of such dealers;
- (i) the changing of labels, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (j) the making of button-holes, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (k) the ironing of garments and/or parts of garments, irrespective of whether or not such ironing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work on newly manufactured garments on behalf of such employers and any of their employees;
- (l) the making 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 measurements 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 measurements of individual persons;
- (e) tailor-made garments for individual persons, provided such garments are not manufactured in a factory;

**"complying employer"** means an employer which is registered with the Council and which has registered all permanent and contract employees with the Council, and which has given effect to all collective agreements of the Council which are applicable to it in each of its establishments, or which has received exemption from any collective agreement to the extent of such exemption;

**"continuous service"** means, without restricting the ordinary meaning of the phrase, all periods of employment with the same employer and includes any kind of leave due in law or agreed to between an employee and his employer Provided that any periods of employment with the same employer, interrupted by a period of unemployment of less than one year. shall be deemed continuous;

**"Council"** means the Northern Chamber (Free State and Northern Cape Region) of the National Bargaining Council for the Clothing Manufacturing Industry;

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

**"despatch packer"** means an employee who is wholly or mainly engaged in the making up of orders and/or parcels and/or bales, and folds and/or packs garments in readiness for despatch;

**"driver of a light motor vehicle"** means an employee who has a light motor vehicle licence (previously referred to as 'Code 8') and who drives a vehicle with a gross vehicle mass of less than 2 000 kg:

**"driver of a medium motor vehicle"** means an employee who has a medium motor vehicle licence (previously referred to as 'Code 10') and who drives a vehicle with a gross vehicle mass of more than 2 000 kg;

**"employee"** means, subject to the definition in section 213 of the Act, those employees falling within the jurisdiction of the scope of the Bargaining Council;

**"employer"** means any person who employs or provides work for any person within the Industry;

**"experience"** means the total period or periods of employment of an employee in the Clothing Industry and/or Bespoke Tailoring Industry and/or private dressmaking and/or knitting industry in



any capacity or capacities: Provided that, for the purpose of computing an employee's experience, employment for 16 weeks in any half-year shall be deemed to have been employment for the whole half-year: Provided further that a trainee in his first half-year of employment, although having less than 16 weeks, but more than 13 weeks' experience on the last day of the half-year, shall be deemed to have been in employment for the whole half-year: Provided further that the trial period of an employee in terms of clause 14 (1) (b) (iii) shall be deemed to be experience only if the contract of service is confirmed:

**"factory clerk"** means an employee who is employed in the production area of the factory and who is wholly or mainly employed in the recording of attendance and/or production data or the checking of work in and out;

**"finisher"** means an employee who is engaged in putting in pads or wadding into shoulders of coats, fastening or sewing sleeveheads, wadding sleeveheads, felling silk facings already basted into position, making buttonholes by hand or felling sleevehead linings by hand;

**"fitter-up"** means an employee who tacks the outside of garments together with the cut-out linings (called trimmings) and adjusts the outside and the inside together accurately so that the parts may go forward to the machine to be put together correctly;

**"fixed-term contract employee"** means an employee who is employed on a full-time basis for a predetermined fixed period or until the completion of a specific short-term task;

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

**"former scribe"** means an employee who scribes and breaks a paper template or former in accordance with a master pattern supplied to him;

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

- (a) Fixing machine belts; oiling machines, filling oil cans or similar work;
- (b) oiling and/or greasing motor vehicles;
- (c) issuing cottons;
- (d) winding bobbins;
- (e) folding garments;
- (f) turning coat facings out after machining;
- (g) marking and/or soaping the position of pockets, buttons, buttonholes, loops, fasteners, darts, hems of turn-ups;
- (h) packing garments into boxes or into other suitable wrappings or into bundles prior to their being sent to the despatch department;
- (i) turning out or over the edges of collars, facings, bands, cuffs, pockets or flaps, whether by hand or machine, other than a power-driven machine;
- (j) pinning shirts or other garments or pinning together parts of garments in preparation for machining;
- (k) shaping by template the lapels or collars of jackets or overcoats preparatory to underbasting, but excluding the operations performed by a shaper;
- (l) marking or trimming the shape of the necks of shirts, underwear or nightwear;
- (m) sorting or snipping off threads or removing spots or marks from materials or garments;
- (n) sorting out garments or parts of garments;
- (o) stamping the sizes or identity work numbers on garments or parts of garments;
- (p) delivering letters, messages or goods on foot or by means of a foot or hand propelled vehicle;

- (q) cutting by hand any trimming (not being piece goods) to a given length or shape;
- (r) making belts, buckles, button and shank moulds by machines operated by hand, excluding making belts by sewing machine;
- (s) making up bundles;
- (t) marking positions of button-holes, buttons, pockets, flaps, etc.;
- (u) pulling bastings;
- (v) sloping;
- (w) soaping;
- (x) turning sleeves or trousers inside out;
- (y) tying off threads;
- (z) pressing parts of unfinished garments;
- (aa) making tea or similar beverages;
- (ab) sorting buttons according to size or colour;
- (ac) carrying messages or garments or parts of garments from one place to another within the workplace, excluding distributing work among the employees;
- (ad) fusing;
- (ae) winding;

**"half-year"** means the six-monthly periods commencing on the first day of January and/or July;

**"hourly wage"** means the weekly wage, divided by the number of hours prescribed by clause 9 of this part of the Agreement;

**"invisible mender"** means an employee who is engaged in mending or repairing a garment or other article composed of woven or knitted material, by hand or machine, using the stoating, fine drawing or reentering processes according to the kind of tear or damage to the material and includes the mending of silk by drawing through the broken threads;

**"invoice clerk"** means an employee who writes out an invoice from an order form, extends and casts totals and thereafter prepares summaries or other statistical records or maintains stock records;

**"knitting machine operator"** means an employee who is engaged in all of the following duties:

- (a) Changing needles and jack;
- (b) straightening tricks;
- (c) running on after press-off;
- (d) tying in yarn and keeping the machine running;
- (e) checking widths and lengths and sizes;
- (f) checking the production ticket to ensure that the correct colour, size, yarn and dye lot are being used/knitted;
- (g) checking the quality of fabric for faults and separating blanks;

**"labourer"** means an employee who is engaged in one or more of the following activities:

- (a) Cleaning premises, plant, machines, vehicles, tools or other articles;
- (b) loading or unloading goods;
- (c) carrying, moving or stacking goods;
- (d) opening or closing or strapping cartons or other containers; nailing packing cases or sewing up or strapping bales or, under the supervision of a despatch packer or clerk, parcelling goods;
- (e) making or maintaining fires, or removing refuse or ashes;

- (f) oiling or greasing vehicles, other than motor vehicles;
- (g) gardening, i.e. planting or digging, mowing, weeding, raking or watering or mixing or spreading garden soil or material or cutting or trimming edges or trees and plants;

**"layer-up"** means an employee who is engaged in the laying of material in one or more thickness or layers preparatory to cutting;

**"level B compliance"** refers to the status of non-compliant employers who bring themselves within the provisions of clause 34(8). For so long as such employers abide by all the conditions set out therein, no writs of execution in respect of non-compliance will be enforced against them, and they will be entitled to Level B Compliance Certificates from the Council;

**"maintenance hand"** means an employee who performs one or more of the following operations:

- (a) Making minor adjustments or repairs to machinery or installations, or assisting a mechanic;
- (b) making minor renovations or repairs to buildings;

**"marker-in"** means an employee who marks out the pattern on a layer or layers of material, preparatory to cutting out;

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

**"mechanic"** means an employee who is engaged in work normally performed by a skilled artisan (other than minor repairs or adjustments to machinery or installations or minor repairs or renovations to buildings), and for the purposes of this definition, the expression "skilled artisan" means a person who has served his apprenticeship in a trade designated or deemed to have been designated under the repealed Manpower Training Act, 1981, or who holds a certificate of proficiency under section 6 or a trade diploma under section 7 of the said Act or any applicable certificates or diplomas in terms of the skills, Development Act, 1998.

**"mechanic, unqualified"** means an employee who performs duties similar to those of a mechanic but who does not have a certificate of proficiency or a diploma;

**"medical practitioner"** means a person entitled to practice as a medical practitioner in terms of the Medical, Dental and Supplementary Health Service Profession Act, 1974 (Act No. 56 of 1974);

**"motor vehicle driver"** means an employee who is engaged in driving a motor vehicle, and for the purposes of this definition, the expression "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;

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

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

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

**"old age"** means 55 years of age;

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

**"ordinary hours of work"** means a 42-hour week of five days, or 45 hours in any one week in respect of a watchman;

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

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

**"passer or checker or examiner"** means an employee who is responsible for passing or checking completed or uncompleted garments for faults but is not responsible for the final quality

control of the garment;

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

**"plain sewing"** means the performing by hand of one or more of the following operations:

Tacking permanent turn-ups, tacking and waistband linings, sewing on hooks and eyes, tickets or press studs, fastening catch in top of trousers, sewing on buttons, making and sewing on hangers, felling crutch linings in trousers. felling buttons or waistband linings, felling necks of vests, fastening edge stays, felling bottoms of linings or seams of linings already basted into position, felling binding, fastening facings inside that have already been basted into position;

**"pleater"** means an employee who places cloth which has been cut to a pattern in a prepared former in readiness for processing in an autoclave or similar machine and who may remove the pleated cloth from the former after the pleating process;

**"presser"** means an employee who is engaged in pressing finished garments by hand or machine;

**"qualified employee"** means an employee whose period or periods of experience entitle him to be paid the highest wage prescribed by clause 4 (1) for an employee of his class;

**"quality controller"** means an employee who has ultimate responsibility for the quality of a garments sent to customers:

**"sample machinist"** means an employee who completely machines prototype garments, other than patent machining;

**"screen printer"** means an employee engaged in-

- (a) operating a screen printing machine;
- (b) setting up screens in sequence of colour to be printed on fabric;
- (c) squaring off and testing that screens fit according to master feeler;
- (d) selecting squeegees to give the penetration and definition required for a quality print, bearing in mind the texture of the fabric;
- (e) positioning colours in correct sequence to ensure that colour combination matches the master feeler and colour card;
- (f) checking the base fabrics to ensure correct face and quality;
- (g) supervising the operations of the colour thrower;
- (h) supervising the handling of screens to and from wash bays;
- (i) examining screens from wash bays to ensure that they are in a satisfactory condition;
- (j) carrying out checks for faults;

**"set leader"** or **"team leader"** means an employee in a set or team who is generally responsible for the work executed by the employees comprising such set or team;

**"sewing machinist"** means an employee who is engaged in operating a sewing machine using needle and thread, excluding an employee who is engaged in setting in sleeves and/or sewing round men's and ladies' tailored coats and overcoats;

**"shaper"** means an employee who is engaged in shaping by hand the designs of lapels and the collars of coats preparatory to underbasting, but excluding trimming by hand;

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

**"stores clerk"** means an employee who is employed in the store or warehouse of the workplace performing clerical duties;

**"supervisor"** means an employee who, under the supervision of a foreman, is in charge of a group of employees in a workplace or a department thereof and who is responsible for the efficient performance by them of their duties, and who may supervise set leaders or team leaders, but who

does not have the power to engage or dismiss employees;

"**task-work**" means the task set by the employer or his representative to an employee of a definite number of garments or parts of garments to be made up by such employee in a specified time;

"**trade union representative**" means a member of a trade union who is elected to represent employees in a workplace:

"**trimmer**" means an employee who is engaged in marking-in or cutting linings or interlinings; or re-cutting single pieces of a garment;

"**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;

"**wage**" means the amount payable to an employee in terms of clause 4 (1) in respect of ordinary hours of work as specified in clause 9: Provided that 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) it means such higher amount;

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

"**winding**" means the winding of yarn on a yarn-winding machine;

"**working day**" means any day on which work is usually performed in the Clothing Industry;

"**workplace**" means the place or places where the employees of an employer work; and if an employer carries on or conducts two or more operations that are independent of one another by reason of their size, function or organisation, the place or places where employees work in connection with each independent operation constitutes the workplace for that operation.

#### 4. REMUNERATION

- (1) Subject to subclauses (4), (5) and (6), the minimum weekly wage to be paid by an employer to each employee of the undermentioned classes shall be as set out below: Provided that if an employee performs work in more than one category, he shall be classified in the grade for which the highest wage is prescribed.

DESCRIPTION OF OCCUPATION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
<b>A. ALL AREAS</b>					
(i)	(a) Foreman	2 445.00	1 956.00	2 456.50	1 965.00
	(b) Supervisor/Quality Controller				
	(i) Qualified	999.00	799.00	1 004.50	803.50
	(ii) Learners				
	first six months of experience	686.00	549.00	689.00	551.00
	second six months of experience	819.00	655.00	822.50	658.00
	Thereafter, the wage specified in (ii)(i) i.e.	999.00	799.00	1 004.50	803.50

DESCRIPTION OF OCCUPATION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
	<b>(c) Cloakroom Supervisor/Watchman</b>	696.50	557.00	698.50	559.00
	<b>(d) Mechanic</b>	2 293.50	1 835.00	2 304.50	1 843.50
	<b>(e) Unqualified Mechanic</b>	854.50	683.50	859.50	687.50
	<b>(f) Watchman</b>	696.50	557.00	698.50	559.00
	<b>(g) Labourer</b>	544.00	435.00	546.50	437.00
	<b>(h) Boiler Attendant</b>	598.50	479.00	600.50	480.50
<b>(ii)</b>	<b>Pattern Grader</b>				
	(i) Qualified	1 295.50	1 036.50	1 301.00	1 041.00
	(ii) Learners				
	first six months of experience	500.00	400.00	502.50	402.00
	second six months of experience	599.50	479.50	601.50	481.00
	third six months of experience	698.00	558.50	701.50	561.00
	fourth six months of experience	799.50	639.50	803.00	642.50
	fifth six months of experience	897.50	718.00	901.00	721.00
	sixth six months of experience	996.00	797.00	1 000.50	800.50
	seventh six months of experience	1 095.50	876.50	1 100.00	880.00
	next four months of experience	1 194.50	955.50	1 198.50	959.00
	Thereafter, the wage specified in (ii)(i) i.e.	1 295.50	1 036.50	1 301.00	1 041.00
<b>(iii)</b>	<b>Marker-In</b>				
	(i) Qualified	999.00	799.00	1 004.50	803.50
	(ii) Learners				
	first six months of experience	500.00	400.00	502.50	402.00
	second six months of experience	561.50	449.00	564.00	451.00
	third six months of experience	627.50	502.00	629.50	503.50
	fourth six months of experience	688.00	550.50	690.00	552.00
	fifth six months of experience	751.00	601.00	753.50	603.00
	sixth six months of experience	811.50	649.00	815.50	652.50
	seventh six months of experience	874.50	699.50	879.00	703.00
	next four months of experience	935.50	748.50	939.50	751.50
	Thereafter, the wage specified in (iii)(i) i.e.	999.00	799.00	1 004.50	803.50
<b>(iv)</b>	<b>Shaper &amp; Chopper-out, other than an interlining and/or trimming chopper-out</b>				
	(i) Qualified	801.00	641.00	805.00	644.00
	(ii) Learners				
	first six months of experience	475.00	380.00	478.00	382.50
	second six months of experience	530.00	424.00	532.00	425.50
	third six months of experience	585.00	468.00	589.00	471.00
	fourth six months of experience	638.50	511.00	641.00	513.00
	fifth six months of experience	692.50	554.00	696.50	557.00
	next four months of experience	747.00	597.50	750.50	600.50
	Thereafter, the wage specified in (iv)(i) i.e.	801.00	641.00	805.00	644.00
<b>(v)</b>	<b>Checker, Examiner and/or Passer</b>				
	(i) Qualified	696.50	557.00	698.50	559.00

DESCRIPTION OF OCCUPATION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
	(ii) Learners				
	first six months of experience	475.00	380.00	478.00	382.50
	second six months of experience	530.00	424.00	532.00	425.50
	third six months of experience	585.00	468.00	589.00	471.00
	next four months of experience	639.00	511.00	641.50	513.00
	Thereafter, the wage specified in (v)(i) i.e.	696.50	557.00	698.50	559.00
<b>(vi)</b>	<b>(a) Invoice Clerk</b>				
	(i) Qualified	999.00	799.00	1 004.50	803.50
	(ii) Learners				
	first six months of experience	720.00	576.00	723.00	578.50
	Thereafter, the wage specified in (vi)(a)(i) i.e.	999.00	799.00	1 004.50	803.50
	<b>(b) Despatch Clerk, Factory Clerk and/or Stores Clerk</b>				
	(i) Qualified	732.00	585.50	735.00	588.00
	(ii) Learners				
	first six months of experience	525.50	420.50	527.50	422.00
	second six months of experience	628.50	503.00	630.50	504.50
	Thereafter, the wage specified in (vi)(b)(i) i.e.	732.00	585.50	735.00	588.00
<b>(vii)</b>	<b>Sewing Machinist engaged in setting in sleeves and/or sewing round men's and ladies' tailored coats and overcoats:</b>				
	(i) Qualified	788.50	631.00	791.50	633.00
	(ii) Learners				
	first six months of experience	475.00	380.00	478.00	382.50
	second six months of experience	527.00	421.50	530.00	424.00
	third six months of experience	578.50	463.00	581.00	465.00
	fourth six months of experience	630.50	504.50	633.00	506.50
	fifth six months of experience	682.50	546.00	687.00	549.50
	next four months of experience	736.50	589.00	739.50	591.50
	Thereafter, the wage specified in (vii)(i) i.e.	788.50	631.00	791.50	633.00
<b>(viii)</b>	<b>Driver of a Motor Vehicle, the unladen mass of which together with the unladen mass of any trailer/trailers drawn by such vehicle—:</b>				
	(a) Does not exceed 2 722 kg	862.50	690.00	866.00	693.00
	(b) Exceeds 2 722 kg	1 002.00	801.50	1 006.50	805.00
<b>(ix)</b>	<b>Part-time Driver of a Motor Vehicle</b>	784.50	627.50	788.50	631.00
<b>(x)</b>	<b>Knitting Machine Operator</b>				
	(i) Qualified	1 026.50	821.00	1 032.00	825.50
	(ii) Learners				
	first six months of experience	475.00	380.00	478.00	382.50
	second six months of experience	568.50	455.00	571.50	457.00
	third six months of experience	659.00	527.00	662.00	529.50

DESCRIPTION OF OCCUPATION				GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
				R	R	R	R
			fourth six months of experience	751.50	601.00	754.00	603.00
			fifth six months of experience	842.50	674.00	846.00	677.00
			next four months of experience	936.00	749.00	940.50	752.50
			Thereafter, the wage specified in (x)(i) i.e.	1 026.50	821.00	1 032.00	825.50
<b>(xi)</b>	<b>Maintenance hand</b>						
			(i) Qualified	589.00	471.00	591.00	473.00
			(ii) Learners				
			first six months of experience	475.00	380.00	478.00	382.50
			second six months of experience	498.00	398.50	500.00	400.00
			third six months of experience	517.00	413.50	519.50	415.50
			fourth six months of experience	541.50	433.00	544.50	435.50
			next four months of experience	568.00	454.50	571.00	457.00
			Thereafter, the wage specified in (xi)(i) i.e.	589.00	471.00	591.00	473.00
<b>B. IN THE MAGISTERIAL DISTRICTS OF BLOEMFONTEIN, KIMBERLEY AND KROONSTAD</b>							
<b>(i)</b>	<b>Sewing Machinist</b>						
<b>(a)</b>			(i) Qualified	696.50	557.00	698.50	559.00
			(ii) Learners				
			first six months of experience	475.00	380.00	478.00	382.50
			second six months of experience	511.50	409.00	515.00	412.00
			third six months of experience	548.00	438.50	550.00	440.00
			Thereafter, the wage specified in (i)(i) i.e.	696.50	557.00	698.50	559.00
<b>(i)</b>	<b>Invisible Mender, Finisher, Presser, Trimmer, Marker-In and/or Chopper-out of linings and trimmings, Former Scriber and Screen Printer</b>						
<b>(b)</b>			(i) Qualified	696.50	557.00	698.50	559.00
			(ii) Learners				
			first six months of experience	475.00	380.00	478.00	382.50
			second six months of experience	511.50	409.00	515.00	412.00
			third six months of experience	548.00	438.50	550.00	440.00
			fourth six months of experience	585.00	468.00	589.00	471.00
			fifth six months of experience	621.50	497.00	624.50	499.50
			next four months of experience	658.50	527.00	661.50	529.00
			Thereafter, the wage specified in (i)(i) i.e.	696.50	557.00	698.50	559.00
	<b>Set Leader and/or Team Leader</b>			739.50	591.50	743.00	594.50
<b>(ii)</b>	<b>General Worker/Pleater</b>						
			(i) Qualified	525.50	420.50	527.50	422.00
			(ii) Learners				
			first six months of experience	475.00	380.00	478.00	382.50
			second six months of experience	499.50	399.50	501.00	401.00
			Thereafter, the wage specified in (ii)(i) i.e.	525.50	420.50	527.50	422.00
<b>(iii)</b>	<b>Despatch Packer and Layer-up</b>						



DESCRIPTION OF OCCUPATION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
	(i) Qualified	543.50	435.00	546.00	437.00
	(ii) Learners				
	first six months of experience	475.00	380.00	478.00	382.50
	second six months of experience	509.00	407.00	511.00	409.00
	Thereafter, the wage specified in (iii)(i) i.e.	543.50	435.00	546.00	437.00
<b>(iv)</b>	<b>Plain Sewer</b>				
	(i) Qualified	568.50	455.00	571.50	457.00
	(ii) Learners				
	first six months of experience	475.00	380.00	478.00	382.50
	Thereafter, the wage specified in (iv)(i) i.e.	568.50	455.00	571.50	457.00
<b>(v)</b>	<b>Sample Machinist</b>	791.50	633.00	795.50	636.50
<b>C. IN THE MAGISTERIAL DISTRICTS OF FRANKFORT, PARYS AND VREDEFORT</b>					
<b>(i)</b>	<b>Sewing Machinist</b>				
<b>(a)</b>					
	(i) Qualified:	652.50	522.00	654.50	523.50
	(ii) Learners:				
	first six months of experience	447.50	358.00	450.50	360.50
	second six months of experience	481.50	385.00	485.00	388.00
	third six months of experience	516.00	413.00	518.00	414.50
	Thereafter, the wage specified in (i)(a)(i) i.e.	652.50	522.00	654.50	523.50
<b>(i)</b>	<b>Invisible Mender, Finisher, Presser, Trimmer, Marker-In and/or Chopper-out of linings and trimmings, Former Scriber and Screen Printer:</b>				
<b>(b)</b>					
	(i) Qualified:	652.50	522.00	654.50	523.50
	(ii) Learners:				
	first six months of experience	447.50	358.00	450.50	360.50
	second six months of experience	481.50	385.00	485.00	388.00
	third six months of experience	516.00	413.00	518.00	414.50
	fourth six months of experience	549.50	439.50	553.50	443.00
	fifth six months of experience	583.00	466.50	586.00	469.00
	Next four months of experience	617.00	493.50	620.00	496.00
	Thereafter, the wage specified in (i)(b)(i) i.e.	652.50	522.00	654.50	523.50
	<b>Set Leader and/or Team Leader</b>	693.50	555.00	697.00	557.50
<b>(ii)</b>	<b>General Worker/Pleater</b>				
	(i) Qualified	501.00	401.00	503.00	402.50
	(ii) Learners				
	first six months of experience	447.50	358.00	450.50	360.50
	second six months of experience	475.00	380.00	476.50	381.00
	Thereafter, the wage specified in (ii)(i) i.e.	501.00	401.00	503.00	402.50
<b>(iii)</b>	<b>Despatch Packer</b>				
	(i) Qualified	523.50	419.00	526.00	421.00

DESCRIPTION OF OCCUPATION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
	(ii) Learners				
	first six months of experience	447.50	358.00	450.50	360.50
	second six months of experience	485.50	388.50	487.50	390.00
	Thereafter, the wage specified in (iii)(i) i.e.	523.50	419.00	526.00	421.00
<b>(iv)</b>	<b>Layer-Up</b>				
	(i) Qualified	518.50	415.00	521.00	417.00
	(ii) Learners				
	first six months of experience	447.50	358.00	450.50	360.50
	second six months of experience	486.00	389.00	488.00	390.50
	Thereafter, the wage specified in (iii)(i) i.e.	530.50	424.50	533.50	427.00
<b>(v)</b>	<b>Plain Sewer</b>				
	(i) Qualified	542.00	433.50	545.00	436.00
	(ii) Learners				
	first six months of experience	450.00	360.00	453.50	363.00
	Thereafter, the wage specified in (iv)(i) i.e.	542.00	433.50	510.00	408.00
<b>(vi)</b>	<b>Sample Machinist</b>	741.00	593.00	696.50	557.00

**NB: All employers who employed staff on 2011/2012 New Entry Wage Dispensation must, with the coming into effect of this Agreement, increase the Weekly Wage for those employees by 6.5% Across-the-Board.**

(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 of the 2011/2012 party-to-party substantive agreement shall be abolished and replaced with the following incentivised wage rates provisions, applicable to new employees only:

- 3.1 With effect 1 September 2013, new employees shall be paid a guaranteed wage of no less than 80% of the normal qualified gazetted wage rate 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 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 provisions of clause 3 of this circular is only applicable to companies which are registered with the National Bargaining Council for the Clothing Manufacturing Industry of South Africa.
- 3.5 All other provisions of the industry's Main Agreement shall be applicable to new employees.
- 3.6 The closed shop shall be applicable to all new employees.
- 3.7 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
- 3.8 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.
- 3.9 Qualified employees shall be employed at the qualified rate, subject to sub-clause 3.2 above.
- 3.10 Current employees employed in terms of the new entry rate provision envisaged in the 2011/2012 party to party agreement, which was subsequently extended to non-parties and who were so employed prior to 1 September 2012 shall by exemption be ring-fenced on those rates plus the annual increases, 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.
- 3.11 Effective 1<sup>st</sup> September 2012, 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.
- 3.12 The parties shall negotiate a national framework agreement at national bargaining council level, to give enabling effect to the plant level incentivised wage component as contemplated in sub-clause 3.3 of this agreement. 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 provisions of clause 4 of the substantive agreement 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.
- 3.13 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.

- 3.14 Should the 80% dispensation fall away in consequence of the provision in sub-clause 3.13 above, new employees employed on the incentive wage provisions should be paid 100% of the applicable agreement rate.
- 3.15 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.
- 3.16 The parties agree that the only outstanding issue pertaining to the national incentivised framework agreement is the deadlock breaking mechanism. The Parties agree to finalise this matter within two (2) weeks from the date of signing this agreement, failing which the provision of sub-clause 3.13 above will become effective.
- (4) Notwithstanding the definition of "experience", an employee who is transferred from any occupation to an occupation for which a higher qualified wage is prescribed shall dealt with as follows:
- (a) An employee transferred to the machinist occupation shall, if such employee has already completed six months' experience or more, be credited with six months' experience and, irrespective of the wage previously paid to him, he shall be paid a wage in accordance with his credited plus his actual experience as a machinist.
  - (b) If an employee who is a chopper-out is transferred to the class of marker-in, he shall be credited with actual experience as a chopper-out, but with only four half-years. If his experience as a chopper-out exceeds four half-years, he shall continue to receive the wage paid as a chopper-out or the wage according to his credited plus his actual experience as a marker-in, whichever is the higher.
  - (c) In every other case of a transfer, not dealt with in (a) and (b) above, the employee shall be regarded as having no experience but shall continue to receive the wage he received prior to the transfer, until such time as he is entitled to receive an increase according to the experience gained in his new occupation.
  - (d) Should an employee be transferred back to his previous occupation, he shall revert back to the wage paid or due to him in that occupation, according to his experience.
  - (e) A qualified sewing machine operator who is transferred to supervisor category shall be credited with six months' experience as a supervisor and shall be entitled to a wage in accordance with his credited plus his actual experience in that category.
- (5) Reduction in wages not permitted: Nothing in this Collective Agreement shall operate to reduce the wage of an employee who, at any time prior or subsequent to the date of coming into operation of this part of the Agreement, was or may be paid wages in the Industry at a higher rate than the minimum provided in this clause, and such employee shall continue to be paid and be entitled to receive wages at such higher rate as if such higher rates were the minimum in respect of that employee. except where otherwise stated in this part of the Agreement.
- (6) An employee who immediately prior to the date of coming into operation of this Collective Agreement was in receipt of a higher wage than that prescribed for an employee of his class, shall receive an increment equal to the difference between the wage prescribed for an employee of his class in the Agreement and the prescribed wage applicable to such employee.
- (7) Person in charge of a first-aid box: The employee in charge of a first-aid box shall receive R3 per week in addition to his weekly wage.

## 5. INCENTIVE BONUS SCHEME

- (1) A wage incentive scheme may be worked in any workplace by mutual agreement between the management, representatives of the trade union and the employees concerned, and may be altered only by mutual agreement between these parties. Such scheme may be terminated by either the employer or the trade union giving not less than one week's notice.
- (2) An incentive scheme may be introduced in respect of such employees employed in a particular section of a workplace: Provided that it shall be applied within a reasonable period after its commencement to all employees engaged on the production of a particular garment, in respect of which the scheme has been introduced.
- (3) Subject to the provisions of clauses 6 (1) and 7 (3), such incentive wage scheme shall enable an employee to earn at least 10 per cent in excess of his ordinary rate of pay for any additional output.
- (4) A copy of the incentive bonus rates and subsequent alterations thereto, agreed on and duly signed by the employer and the secretary of the trade union, shall be filed with the Secretary of the Council, and the employer shall retain a copy thereof and display it in a prominent place easily accessible to his employees.

## 6. SHORT TIME

- (1) Where short time has been or is being introduced in any workplace, an employee who is not required to work on any day shall be given notice of that fact not later than closing time of the working day prior to the day of which his services are not required.
- (2) An employee who attends the workplace on any day shall, unless he has received notice in terms of subclause (1) of this clause that his services will not be required on such day, be employed for at least four hours or be paid wages in lieu thereof.
- (3) Where full-time is not being worked in any workplace, the work shall be distributed evenly among the employees in each of the sections or departments concerned.
- (4) Where short time has been introduced in any workplace, the employer shall furnish to the Secretary of the Council such particulars as are relevant, in the form and manner specified by the Council and forward it to, P O Box 1142 Woodstock, 7915, within seven days of the commencement of such short time.

## 7. PAYMENT OF AMOUNTS DUE TO EMPLOYEES

- (1) (a) An employer shall pay wages and other remuneration in sealed envelopes, showing the name and occupation of the employee, number of hours worked on ordinary time and/or overtime and/or Sunday time, rate of pay and any deductions made. Such payments shall be made weekly, in cash, or may be deposited into the employee's account with a financial institution, or by bank transfer, or by cheque, during working hours, on the nominated pay day of a workplace:

Provided that where an employee's service is terminated other than on the usual pay day of the workplace, any amounts due to him shall be paid immediately on termination. Where a paid public holiday falls on a Friday, such payments shall be made on the last working day immediately preceding such holiday.

- (b) Monthly paid employees shall be paid not later than the last pay day of the month, or on termination of employment if this should not take place on the ordinary pay day of the employee.

- (c) 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.
- (2) An employer shall pay to an employee who, during any part of any one week, is employed on more than one class of work for which different weekly wages are hereby prescribed, the maximum of such different weekly wages for the whole of that week.
- (3) No deductions whatsoever shall be made from the amounts due to an employee, except as provided hereunder, and each amount and the purposes for which it is deducted shall be shown separately on the pay envelope:
    - (a) Except where otherwise provided in this part of the Agreement, whenever a weekly paid employee is absent from work. Other than on the instructions or at the request of his employer, a pro rata amount for the actual time lost may be deducted;
    - (b) subject to the provisions of clause 6 of this part of the Agreement, where short time has been introduced a deduction may be made for the actual time not worked;
    - (c) with the written consent of the employee, deductions may be made for insurance or pension funds;
    - (d) contributions to the Council in terms of clause 20 of this part of the Agreement may be deducted;
    - (e) contributions to the Medical Benefit Society in terms of clause 21 of this part of the Agreement may be deducted;
    - (f) with the written consent of the employee, contributions to the funds of the trade union may be deducted;
    - (g) the actual cost of scissors supplied by the employer may be deducted;
    - (h) any amount which an employer is legally or by order of any competent court required or permitted to make may be deducted;
    - (i) contributions to the Provident Fund in terms of clause 29 of this part of the Agreement and/or deductions for housing loan repayments in terms of a housing loan scheme approved by this Council may be deducted;
    - (j) deductions for overalls in terms of clause 27 (3) (a) or (b) may be made;
    - (k) where an employer supplies an employee with tea, he may deduct 20c per week from the employee's wages.
  - (4) If, owing to the accidental stoppage of machinery, no work is available for an employee, deductions may only be made from the wage of such employee for the actual time lost in excess of two hours.
  - (5) (a) Each employee shall be paid an annual bonus on the day of his employer's annual closure in December of each year, equivalent to 2,5% of his total annual basic wage calculated from 1 January to 31 December: Provided that a pro rata share of the bonus shall be paid to an employee who leaves employment before the annual closure.
    - (b) The bonus is inclusive of and not additional to any annual bonus paid by an employer.
    - (c) For the purposes of calculating this bonus, absences of any nature may not be taken into consideration.

## **8. PROPORTION OF RATIO OF EMPLOYEES**

An employer shall not employ an unqualified employee unless he has in his employ a qualified employee of the same class, and for each such qualified employee not more than three unqualified employees shall be employed: Provided that for purposes of this clause, an

unqualified employee receiving not less than the total wage of a qualified employee of his class, shall be reckoned as a qualified employee.

## 9. HOURS OF WORK

- (1) No employer shall require or permit an employee, other than an employee referred to in subclause (5)-
- (a) to work for more than 42 hours per week;
  - (b) to work for more than five days in any one week;
  - (c) to work on Saturdays and Sundays;
  - (d) to work for more than nine hours, excluding meal intervals in any one day;
  - (e) (i) to work before 07:00 or later than 17:30: Provided that this subclause shall not apply to employees engaged as boiler attendants;
  - (ii) to work during the rest intervals provided for in this clause or during the lunch hour on any day from Monday to Friday, inclusive.
  - (f) to work for more than five hours without a meal interval of at least an hour.
- (2) Notwithstanding the provisions of subclause (1) of this clause, an employer may require or permit an employee to work overtime subject to the provisions of clause 10: Provided that no employer shall require or permit an employee to work more than 13 hours per week overtime in the Magisterial Districts of Bloemfontein, Kimberley and Kroonstad and 12 hours per week in the Magisterial Districts of Parys and Frankfort: Provided further that no employer shall require or permit an employee to work overtime, after completion of his ordinary working hours, for more than one-and-a-half hours on any day, unless he has-
- (a) given notice thereof to such employee before midday;
  - (b) provided such employee with an adequate meal before commencing overtime; or
  - (c) paid such an employee an allowance of R5,00.
- (3) Rest intervals of not less than 10 minutes, during which no work shall be performed, shall be allowed to each employee not later than two-and-a-half hours after the commencement of the morning work period, and as nearly as practicable in the middle of the afternoon work period, and such intervals shall be regarded as time worked.
- Utensils and boiling water for making tea shall be provided by the employer and be made available for the employees at the commencement of each rest interval, and also at 12:30 every day from Monday to Friday, inclusive.
- (4) In addition to the rest intervals stipulated in subclause (3) of this clause, the employees engaged on work on a conveyor belt system shall be given a rest interval of five minutes, which shall be regarded as time worked, after completion of each hour's work.
- (5) **Exclusions:** The provisions of this clause shall not apply to a watchman: Provided that the watchman shall not be required to work for more than-
- (i) 45 hours per week; or
  - (ii) six days in any one week:
- Provided further that the employer may require his watchman to work on the seventh day of the week and shall pay the watchman in addition to his weekly wage an amount equal to two-sixths of such weekly wage in respect of work done on such seventh day.

(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.
  - (ii) Notwithstanding the provisions of sub-clause 1 (a) above, supervisory and management staff from the existing staff complement of the employer's business may be employed on a twilight shift.
  - (iii) A twilight shift may only operate between the hours 16h30 to 23h00 daily from Monday to Friday.
- (b) **Employment conditions:** Staff employed on the twilight shift shall be subject to the following employment conditions:
- (i) All provisions contained in this part of the Agreement, unless specifically excluded, shall be applicable to employees employed on a twilight shift.
  - (ii) The remuneration payable to a twilight shift worker shall accrue at an hourly rate.
  - (iii) A twilight shift worker shall not be entitled to the payment of a shift allowance.
- (c) **Transport arrangements:** The following conditions will apply to the transportation of employees working on a twilight shift:
- (i) The cost of transport from the work place to the home of employees will be funded by the employer; and/or
  - (ii) The employer will be responsible for the arrangements and expenses of transport from the work place to the homes of the employees at the conclusion of a twilight shift; Provided that where an employer and employee agree that the employee shall make the practical arrangements for transport home, this shall be permissible provided the employer shall still be responsible for the costs of such transport.

## 10. OVERTIME AND SUNDAY WORK

- (1) Overtime, that is, time worked in excess of the hours specified in clause 9 (1) of this part of the Agreement, may not be worked without the written permission of the Council.
- (2) Payment for overtime shall be made at the rate of one-and-a-half times the hourly wage for each hour or part of an hour so worked from Monday to Saturday.
- (3) An employer shall pay an employee who works on a Sunday-
- (a) for less than four hours, an ordinary days' wage;
  - (b) for more than four hours, the greater of-
    - (i) double the employee's rate of pay for the number of hours worked; or double an ordinary day's wage; or
    - (ii) pay the employee remuneration at a rate of not less than one-and-a-half times his ordinary rate of remuneration in respect of the total period worked on such Sunday and grant him within seven days of such Sunday one day's holiday and pay him in respect thereof remuneration at a rate of not less than his ordinary rate of remuneration as if he had on such holiday worked his average ordinary working hours for that day of the week.

- (4) No employee shall be required to work overtime without his consent.
- (5) No employee shall be dismissed or prejudiced in his employment by reason of his refusal to work overtime.

(6) **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 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) the three days family responsibility leave provided for in clause 9 of this part of the Agreement.
- (7) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.

## 11. OUTWORK

No employer in the Industry shall give outwork to be manufactured other than in a workplace registered in terms of clause 12 of this Collective Agreement, nor shall he require or permit any employee to perform any work in the Clothing Industry other than in a workplace provided, equipped, maintained and controlled by the employer.

## 12. REGISTRATION OF AN EMPLOYER

- (1) Every employer on whom this part of the Agreement is binding and who has not already done so in terms of the previous Agreement shall, within seven days of the date on which this part of the Agreement becomes binding on him, furnish to the Secretary of the Council such particulars as are relevant, in the form and manner specified by the Council
- (2) Where an employer carries on business as a partnership, company or close corporation, the particulars required by the Council shall be provided in the form and manner specified by the Council, in respect of each partner, director or member of the business, as the case may be.
- (3) When an employer's business undergoes any of the following changes, the employer shall furnish to the Secretary of the council, a notice of the change in writing setting out full particulars of such change within seven days of its taking place:
  - (a) Change of name;
  - (b) change of address;
  - (c) changes in the composition of its members or partners or directors;
  - (d) the sequestration or liquidation of the business;
  - (e) the transfer or abandonment of the business;
  - (f) the acquisition of another business which is covered by this part of the Agreement;
  - (g) the commencement of any other business covered by this part of the Agreement.

### 13. PAID HOLIDAYS AND ANNUAL LEAVE

- (1) (a) An employer shall grant to each of his employees, during the month of December or January of each year, annual leave on the following basis:
  - (i) In the case of an employee (other than a watchman) who was, prior to the commencement of the annual leave, in the firm's employ on or before 1 February of any year, and who remained in such employ until 1 December of that year, 15 working days on full pay. No such employee shall be paid less than three weeks' wages as annual leave pay.
  - (ii) In the case of a watchman the same provisions as contained in (a) (i) above shall apply, except that 23 working days' leave shall be granted: Provided that an employee who was absent from work for a continuous period in excess of 12 weeks shall be paid holiday pay in terms of subclause (2) of this clause.
- (b) The holiday pay due in terms of this subclause shall be paid by the employer not later than the last working day of the employee before the commencement of the period of leave.
- (2) (a) An employee who was employed from 1 February for less than one year from the date of commencement of the previous annual leave period or whose employment terminated before commencement of the annual leave period, provided his employment with the employer endured for a period of not less than four weeks, shall be paid holiday pay calculated on the basis of 1,25 times the daily wage in respect of each completed month of service, inclusive of the leave period.
- (b) The holiday pay due in terms of paragraph (a) shall be paid by the employer not later than the last working day of the employee before the commencement of the period of leave, or if the employee's employment terminates before that date, on the day he leaves the employer's service.
- (3) In determining the period of employment in respect of which holiday pay is to be calculated in terms of subclause (2), the expression "employment" shall be deemed to include any period during which an employee-
  - (a) is absent from work on the instruction or at the request of the employer;
  - (b) is on sick leave, provided a medical certificate for the period or periods of absence has been produced;
  - (c) is on maternity leave, provided a medical certificate to this effect has been produced.
- (4) (a) Every employer shall grant to each of his employees 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 as paid holidays and no employer shall employ an employee and no employee shall work on these 12 days.
- (b) An employer shall grant to all of his employees who have worked the whole morning period of the Thursday preceding Good Friday, time off from the commencement of the normal interval until the normal closing time and such time lost shall be regarded as time worked: Provided that where an employee is absent on the employer's instructions, he shall be entitled to payment for the Thursday afternoon period preceding Good Friday.  
 Provided further that if an employee has to work on any public holiday, such employee shall be remunerated at time and a half the ordinary hourly rate for the time so worked, in addition to the entitlement of the day's pay.
- (5) In the event of an employer granting to his employees in terms of subclause (1) of this clause. a leave period which includes the Day of Reconciliation, Christmas Day, Day of Goodwill or New Year's Day, such employer shall pay a full day's pay in respect of each such day to each of his employees in his employ on the commencement of the leave, and to each employee whose contract of service is terminated within the 14 days prior to the commencement of the leave period Provided that the employee concerned was in the

continuous employment of his employer for a period of not less than six months immediately prior to the leave period: Provided further that the contract was not terminated by the employee concerned, or that he was not summarily dismissed for any good cause recognised by law as sufficient.

- (6) In the event of New Year's Day, Human Rights Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day or Day of Goodwill falling on a Saturday or a Sunday, the employer shall pay to each of his employees an extra day's pay on the first pay day after such day or when payment for these days is payable in terms of this clause or, alternatively, shall grant the Monday following such public holiday as a holiday and shall pay a day's pay to each of his employees in respect thereof.
- (7) For the purposes of this clause, "day's pay" means the "weekly wage" divided by five, and "full pay" means the "wage" paid immediately prior to the commencement of the holiday leave prescribed by subclause (1).
- (8) Notwithstanding the provisions of subclause (2) an employer may close his workplace on any other three days with the consent of the majority of his employees, and in that event shall not be obliged to pay wages in respect of such days: Provided that he shall afford his employees the opportunity of working in the time lost in respect of any such days, on any day other than a Sunday, at ordinary rates of pay should the majority of his employees so agree: Provided further that an employer shall notify his employees of his intention to close the workplace on such days by means of a notice posted in a prominent place in his workplace at least 24 hours prior to the usual starting time of the first day of closure, and that the Council be notified thereof in writing.
- (9)
  - (a) An employee shall be entitled to six consecutive months' maternity leave, of which five months shall be unpaid and one month paid in terms of clause 32 (1).
  - (b) An employee may commence maternity leave-
    - (i) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
    - (ii) on the date which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.
  - (c) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
  - (d) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave of six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.
  - (e) An employee shall give an employer notice in writing, unless the employee is unable to do so, of the date on which the employee intends to
    - (i) commence maternity leave; and
    - (ii) return to work after maternity leave;
  - (f) Notification in terms of subclause (e) shall be given-
    - (i) at least four weeks before the employee intends to commence maternity leave; or
    - (ii) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- (10)
  - (a) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her child.
  - (b) During an employee's pregnancy, and for a period of six months after the birth of her child, her employer shall offer her suitable alternative employment on terms and

conditions that are no less favourable than her ordinary terms and conditions of employment, if-

- (i) the employee is required to perform night work or work that poses danger to her health or safety or that of her child; and
  - (ii) it is practicable for the employer to do so.
- (11) (a) An employer shall grant an employee who has been in his employ for longer than four months and who works for at least four days a week for that employer, three days' unpaid family responsibility leave, which the employee shall be entitled to take-
- (i) when the employee's child is born;
  - (ii) when the employee's child is sick; or
  - (iii) in the event of the death of-
    - (aa) the employee's spouse or life partner; or
    - (ab) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling;
- (b) An employee may take family responsibility leave in respect of the whole or a part of a day.
- (c) Before granting an employee family responsibility leave, in terms of this subclause, an employer may require reasonable proof of an event contemplated in subclause (1) (a) for which the leave was required.
- (d) An employee's unused entitlement to leave in terms of this subclause shall lapse at the end of the annual leave cycle in which it accrues.
- (e) Exclusions: The provisions of this clause shall not apply to a watchman: Provided that a watchman shall be granted four weeks' holiday leave on full pay, plus payment of an amount equal to one-quarter of his weekly wage, during each period of 12 months, employment: Provided further that should such watchman's employment be terminated before such leave is granted, he shall be paid in lieu of such leave two-an-one-fifth times his daily wage in respect of each completed month of employment, calculated from the date of commencement of his employment or from the first pay day after the last 12 months' period in respect of which he was granted four weeks' holiday leave, as specified in this subclause. For the purposes of this subclause, the daily wage of a watchman shall be one-sixth of his weekly wage.

#### 14. TERMINATION OF EMPLOYMENT

- (1) Subject to the provisions of subclause (1) (b) (ii), (iii) and (iv) of this clause! written notice, in the form of Annexure J to this part of the Agreement, of not less than five working days, which for the purposes of this clause shall include paid holidays, to take effect from the working day following that on which it is given shall be given by an employer or an employee to terminate a contract of service:
- (a) Provided that this shall not effect-
    - (i) the right of an employer or an employee to terminate the contract of service without notice for any good cause recognised by law as sufficient;
    - (ii) any agreement between the employer and the employee providing for a longer period of notice than one week.
  - (b) Provided further that-
    - (i) an employer may pay an employee wages for and in lieu of the specified period of notice;

- (ii) an employee who is working short time may terminate his employment without giving notice;
  - (iii) the first 20 working days, in respect of weekly paid employees, or the first 35 working days, in respect of monthly paid employees, of the period of employment of an employee by an employer shall be deemed to be a trial period (unless otherwise stated in a written agreement), and such employment may be terminated either by the employer or the employee at any time within such trial period by giving 24 hours' notice;
  - (iv) monthly paid employees shall give or be given not less than one calendar month's notice, in writing, to take effect from the first pay day of the month following that in which notice is given.
- (2) An employee laid off during the currency of any period of notice given in terms of subclause (1) of this clause shall receive full pay for the unexpired part of such notice period.
- (3) No employer shall terminate the services of any employee by reason of such employee's
- (a) approaching confinement: Provided that the employee returns not later than six months after the date of confinement leave;
  - (b) absence from work through illness:
    - Provided that-
      - (i) the employer is notified within 5 working days of the commencement of such illness; and
      - (ii) a medical certificate for the period of absence is provided on the employee's return to work;
  - (c) absence on leave, the written permission of the employer having been obtained;
  - (d) partial disablement through injury on duty.
- (4) (a) In the event of an employer failing to give notice or permit the employee to work the required notice period, or an employee failing to give and to work the required notice period, the employer shall pay or the employee shall forfeit, subject to the provisions of paragraph (b) of this subclause, an amount equal to the full weekly remuneration which the employee was receiving immediately prior to the date of such termination.
- (b) Subject to the provisions of subclause (5), the employment of an employee who absents himself from work for a period of five consecutive working days without notifying his employer may be terminated by the employer without notice: Provided that-
- (i) the employer attempts to contact the employee in writing at the last known address supplied by the employee;
  - (ii) the employee shall be allowed to lodge with his employer a written appeal against his dismissal.
- (c) If an employee leaves without notice or is unaccountably absent, the employer shall send his service card to the Bargaining Council not earlier than the sixth nor later than the 11<sup>th</sup> day of such absence, together with any wages due in terms of this part of the Agreement, and a statement by the employer detailing circumstances surrounding the employee's absence from work and requesting a refund of the amount to be forfeited in terms of paragraph (a) hereof.
- (5) Subject to the provisions of subclause (4) (a) and (b), an employee who is discharged or leaves without notice during the currency of any period of notice given in terms of subclause (1) of this clause shall receive full pay or shall forfeit such wages for the unexpired period of such notice.

- (6) The period of notice shall not run concurrently with nor shall notice be given during an employee's absence on leave granted in terms of clause 13.
- (7) Subject to the provisions of subclause (3) (b), no notice shall be given during absence on sick leave or confinement leave as provided for in clause 13 (9);
- (8) Notwithstanding the provisions of subclauses (1), (3) and (4), no employer shall, in terms of the Act, unfairly terminate the services of an employee. Furthermore, for the purposes of determining the length of an employee's employment with an employer, previous employment with the same employer shall be taken into account if the break between the periods of employment is less than one year.

#### **15. PREMIUMS**

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

#### **16. TOOLS**

- (1) Every employer may, at the request of his employees, supply scissors for the purpose of their employment at the price paid therefor by the employer.
- (2) The cost of the scissors may be deducted from the employee's wages in weekly instalments, as mutually agreed upon between the employer and employee.
- (3) The employer shall keep the scissors sharpened and in good order, free of charge.

#### **17. CONTRACTS**

- (1) ***Existing contracts:***

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

- (2) ***Fixed-term contracts:***

- (a) An employer may engage fixed-term contract employees for a specific period and/or until the completion of a specific short-term task.
- (b) Any employee engaged on a fixed-term contract shall be employed subject to the same terms and conditions as prescribed in this Collective Agreement for other employees of the same class/job category.
- (c) Fixed-term contracts shall be reduced to writing and shall stipulate the commencement and termination dates and/or completion date of the contract task.
- (d) Copies of all fixed-term contracts (as well as accompanying exemption application where applicable) concluded in the Industry shall be forwarded to the Secretary of the Council, PO Box 1142, Woodstock. 7915, for registration and processing by no later than seven days after commencement of duty of the employee.

#### **18. ENGAGEMENT, TRANSFER AND TERMINATION FORMS**

- (1) An employer shall on engaging an applicant for work, require such applicant to produce a service card issued by the Council, which shall be in the form and manner specified by the

Council. In the case of an employee who does not possess a service card, the employer shall complete an application for service card form, in the form and manner specified by the Council.

- (2) If during or on completion of the trial period in terms of clause 14 (1) (b) (iii), the contract of service is confirmed, the employer shall, immediately on such confirmation, enter on the service card or application form, the name of his factory, the occupation of the employee, and the date of commencement of employment, and send the card to the Secretary of the Council. within seven days of engagement as provided for in subclause (1) of this clause.
- (3) The Council shall extract such information as may be required from the service card, and return it to the employer with the least possible delay. In the case of an application form, the Council shall issue a service card in respect of the new entrant to the Industry and forward it to the employer. The employer shall retain the service card until the employee leaves his employ.
- (4) Whenever an employer transfers his employee to another grade, in terms of clause 4 (2), he shall, within 14 days from the date of transfer, complete a transfer form as per Annexure A and forward it to the Council. The Council shall, with the least possible delay, acknowledge such transfer notice to the employer.
- (5) On the termination of services of an employee, except in terms of clause 14 (1) (b) (iii), an employer shall supply the employee with his service card, duly completed by the employer, stating the grade or grades in which the employee was employed by the firm, the total weekly wage paid prior to termination and the date of termination.
- (6) The employer shall complete and transmit to the Regional Chamber a record, in the form and manner specified and supplied 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.

## 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 set out 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 requested.
  - (d) Satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought and the response resulting from such



consultations. Such consultations shall include a registered trade union where such union has members employed at the workplace.

- (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, and in form the applicant of its decision within 45 days from the date of lodgement of the application with the General Secretary. If notification of the decision is not received within this period, the application shall be deemed to have been refused.
  - (c) The Exemptions Committee may call for any further information or submissions it deems relevant from the applicant, prior to making a decision. The 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 of 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 refused.
  - (e) Subject to the time period for considering the application as provided in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been refused 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 to 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 amount thereof: Provided that such a fee shall be consistent with-
    - (i) the cost incurred for the hearing of the appeal; and
    - (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 also 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 that are in compliance with the applicable Council Agreements will not be materially prejudiced by the exemption.
    - (c) No infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted, nor does the application if granted, result in a conflict with the primary objectives of the Act.
    - (d) The exemption will not undermine collective bargaining and labour peace in the Industry.
    - (e) There has been compliance with subclause (3) above.
    - (f) The majority of employees affected 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 put up 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.
  - (d) The terms of the exemption sought, including the period for which exemption is sought
  - (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. 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 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.

## 20. COUNCIL FUNDS

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

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

- (1) (a) Every employer shall, on every pay day of each week and from the first pay day of coming into operation of this part of the Agreement, deduct an amount equal to 0.28% of each employees wages per week, calculated at the qualified machinist rate of pay, up to a maximum of R1,95 per week for whom minimum wages are prescribed in this Agreement: Provided that no deduction shall be made from the wages of an employee who has worked for less than 20 hours in the week in which the deductions fall due: Provided further that no deductions shall be made from the holiday pay paid to each employee when the workplace closes in terms of clause 13 (1) of this part of the Agreement.
- (b) An employer shall, in respect to each contributor from whose wages deductions are made in terms of paragraph (a) above, contribute an amount equal to 0.40% of each employees wages per week, calculated at the qualified machinist rate of pay, up to a maximum of R2,11 per week.
- (2) (a) The employer shall pay the total amounts so deducted, together with his contributions in terms of subclause (1) (b) above, to the Secretary of the Council, P O Box 1142, Woodstock, 7915, within seven days from the end of the month in which the deductions fall due and such payment shall be accompanied by a completed copy of Annexures E and F, in the case of employers in the Magisterial Districts of Bloemfontein, Frankfort, Kroonstad, Kimberley, Parys and Vredefort.
- (b) Where an employer has failed to deduct contributions from the wages of employees, he shall not be permitted to deduct arrear contributions but shall make good these contributions himself.
- (c) Should any amount due in terms of this clause not be received by the Council by the tenth day after the due date on which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum:
- Provided that the Council shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Council, the interest may accrue to the general funds of the Council.

## 21. MEDICAL BENEFIT SOCIETY

- (1) The Free State and Northern Cape Clothing Industry Medical Benefit Society, (hereinafter referred to as the "Society). originally established on 23 March 1967 in terms of Government Notice No. R 379, is hereby continued.
- (2) Every employer in the Magisterial Districts of Bloemfontein, Frankfort, Kimberley, Kroonstad, Parys and Vredefort shall. On the pay day of each week, deduct R7,00 from the wage of each of his employees for whom minimum wages are prescribed in this part of the Agreement.
- (3) The employer shall pay the total amount so deducted, together with an amount of R16,94 to be contributed by him and furnish to the Secretary of the Council P.O. Box 1142,

Woodstock, 7915, such particulars as are relevant, in the form and manner specified by the Council.

- (4) Where an employer has failed to deduct contributions from the wages of employees, he shall not be permitted to deduct arrear contributions but shall make good these contributions himself.
- (5) Should any amount due in terms of this clause not be received by the Council by the tenth day after the due date on which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum: Provided that the Council shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Council the interest may accrue to the general funds of the Council.
- (6) On expiry of this part of the Agreement by effluxion of time or cessation for any other cause, the Society shall continue to be administered by the Management Committee, and in the event of a subsequent agreement providing for the continuation of the Society not being negotiated within one year from the date of expiry of this part of the Agreement, or the Society not being transferred within such period to a society constituted for the same or a similar purpose, the Society shall be liquidated by the Management Committee.

## **22. EXTRACT FROM WAGE REGISTERS**

Every employer shall forward to the Secretary of the Council, P.O. Box 1142, Woodstock, 7915, copies, in triplicate of his wage register in the form and manner specified by the Council, not later than one week after the first pay day in every quarter.

## **23. TRADE UNION LABOUR**

### **A. EMPLOYMENT OF TRADE UNION LABOUR**

- (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.
- (1) 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, P O Box 1142, Woodstock, 7915, within seven days from the end of the month 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.
- (2) 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.

## **B. RIGHTS AND ACCESS TO PREMISES**

- (1) Any office bearer or official of a representative trade union shall be entitled to enter the employer's premises in order to recruit members or communicate with members, or otherwise serve members' interests.
- (2) A representative trade union shall be entitled to hold meetings with employees outside their working hours at the employer's premises.
- (3) The members of a representative trade union shall be entitled to vote at the employer's premises in any election or ballot contemplated in the union's constitution.
- (4) The rights conferred by this clause shall be subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent the undue disruption of work.
- (5) The authorised person or persons shall notify the employer or his representatives of his intention to visit the workplace.
- (6) The trade union shall have reasonable access to facilities at the workplace, including the use of the telephone, notice boards and a venue for trade union representative meetings, where such facilities are available, subject to the following:
  - (a) Such facilities shall be available during the normal working hours of the business and, while normal output is maintained, including lunch and tea breaks.
  - (b) The granting of facilities shall be subject to prior agreement from management, which agreement shall not unreasonably be withheld, and the facilities shall be used for industry-related matters. Such industry-related matters shall be defined by the Council from time to time.
  - (c) The scale of facilities shall be subject to the individual circumstances of a workplace.
- (5) The trade union shall be entitled to distribute the union newspaper at the workplace.
- (6) 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.

- (7) 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.

**C. TRADE UNION REPRESENTATIVES-TIME OFF**

- (1) Representatives from the representative trade union shall be granted paid time off on the following basis:

Ten days per annum per trade union representative, pooled for each workplace and to be divided between various trade union representatives at the discretion of the Union: Provided that

- (a) all such leave shall be subject to the operational requirements of the workplace;
- (b) in the case of employers employing five or fewer employees, the union shall give the employer ten days' written notice of the activity for which it seeks time off in terms of this clause;
- (c) in the case of employers not referred to in paragraph (b), the union shall give the employer one day's notice of the activity for which it seeks time off in terms of this clause; and
- (d) all leave granted in terms of this clause shall be used to attend bona fide industry-related trade union activities.

**D. SACTWU EDUCATION BURSARY SCHEME**

- (1) For the purposes of establishing a SACTWU Educational Trust, every employer to whom this part of the Agreement applies, shall each week contribute 31 cents for each employee in his workplace. The moneys so paid shall be utilised by the SACTWU Education Bursary Scheme to award bursaries to all employees and their children in the Industry to further their education.
- (2) The total amount so contributed per month shall be submitted to the Secretary of the Council, PO Box 1142, Woodstock, 7915, within 10 days of the month in which the contributions fall due. The Secretary of the Council shall within 15 days of receipt forward such contributions to the General Secretary of the trade union, together with an analysis of the amounts received from employers, after withholding a collection fee as determined and agreed upon from time to time by the parties to the Council.

**E. SACTWU HIV/AIDS PROJECT**

- (1) There is hereby established an HIV/AIDS Project, known as the SACTWU HIV/AIDS Project.
- (2) Every employer to whom this part of the Agreement applies shall each week for each employee in his employ contribute an amount of 45 cents to the SACTWU HIV/AIDS Project. The amount shall be submitted to the Secretary of the Council, P O Box 1142, Woodstock, 7915, within seven days of the end of the week in which the contribution fall due.
- (3) The total amount so collected by the Council shall be transferred to the SACTWU Finance Department, P.O. Box 18359, Dalbridge, 4014, on a quarterly basis.

**F. 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 Agreement 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, P O Box 1142, Woodstock, 7915, within 14 days of having made such deductions.
  - (c) deduct the agency fee from the wages of an employee without the employee's authorisation as provided for in section 25(4) of the Act.
- (4) **Payment of agency fees:** The Regional Secretary shall pay the received trade union agency fee deductions to the trade union by not later than the end of the month in which the fees were received.
- (5) **Utilisation of agency fees:** No agency fee deducted may be –
- (a) paid to a political party as an affiliate fee;
  - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
  - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.

#### 24. POWERS OF DESIGNATED AGENTS

- (1) 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 33 of this part of the Agreement or the Disputes Procedure in terms of clause 34 of this part of the Agreement may
- (a) subpoena for questioning any person who maybe 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 or object relevant to the resolution of the dispute, to appear before the designated agent or to 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 to be there;
    - (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;



- (e) inspect and retain for a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the designated agent.
- (2) A subpoena issued for any purpose referred to in subclause (1) shall be signed by the Secretary of the Council 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.
- (3) The written authorisation referred to in subclause (1) (d)-
- (a) if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to section 14 of the Constitution of the Republic of South Africa, 1996, and then only on the application of the designated agent 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;
  - (b) in all other cases, may be given by the Secretary of the Council.
- (4) The owner or occupier of any premises that the designated agent is authorised to enter and inspect, and every person employed by that owner or occupier, shall provide the facilities that a designated agent requires to enter those premises and to carry out the inspection or seizure.
- (5) The designated agent shall issue a receipt for any book, document or object seized in terms of subclause (4).
- (6) 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.
- (7) The designated agent shall pay the prescribed witness fee to each person who appears before him in response to a subpoena issued in terms of section 208 of the Act, where such fee has been specified by the Minister of Labour or, in the absence of such fee, as may be determined by the Council from time to time.
- (8) 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 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 designated agent;
  - (c) by refusing to take the oath or to make an affirmation as a witness when the designated agent so requires;
  - (d) by refusing to answer any questions fully and to the best of that person's knowledge and belief subject to subclause (6);
  - (e) if the person, without good cause, fails to produce the book, document or object specified in a subpoena to a designated agent;

- (f) if the person wilfully hinders the designated agent in performing any function conferred by or in terms of the Act;
  - (g) if the person insults, disparages or belittles the designated agent, or prejudices or improperly influences an investigation or improperly anticipates the designated agent's recommendations;
  - (h) by wilfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings;
  - (i) by doing anything else in relation to the designated agent which, if done in relation to a court of law, would have been contempt of court.
- (9) The designated agent may, on, recommendation of the Council, refer any contempt to the Labour Court for an appropriate order.

## **25. PROHIBITION OF EMPLOYMENT OF CHILDREN AND OF FORCED LABOUR**

- (1) No person shall employ a child
  - (a) who is under 15 years of age; or
  - (b) who is under the minimum school-leaving age in terms of any law, providing this is 15 years of older.
- (2) No person shall employ a child in employment
  - (a) that is inappropriate for a person of that age;
  - (b) that places at risk a child's well-being, education, physical or mental health, or spiritual, moral or social development.
- (3) Subject to the Constitution of the Republic of South Africa, 1996, all forced labour is prohibited.
- (4) No person may for his or her own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of subclause (1).
- (5) A person who employs a child in contravention of subclauses (1) to (4) commits an offence.

## **26. EXHIBITION OF AGREEMENT**

Every employer shall keep exhibited in his workplace, in a place readily accessible to his employees, a legible copy of this Collective Agreement in one official language.

## **27. OVERALLS**

- (1) An employer shall issue within four weeks of the commencement of employment of an employee, two new overalls to such employee and shall issue to each and every employee in his employment two new overalls every 18 months on or before 1 January or 1 July, as the case may be.

An employee to whom such overalls have been issued in terms hereof shall be required to wear such overalls during all working hours, and shall be responsible for the good condition and laundering of such overalls away from the workplace where he is employed: Provided that an employer may launder his overalls and withdraw the right of an employee to take such overalls away from the workplace where he is employed: Provided further that nothing contained in this subclause shall be so construed as to reduce the obligations imposed on any employer in regard to protective clothing and appliances as laid down in the Occupational Health and Safety Act, 1993, or the regulations published under that Act.

An employee to whom such overalls have been issued in terms hereof shall be required to wear such overalls during all working hours, and shall be responsible for the good condition and laundering of such overalls away from the workplace where he is employed: Provided

that an employer may launder his overalls and withdraw the right of an employee to take such overalls away from the workplace where he is employed: Provided further that nothing contained in this subclause shall be so construed as to reduce the obligations imposed on any employer in regard to protective clothing and appliances as laid down in the Occupational Health and Safety Act, 1993, or the regulations published under that Act.

- (2) Ownership of any overall issued to any employee shall be ceded to such employee 12 months after the date of issue of such overall.
- (3) The employer shall be entitled to deduct the following amounts in respect of overalls from an employee on termination of employment:
  - (a) R7,50 per overall if such termination occurs within six months after the date of issue of overalls;
  - (b) R5,00 per overall if such termination occurs within seven to twelve months after the date of issue of the overalls.
- (4) Should an employer fail to provide his employee with an overall or overalls as specified in subclause (1) within 60 days of the due date of issue and having been given two weeks written notice by the Council, such employer shall be liable to pay to his employee, as a penalty, an amount equal to R1,50 per overall not issued in respect of every period of 30 days that has lapsed from the due date of issue of such overall or overalls.
- (5) If an employee fails to wear an overall as specified in subclause (1), the employer shall have the right to advise such employee that failure to appear at work with an overall on the following day will result in a new overall being issued, in such case an amount equal to the cost of such overall, but not exceeding R15,00, may be deducted from the wage due to such employee on the first pay day following the issue of such overall.

## **28. SAFEGUARD OF WORKERS' EARNINGS**

- (1) Every employer shall, within two months of the date of coming into operation of this Collective Agreement or within two months of the coming into operation of the workplace of a new factory, give a bankers' or other guarantee, acceptable to the Council, payable on demand in the event of the employer's insolvency or otherwise.
- (2) Such guarantee shall be used to cover the payment of all contributions due to the Council and all benefit funds established in terms of this part of the Agreement and the payment of holiday pay and wages due to his employees: Provided that the amount so guaranteed shall be an amount equal to two months' contributions for all his employees and three weeks' wages for each and every employee in his employ.

## **29. PROVIDENT FUND**

- (1) The Provident Fund for the Clothing Industry (Free State and Northern Cape), (hereinafter referred to as the "Northern Chamber Fund"), originally established on the 1st pay day in September 1971 in terms of Government Notice No' R. 321 dated 1 March 1974, is hereby dissolved.
  - (a) The assets and the liabilities of the Fund on that date will be transferred to the Provident Fund for the Clothing Industry (Northern Areas), to be renamed to the Provident Fund for the Clothing Industry (Northern Chamber) on 1 April 2008, (hereinafter in referred to as the Northern Chamber Fund) and the Fashion Industry Protection Fund, each split between the two funds as recommended by an Actuary appointed for this purpose, and agreed to by the Administrative Committee, in consultation with their advisor;
  - (b) If the actual transfer of assets (and therefore liabilities) takes place on a date other than 1 April 2008, the liabilities shall be increased by interest as recommended by

the actuary and approved by the Administrative Committee, and the full value of assets as at 1 April 2008, with further investment returns to the date of transfer, less any expenses, shall be transferred;

- (c) The Fund (the Provident Fund for the Clothing Industry (Free State and Northern Cape)) shall then be known as the Former Fund, where appropriate;
- (d) The Northern Chambers Fund shall be read to be the Fund in the balance of these Rules, from 1 April 2008, where appropriate;
- (e) The administration and management of, and contributions and benefits paid by the Northern Chambers Fund will be governed by a collective agreement to be gazetted and an agreed set of Rules for that fund, the Rules ultimately being registered with the Registrar of Pension Funds in terms of the Pension Funds Act. However, the provisions of that Fund are briefly summarised in sub-clause (2);
- (f) For each member of the Fund, the balance held in that member's account in the Fund on 1 April 2008 will be transferred to an account established for that member in the Northern Chambers Fund;
- (g) The mechanism used for the dissolution of the Fund is the Transfer of Fund provision contained in sub-clause 30(2) in this Part of main agreement. The transfer of assets and liabilities between this provident fund and the Fashion Industry Protection Fund is a once-off transfer;
- (h) A notice to the Registrar of Labour should be given in terms of a Section 14 transfer. The Registrar may gazette the notice of dissolution of the two funds; and
- (i) Any requirements of a fiscal nature shall be fulfilled.

The purpose of the Fund shall be the provision of benefits to employees and the Fund shall no longer provide the benefits to employees. The administration and management of, and contributions and benefits paid by the Fund will be governed by the provisions of this part of the agreement, and any Rules of the Fund (agreed by the Administrative Committee), and reduced to writing.

- (2) The Fund (and the Northern Chambers Fund with effect from 1 April 2008, upon which date all below will cease in the Fund, given the full transfer of the Fund to that fund and the Clothing Industry Protection Fund, and read as such) shall consist of:
  - (a) contributions paid into the Fund in terms of subclause (3) of this clause;
  - (b) interest derived from the investment of any moneys of the Fund;
  - (c) any other sums to which the Fund may become entitled or which may be donated to the Fund;
  - (d) any moneys held in trust by the Council for the purposes of the Fund.
  - (e) Any values transferred as a result of an amalgamation, merger, or a bulk transfer of assets and a liabilities as a result of sub-clause 1 (5) above;
  - (f) Any values transferred from any other retirement provision, with the approval of the Administrative Committee (or its successor) subject to meeting the fiscal requirements by an individual member.
- (3) Contributions:
  - (a) Every employer shall on the pay day of each week deduct from the wage of each employee (hereinafter referred to as "contributor") to whom this clause applies and who has worked for at least 20 hours in the week in which the deduction falls due, an amount equal to 5,75% of the basic weekly wage of the contributor. The employer shall add thereto an amount equal to 6,5%, being the employer's contribution in respect of each employee. The total amount so deducted from the wages of his employees together with the amount contributed by the employer shall be paid to the Secretary of the Council, P.O. Box 1142, Woodstock, 7915, seven days from the end

of the month in which the deductions fall due, such particulars as are relevant in the form and manner specified by the Council.

- (b) Should any amount due in terms of this clause not be received by the Council by the seventh day after the due date on which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum. The interest received shall be added to the interest income of the Fund and form part of the general investment returns of the Fund.
- (4) Benefits (subject to the transfer of all benefit entitlement to the Northern Chambers Fund upon the merger and dissolution of the Fund):
- (a) The Fund shall pay benefits in the event of a member leaving the Fund by withdrawal, retrenchment, death, retirement or ill-health, in accordance with the Rules of the Fund.
  - (b) There shall be no waiting period for payment of benefits, nor shall a vesting scale or forfeiture rules apply.
  - (c) Notwithstanding anything to the contrary in the Rules of the Fund, the death benefit provided to metro members will be R10 000, plus the value of their account in the Fund. The benefit to non-metro members will be limited to their member share.
  - (d) The Administrative Committee may augment the members share of all members of the Fund by the declaration of a bonus, subject to confirmation from an actuary that the bonus will not place the Fund in a financially unsound position.
  - (e) On 1 April 2008 the severance benefit offset as described in sub-clause 31(4) shall cease, and a value is to be calculated by the Actuary and recommended to the Administrative Committee as the amount which gives recognition to the expected present value of the severance benefit offset that the employer would have enjoyed had the benefit not been discontinued. Upon acceptance of the recommendation by the Actuary, this amount will be transferred to the account established in the Fashion Industry Protection Fund for the employer of that member, to be dealt with in accordance with the provisions of this agreement that relates to that fund.
  - (f) On 1 April 2008 the enhanced Provident Fund benefit at retirement due in terms of the Rules of the Fund shall cease, and a value is to be calculated for each member by the Actuary and recommended to the Administrative Committee as the amount which gives recognition to the expected present value of the enhanced retirement benefit that the member may have enjoyed had he reached retirement, and the benefit not been discontinued. Upon acceptance of the recommendation by the Actuary, this amount will be added to the members share of each active member of the Fund. For any dormant member who has reached retirement age, that dormant member shall be assumed to retire on that date, and have their benefit enhanced appropriately.

(5) Fund Accounts:

The Administrative Committee may, upon advise from their advisors, establish such accounts in the Fund as may be deemed appropriate to ensure the sound ongoing functioning of the Fund, and may credit such amounts to those accounts at establishment as their advisors deem appropriate, subject to the establishment of the accounts with these recommended amounts not placing the Fund in a financially unsound position. It is required that the Rules of the Fund reflect these reserve accounts, and specify the provisions for the operation of these accounts. These reserve accounts must at all times be operated in compliance with any applicable legislation.

- (6) Members of the Fund (and the Northern Chambers Fund with effect from 1 April 2008, upon which date all members and their benefit entitlements of the Fund transfer to that fund, and read as such) shall consist of:
- (a) Active members, for whom contributions are made on a regular basis;
  - (b) Inactive members, who are currently dormant in the Fund, because they are not currently employed in the industry as defined in Clause 3, but who are expected to return to the industry; and
  - (c) Unclaimed members who last paid a contribution to the Fund more than six months ago, are no longer employed in the industry, and have not come forward to claim their benefit in the Fund, except that, where the Unclaimed Members of the Former Fund are transferred to the Northern Chamber Fund on 1 April 2008, and become Unclaimed Members of that fund on that date, any tax obligations which lay with the Former Fund in relation to these Unclaimed Members are transferred to that Fund.

### **30. ADMINISTRATION AND INTERPRETATION OF AGREEMENT**

- (1) The Council shall be the body responsible for the administration of this Collective Agreement and may give expressions of opinion not inconsistent with its provisions for the guidance of employers and employees.
- (2) Notwithstanding anything to the contrary in this Part of the Agreement, the Council or Regional Chamber may formally dissolve any funds established or constituted by the Council for the benefit of the employees of the Region, subject to the following:
  - (a) Such dissolution may take the form of a transfer, merger, amalgamation or split;
  - (b) On the dissolution date, all contributions to the fund shall cease, and accrual of benefits shall terminate;
  - (c) On the dissolution date, all the cash, assets and liabilities, members and unclaimed benefits, rights, and benefit obligations in terms of that clause / those clauses of the agreement / and Rules that govern that fund are transferred to another fund/s and / or society duly constituted for substantially the same purpose or to give the same effect as the fund being dissolved;
  - (d) In the event of such decision, all amounts standing to the credit of the personal credit of stakeholders of the fund being dissolved shall be transferred to their credit under the new fund/s and / or society, and the benefits due to such stakeholders shall not be changed in any way by virtue of such transfer, except where specifically provided for by agreement by the parties;
  - (e) Notice of the dissolution of the Fund shall be provided to the Registrar: Labour, who shall gazette such notice, and such further regulatory action as is required shall be complied with; and
  - (f) Any requirements of a fiscal nature shall be fulfilled.

### **31. SEVERANCE PAY**

- (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: Provided that the previous employment with the same employer shall be taken into account if the break between the periods of employment is less than one year.

- (2) An employee, who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer, shall not be 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 in terms of this part of the Agreement.
- (4) Until 1 April 2008, where an employee aged 50 years or older, subject to sub-clause (5) below, is retrenched, such employee shall receive the stipulated enhanced Provident Fund benefits due in terms of the rules (if any) read the constitution of the fund. With effect from 1 April 2008, the benefit enhancement will cease, as described in sub-clause 4 (f) above. Until 1 April 2008, the employer's liability in respect of retrenchment benefits for such employee shall be limited to the payment of the difference between the said enhanced Provident Fund benefit and the amount of severance pay reflected in sub-clause (1) above where the enhanced Provident Fund benefit is less than the severance pay. With effect from 1 April 2008, the employer's liability in respect of retrenchment benefits will be the amount of severance pay reflected in sub-clause (1) above. However, to the extent that the employer is compliant, the employer may claim an offset from the Fashion Industry Protection Fund as is provided for in sub-clause 35 (21).
- (5) Where an employee reaches the stipulated retirement age of 55 years or older, the employer shall have no liability for retrenchment pay.

### **32. MATERNITY BENEFITS**

- (1) Subject to clause 13 (9) (a) of this part of the Agreement, the Medical Benefit Society shall pay one month's wages (4,33 weeks' wages) to an employee going on maternity leave: Provided that such employee has one or more years' service with the same employer and a medical certificate is produced. An employee may take up to 6 months' maternity leave, but may return earlier on giving two weeks' notice to the employer of her intention to return to work.
- (2) A substitute employee may be employed in the place of a person on maternity leave for the duration of the maternity leave. Such substitute employee's employment may be terminated by giving the required notice on the return of the employee who went on maternity leave.

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

- (1) The Council 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 have been breached then the following procedure shall apply to enforce compliance:
  - (a) The Council shall request a designated agent to investigate the alleged breach and/or refer the matter to the Council.
  - (b) If, upon completion of the investigation, the designated agent has reason to believe that this part of the Agreement has been breached, the designated agent may endeavour to secure compliance with the Agreement through conciliation.
  - (c) At the end of the conciliation process the designated agent shall submit a report to the 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 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 Secretary of the Council decides to refer the matter to arbitration, he shall 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 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/her 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/she deems appropriate and where the Act provides for such an order to be made or for the Council to recover its costs of providing the arbitration service:
 

Provided that where the Council's accredited conciliator has made an advisory award in terms of clause 34 (3) (c) (iii) 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 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;
    - (ab) proof presented that such party has been notified of the proceedings, and 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, and 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 affected 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.
- (k) The Secretary of the Council may apply to make the arbitration award an order of the Labour Court in terms of section 158 (1) of the Labour Relations Act.

### **34. 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 parties shall rank the nominees of the employer parties in order of their preference, and the employer parties shall do likewise in respect of the nominees of the union parties.
  - (iii) In the event of the number of remaining vacancies being an even number, half of the vacancies 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) *Dispute 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 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 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 subclause 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 subclause (6) 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 shall 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.

### 35. 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 Northern 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 this employees for whom wages are prescribed in this part of the Agreement, and amount of 11 cents: Provided that no deductions shall be made from the wages of any employee who has worked less than 20 hours in the week in which the deduction falls due.
- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of subclause (4), contribute an amount of 14 cents per week.
- (6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded by the employer to the Regional Secretary of the Regional Chamber, within seven days from the end of the week in which the deductions fall due.
- (7) The moneys collected by the Regional Chamber shall be paid monthly by the Regional Chamber into a bank account styled "Fashion Industry Protection Fund" opened by the Regional Chamber for the purpose of receiving these funds and for disbursing them for the purpose for which they are intended.

This account shall be administered by the Regional Chamber.

- (8) The moneys so 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 subclause (2):
  - (a) 'Buy Local' campaigns;
  - (b) combating customs fraud and illegal imports;

or for such other strategies as meet the objectives of the Fund.
- (9) During the period of operation of the Fund, should the Southern African Clothing & Textile Workers' Union (SACTWU) and/or the Free State and Northern Cape Clothing Manufacturers' Association (FSNCCMA) 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 subclause (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 be subject to approval by the Registrar: Labour.



- (10) The Fund's moneys shall be used to meet all reasonable expenses incurred in pursuit of the authorised activities in regard to the strategies referred to above and may not be used for any unauthorised purpose or activity.
- (11) If SACTWU or the FSNCCMA is in doubt about whether contemplated expenditure of the Fund's moneys qualifies as expenditure on an authorised activity, SACTWU or the FSNCCMA, as the case may be, may request confirmation in advance by the Regional Chamber in this regard.
- (12) No moneys of the Fund shall be disbursed by the Regional Chamber until the Fund has been established by this part of the Agreement and SACTWU, the FSNCCMA 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 moneys at any time shall be used for the benefit of the activities and purposes authorised in terms of the Fund.
- (14) SACTWU and the FSNCCMA 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 shall 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 FSNCCMA.Should the Regional Secretary of the Regional Chamber deem it necessary, such approved expenditure shall be presented to the Regional Chamber for approval prior to payment.
- (16) Any expenses that have been incurred by SACTWU or the FSNCCMA for unauthorised purposes or activities and for which SACTWU or the FSNCCMA, have been paid or reimbursed, may be recovered by the Regional Chamber from SACTWU or the FSNCCMA, 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 FSNCCMA 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 or expenditure falls within the objects of the Fund, either party may refer a dispute in this regard of 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.

### 36. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION

- (1) This part of the Agreement shall remain in force until 31 August 2014: 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 2013.
- (2) To 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.

### 37. 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.

### 38. 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.

### 39. 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.

#### **40. CONTRACT EMPLOYEES**

Contained in Annexure D.

#### **41. 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>2[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.

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<sup>2[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.

- 7.1.7. Informed consent means that the individual has been provided with information, understands it and based on this has agreed to undertake the HIV test. It implies that the individual understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.
- 7.1.8. Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles regarding such research.<sup>3[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

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<sup>3[2]</sup> See amongst others the Department of Health's National Policy for Testing for HIV and the Biological Hazardous Agents Regulations.



- (vii) adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are being met.

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

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

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

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

## **10. EMPLOYEE BENEFITS**

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

## **11. DISMISSAL**

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

## **12. GRIEVANCE PROCEDURES**

- 12.1. Employers should ensure that the rights of employees with regard to HIV/AIDS, and the remedies available to them in the event of a breach of such rights, become integrated into existing grievance procedures.
- 12.2. Employers should create an awareness and understanding of the grievance procedures and how employees can utilise them.

- 12.3. Employers should develop special measures to ensure the confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private.

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

- 13.1. The effective management of HIV/AIDS in the workplace requires an integrated strategy that includes, amongst others, the following elements:

13.1.1. An understanding and assessment of the impact of HIV/AIDS on the workplace; and

13.1.2. Long and short term measures to deal with and reduce this impact, including:

- (i) An HIV/AIDS Policy for the workplace
- (ii) HIV/AIDS Programmes, which would incorporate:
  - (a) Ongoing sustained prevention of the spread of HIV among employees and their communities;
  - (b) Management of employees with HIV so that they are able to work productively for as long as possible; and
  - (c) Strategies to deal with the direct and indirect costs of HIV/AIDS in the workplace.

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

- 14.1. Employers and the trade union should develop appropriate strategies to understand, assess and respond to the impact of HIV/AIDS in their particular workplace and sector. This should be done in cooperation with sectoral, local, provincial and national initiatives by government, civil society and non-governmental organisations.

14.2. Broadly, impact assessments should include:

- (i) Risk profiles; and
- (ii) Assessment of the direct and indirect costs of HIV/AIDS;

14.3. Risk profiles may include an assessment of the following:

- (i) The vulnerability of individual employees or categories of employees to HIV infection;
- (ii) The nature and operations of the organisation and how these may increase susceptibility to HIV infection (e.g. migrancy or hostel dwellings);
- (iii) A profile of the communities from which the organisation draws its employees;
- (iv) A profile of the communities surrounding the organisation's place of operation; and
- (v) An assessment of the impact of HIV/AIDS upon their target markets and client base.

14.4. The assessments should also consider the impact that the HIV/AIDS epidemic may have on:

- (i) Direct costs such as costs to employee benefits, medical costs and increased costs related to staff turnover such as training and recruitment costs and the costs of implementing an HIV/AIDS programme;
- (ii) Indirect costs such as costs incurred as a result of increased absenteeism, employee morbidity, loss of productivity, a general decline in workplace morale and possible workplace disruption;

14.5. The cost effectiveness of any HIV/AIDS interventions should also be measured as part of an impact assessment

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

## 15.1. A Workplace HIV/AIDS Policy

15.1.1. Every workplace should develop an HIV/AIDS policy<sup>4[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;
- (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;

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<sup>4[3]</sup> This policy could either be a specific policy on HIV/AIDS, or could be incorporated in a policy on life threatening illness.

- (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."