

# NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY

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## NATIONAL MAIN COLLECTIVE AGREEMENT

### PART D: PROVISIONS FOR THE NORTHERN REGION (CLOTHING)

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

Amended/Extended/Re-Enacted/Corrected/ Renewed	Government Notice	Government Gazette	Date of Publication
Correction Notice	R.647	28976	07.07.2006
Renewed from 08/09/06 to 31/08/07	R.884	29174	08.09.2006
Cancellation Notice	R.1078	29332	03.11.2006
Re-Enacted, Amended & Extended further to 31/08/08	R.1079	29332	03.11.2006
Correction Notice	R.1232	29434	08.12.2006
Renewed 14/09/07 to 31/08/12	R.844	30276	14.09.2007
Cancellation Notice	R.1052	30443	09.11.2007
Re-Enacted, Amended & Extended further to 31/08/12	R.1053	30443	09.11.2007
Cancellation Notice	R.582	31084	30.05.2008
Amended	R.583	31084	30.05.2008
Cancellation Notice	R.1008	31434	19.09.2008
Re-Enacted, Amended & Extended	R.1009	31434	19.09.2008
Cancellation Notice	R.214	33040	19.03.2010
Re-Enacted, Amended & Extended	R.215	33040	19.03.2010

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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.

**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY  
NATIONAL MAIN COLLECTIVE AGREEMENT  
PART D: PROVISIONS FOR THE NORTHERN REGION (CLOTHING)**

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**GOVERNMENT NOTICE**

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**DEPARTMENT OF LABOUR**

**No. R. 1154**

**15 December 2005**

**LABOUR RELATIONS ACT, 1995**

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

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

**M M S MDLADLANA  
Minister of Labour**

**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING**

**INDUSTRY**

**NATIONAL MAIN COLLECTIVE AGREEMENT**

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

Cape Clothing Association

Consolidated Association of Employers of Southern Africa Region

Eastern Province Clothing Manufacturers' Association

Free State and Northern Cape Clothing Manufacturers' Association

Natal Clothing Manufacturers' Association

Northern Decentralised Clothing Manufacturers' Association

Transvaal Clothing Manufacturers' Association

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

Southern African Clothing and Textile Workers' Union

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

## **1. SCOPE OF APPLICATION**

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

Part A Provisions for the Eastern Cape Region

Part B Provisions for the Free State and Northern Cape Region

Part C Provisions for the KwaZulu-Natal Region

Part D Provisions for the Northern Region (Clothing)

Part E Provisions for the Northern Region (Knitting)

Part F Provisions for the Western Cape Region (Clothing)

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

Part H Provisions for the Western Cape Region (Knitting)

Part I Provisions for the Non-Metro Areas

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

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

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 (2) of the Act, and shall remain in force until 31 August 2013. This Agreement shall bind the Parties and their members and shall remain effective beyond the expiry date determined by the Minister or until the Parties agree otherwise.

## **3. SPECIAL PROVISIONS**

The provisions contained in clause 11.1 (1) and (5), 14.4B and 14.6(5) of Part A; clauses 19B, 23A (1) and (5) and 34 (5) of Part B; clauses 4 (5), 23B, 27 (1) and (4) and 38 (5) of Part C; clauses 19B, 22(5), 25 (1) and 26A (1) and (2) of Part D; clauses 13A(1) and (2), 16B and 28(5) of Part E; clauses 11(4)(b), 14(1) and (5), 19B, 26(13)(a) to 26(13)(g)(v) and 37(5) of Part F; clauses 11 (4) (b), 14 (1) and (5), 19B, 26 (13) (a) to 26 (13) (g) (v) and 37 (5) of Part G; clauses 11 (4) (b), 14 (1) and (5), 19B, 26 (13) (a) to 26 (13) (g) (v) and 37 (5) of Part H and clause 34 (5) of Part I of

the Agreement published under Government Notices Nos. R. 1154 of 15 December 2005, R. 884 of 8 September 2006 and R. 844 of 8 September 2007 (hereinafter referred to as the "Former Agreement"), as further amended, extended and re-enacted from time to time, shall apply to employers and employees who are members of the parties to the collective agreement.

#### **4. GENERAL PROVISIONS**

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

Original Agreement signed at **CAPE TOWN** on behalf of the Parties the **14th day of SEPTEMBER 2005**. Latest amendments signed on 19 March 2010.

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**D ARENDS**  
Chairperson

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**F OOSTHUYSEN**  
Vice-Chairperson

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**S D NDUNA**  
General Secretary

## **PART D : PROVISIONS FOR THE NORTHERN REGION (CLOTHING)**

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

- (1) The terms of this part of the Agreement shall be observed-
- (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 Province of the Transvaal, as it existed prior to the coming into operation of the constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993).
- (2) Clauses 1 (1) (a), 2, 19B, 22(5), 25(1) and 26A(1) to (3) of this Collective Agreement shall not apply to employers and employees who are not members of the employers' organisation and trade union respectively.

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

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

### **3. DEFINITIONS**

#### ***General definitions***

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

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

"**agency shop**" means the compulsory payment of a monthly levy by the non-party employers;

"**blocker**" means an employee engaged in one or more of the following operations in a Millinery Sector establishment:

Blocking, panning, stiffening of raw materials, pressing, spraying and polishing of hats, dyeing and brushing of hats in the course of manufacture;

"**blocker's assistant**" means an employee who assists the blocker in a Millinery Sector establishment by standing in front of the blocker and keeping the hats in place on the block;

"**Category A**" means a pattern maker and/or grader;

"**Category B**" means a marker-in;

"**Category C**" means a mechanic;

"**Category D**" means a chopper-out, cutter and/or re-cutter, negative maker, screen maker (engraver), screen printer and sample cutter;

"**Category E1**" means a sample machinist;

"**Category E**" means a sewing machinist, a finisher, an operator of a linking, overlocking and/or sewing machine, an invisible mender, an embroiderer, an embroidery machinist (other than embroidery machine mincer), a faggotter, a beader and/or pleater by hand, a baster, a shaper, a fitter-up, a checker, a presser of garments, an assistant screen maker (engraver), an assistant screen printer, a darkroom assistant, a mixing and filtering operator, an oven and curing operator, a screen controller, a screen preparer, a squeegee preparer, and a despatch packer;

"**Category F1**" means a machinist promoted to assistant supervisor;

**"Category F"** means an assistant supervisor, other than a machinist promoted to assistant supervisor, a despatch clerk, factory clerk and a storeman;

**"Category G1"** means other pressers not provided for elsewhere in this clause, an underpresser, a presser of shirts, ties, pyjamas and other nightwear, hats, caps, underwear, knitwear, aprons, overalls and blouses without lace, embroidery, tucks and handmade pleats, a machine belt fixer, a maintenance assistant, a layer-up; a plain sewer, an operator of a button covering, zip tacking and/or pleating machine, an employee engaged on the trubenzing of collars and/or a clicker and shaper by template, a general worker, an applique cutter, a tracer and/or marker and/or framer, a pleater, and an embroidery machine mincer;

**"Category G2"** means all employees classified as G1, who are qualified as at 31 December 1987, other than a general worker, an applique cutter, a tracer and/or marker and/or framer;

**"Category H1"** means a foreman;

**"Category H2"** means a supervisor, an assistant foreman and a head cutter;

**"Category H3"** means an artisan;

**"Category H4"** means a labourer, scooter driver and/or boiler attendant;

**"Category H5"** means a watchman;

**"Category H6"** means a driver of a light motor vehicle;

**"Category H7"** means a driver of a medium motor vehicle;

**"chopper out"** means an employee engaged in the cutting out of material, other than trimming by hand or machine, in a Millinery Sector establishment;

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

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

**A. and includes -**

- (a) all operations incidental thereto and consequent thereon and all succeeding processes or operations performed in connection therewith carried on by such employers and any of their employees, irrespective of the process or method used in such making and irrespective of whether such processes or operations are performed on the premises of such employers, or elsewhere;
- (b) all types of hand-sewing operations (including beading and embroidery), whether by hand and/or machine, on garments and/or parts of garments and irrespective of whether or not such operations are performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (c) any of the aforementioned items made for quantity production tailoring made to the order of any government department, provincial administration, S A Airways, Telkom, Transnet or local authority;
- (d) any part(s) of garments whether by means of a knitting process or otherwise;
- (e) design-room services, irrespective of whether or not such services are provided by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (f) fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery
- (g) screen process printing on garments and parts of garments performed in a clothing,

textile and/or knitting establishment;

- (h) tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or on the responsibility of such dealers;
- (i) the changing of labels, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (j) the making of buttonholes, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (k) the ironing of garments and/or parts of garments, irrespective of whether or not such ironing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work on newly manufactured garments on behalf of such employers and any of their employees;
- (l) the making up of garments from knitted fabric in the establishment in which the fabric was knitted;
- (m) the making up of sample garments and/or parts of garments, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (n) the marking-in and/or cutting of garments or parts of garments, irrespective of whether or not such operation(s) is (are) performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees; and
- (o) the packing of garments and/or parts of garments, irrespective of whether or not such packing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work with newly manufactured garments on behalf of such employers and any of their employees;

**B. but excludes -**

- (a) belts, braces, garters, suspenders and armlets manufactured from leather;
- (b) boxing gloves;
- (c) retail dressmaking, i.e., the making of single garments to the measurement of individual persons;
- (d) retail millinery, i.e., the making of hats in shops for sale in such shops and the making of single hats to the measurement of individual persons;
- (e) tailor-made garments for individual persons, provided such garments are not manufactured in a factory;

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

**"Council"** means the Northern Chamber (Clothing) of the National Bargaining Council for the Clothing Manufacturing Industry;

**"employee"** means those employees falling within the jurisdiction of the scope of the 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, excluding the Millinery Sector, in any capacity or capacities in respect of which wages are prescribed in

clause 4 of this part of the Agreement, and shall be deemed to each contract of service to have been continuous from the time the employee enters this employer's service until the time such service is terminated: Provided that-

- (a) for the purpose of computing an employee's experience in the Clothing Sector, employment for 16 weeks in any half year shall be deemed to have been employment for the whole half-year;
- (b) a trainee in his first half-year of employment in the Clothing Sector, although having less than 16 weeks' but more than 13 weeks' experience on the last day of a half-year shall be deemed to have been in employment for the whole half-year;
- (c) experience in the Knitting Sector shall be regarded as experience in the Clothing Sector but not in the Millinery Sector;
- (d) the trial period of an employee in terms of 13 (1) (b) (iii) shall be deemed to be experience only if the contract of service is confirmed;
- (e) for the purposes of the Millinery Sector of the Industry only, the total period of periods of employment of an employee in the Millinery Sector, irrespective of the place of such employment or the class of work performed by such employee, other than that of a labourer or driver of a motor vehicle, shall include the total period or periods of employment in a shop of a Millinery Sector employer mainly or wholly engaged in the alteration and/or repair of ladies' and/or girls' hats, incidental to the sale by retail of such articles; and shall be deemed in each contract of service to have been continuous from the time the employee enters his employer's service until the time that such service is terminated: Provided that for the purposes of computing an unqualified employee's experience, employment of 16 weeks in any half-year shall be deemed to have been in employment for the whole half-year on condition that an unqualified employee in his first half-year of employment, although having less than 16 weeks' experience on the last day of the half-year, but more than 13 weeks, shall be deemed to have been in employment for the whole half-year;

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

**"hourly wage"** means, in the case of an employee, the weekly wage, divided by the number of ordinary hours of work per week prescribed for an employee of his class;

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

**"milliner"** means an employee who has had two or more years' experience in one or more of the following operations in a Millinery Sector establishment:

- (a) the design of hats;
- (b) the making of complete hats with material, excluding the making up of hats from material by machine;
- (c) the setting out and/or chopping out of patterns, excluding the cutting of trimmings;

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

**"nightwork"** 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 60 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 40-hour week of five days and 60 hours in any one week in respect of a watchman in the Clothing Sector and a 41-hour week of five days and 45 hours in any one week in respect of a watchman in the Millinery Sector;

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

**"permanent disability"**, as certified by a medical practitioner, means being permanently unfit for further employment in the Clothing Industry;

**"personal wage"** means the last wage paid by the employer which is higher than the prescribed wage and which is checked by the Council, in terms of clause 18 of the Agreement, plus any statutory increases prescribed in terms of this part of the Agreement since date of termination of employment: Provided that not more than the four most recent increases shall be taken into account in determining the personal wage: Provided further that where an employee has not been employed in the Industry for more than two years, the personal wage shall be the greater of the minimum currently prescribed and the last wage paid on termination of employment;

**"qualified employee"** in the case of an employee referred to in clause 4 (1) Categories A and B in the Schedule to clause 4 (1), means an employee who has six or more half-years' experience; and in the case of clause 4 (1) Category C, an employee who has nine or more half-years' experience, and in the case of clause 4 (1) Categories D and E, an employee who has four or more half-years' experience;

**"short time"** means a temporary reduction in the number of working hours of any employee in any one week below the number of hours prescribed for an employee of his class or temporary cessation of work by reason of the exigencies of the business, e.g. shortage of material or orders or the necessities of stocktaking;

**"task work"** means the setting by an employer or his representative to any employee of a definite number of garments or portions of garments, to be made 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;

**"trainee"** in the case of an employee referred to in clause 4 (1) Categories A and B, means an employee who has less than six half-years' experience; and in the case of an employee referred to in clause 4 (1) Category C, means an employee who has less than nine half-years' experience; and in the case of an employee referred to in clause 4 (1) Categories D and E, an employee who has less than four half-years' experience;

**“trimmer” or “stitcher”** means an employee engaged in one or more of the following operations in a Millinery Sector Establishment:

- (a) the application of trimmings such as elastic, ribbon, flowers or veiling to a ready blocked and shaped hat, according to a given model, by hand;
- (b) sewing by hand into hats of headbands, lining or leather, which may include as part of the same operation the stitching by hand of blocked crowns and brims which have been fused or pinned together;
- (c) making trimmings by hand according to a given design or pattern;
- (d) the wiring of brim or crown of hats by hand;
- (e) binding any edge of a hat with ribbon or other material, by hand;
- (f) cutting by hand of felt and straw strips for hat edges and trimmings;

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

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

**"unladen mass"** means the mass of any motor vehicle or trailer as recorded in a licence or certificate issued in respect of such motor vehicle or trailer by any authority empowered by law to issue licences in respect of motor vehicles;

**"wage"** means the portion of the remuneration, excluding the bonus earned in terms of clause 5 of this part of the Agreement, payable to an employee in respect of the ordinary hours of work as laid down in clause 9 of this part of the Agreement;

**"week"** means a period of five working days;

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

**"workplace"** means the place or places where the employees of an employer work; 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;

**"occupations"** means the jobs listed and described as follows:

**"applique cutter"** means an employee who cuts off the loose edges of pieces of material which have been embroidered onto garments or parts of garments;

**"artisan"** 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 other than a machine belt fixer and maintenance assistant referred to in clause 4 (1) Category G1 of this part of the Agreement, and for the purposes of this definition the expression "skilled artisan" means a person who has completed or is deemed to have completed a contract of apprenticeship in a trade designated or deemed to have been designated in terms of the Manpower Training Act, 1981, or who holds a certificate issued or deemed to have been issued to him by the Registrar of Manpower Training and conferring on him artisan status in terms of that Act and any other employee engaged in work normally performed by an artisan except where specifically otherwise provided;

**"assistant foreman"** means an employee who assists a foreman in the performance of his duties;

**"assistant supervisor"** means an employee who assists a supervisor in the performance of his duties;

**"bartacker"** means an employee engaged in sewing the edges of garments by using a sewing machine;

**"baster"** means an employee engaged in hand-sewing in setting a coat or parts of a coat into position preparatory to other operations, and/or in underbasting, i.e. hand-sewing linings of coats into position preparatory to sewing the edge seams, and includes an employee engaged on outbasting and a person operating a programmed automatic machine that joins or holds two parts of a garment together;

**"beader"** means an employee who sews beads onto garments or part of garments by hand;"

**"boiler attendant"** means an employee who, under general supervision, maintains the water level and steam pressure in a boiler and who makes, maintains or draws the fire in such a boiler and who removes ashes;

**"checker"** means an employee who examines the incompleated and/or completed garments for flaws;

**"clicker"** means an employee who cuts parts of garments from dies, using a mechanical or hydraulic press;

**"chopper out"** means an employee engaged in cutting out garments or parts of garments by hand from one or more layers of material;

**"cutter"** means an employee who, with the aid of a single pattern, cuts by hand or machine parts of knitted garments from one or more layers of body blanks;

**"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 in readiness for despatch;

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

**"embroiderer"** means an employee who operates a single-head machine; makes a predetermined logo by means of tracing and a frame, operates an embroidery machine, and threads up, adjusts tension, checks and/or examines work under needles, excluding a multihead machine operator;

**"embroiderer by hand"** means an employee who embroiders by hand using a needle and thread;

**"embroidery machine operator"** means an employee who operates a multi-head machine or machines;

**"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, which data may require further processing by office administration;

**"finisher"** means an employee who performs one or more of the following operations by hand: Putting pads or wadding into shoulders of coats, fastening or serging sleeveheads, wadding sleeveheads, felling silk facings already basted into position, making buttonholes by hand, and felling sleevehead linings by hand;

**"fitter-up"** means an employee engaged in the cutting room who takes the outsides of garments together with the cut-out linings (called trimmings) and adjusts the outsides and the insides together accurately so that the parts may go forward to the machine to be put together correctly;

**"foreman"** means an employee in charge of the employees in a factory, 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;

**"framer"** means an employee who inserts a piece of cloth or part of a garment into a frame preparatory to the embroidering thereof;

**"general worker (Clothing)"** means an employee engaged in one or more of the following operations in the Clothing Sector of the Industry:

Cleaning, i.e. cutting or nipping off threads by machine or hand and/or removing spots or marks from materials or garments, folding, sorting, pinning finished garments, stamping, marking, sloping by hand or machine, patent turning, cutting by hand or any trimming (not being piece goods) to a given length or shape, feeding into or taking out of automatic roller or form presses, pulling out bastings, soaping, turning sleeves or trousers inside out, marking by template and cutting to shape, excluding the operations performed by a "sharper by template", marking trimmings, labelling by machine other than a machine using needle and thread, making tea or similar beverages, or carrying garments or parts of garments from one place to another within an establishment, acting as messenger, and sweeping floors;

**"general worker (Millinery)"** means an employee engaged in one or more of the following operations in the Millinery Sector of the Industry:

- (a) laying up;

- (b) moulding of flowers;
- (c) cutting off surplus of brims along marked lines;
- (d) collecting and sorting hats;
- (e) fixing belts;
- (f) sheening and/or polishing and mangling hoods;
- (g) steaming of dusting hats;
- (h) straightening out the remnants;
- (i) stirring or grinding chemicals;
- (j) grinding shellac;
- (k) packing;
- (l) delivering or carrying messages, letters or other articles on foot, by means of a bicycle or a similar foot-propelled vehicle;
- (m) making tea or other similar beverages;
- (n) cleaning premises, utensils or other articles;
- (o) loading or unloading vehicles;
- (p) carrying, moving, stacking or sorting goods or waste;
- (q) making or maintaining fires;
- (r) opening or closing packages;

**"head cutter"** means an employee who is responsible for the efficient performance of duties by other cutters;

**"invisible mender"** means an employee who is engaged in repairing knitting faults in garments or parts of garments;

**"labourer"** means an employee engaged in one or more of the following operations: Cleaning premises, loading or unloading goods, carrying and/or stacking goods, removing refuse;

**"layer-up"** means an employee who is engaged in the laying of material in one or more thickness on the cutting tables and may include the duty of slitting the ends;

**"linker"** means an employee engaged in operating a linking machine used for the purpose of joining parts of a fully fashioned garment;

**"machine belt fixer"** means an employee who measures a leather belt and by means of a pair of pliers fits a belt to a sewing machine;

**"maintenance assistant"** means an employee who is engaged in oiling, greasing and cleaning sewing machines, and who may make adjustments or replace parts to sewing machines or other equipment used directly in the manufacture of the products of the workplace, such as chain hooks, bases, feed dogs, throat plates, tension controls, tension springs, presser feet, lifters, shuttles on bar-tack and button sew-on machines, and loopers on machines, and/or is engaged in cleaning plant, machines, vehicles, tools, utensils or articles other than garments;

**"marker-in"** means an employee who is engaged on marking-in patterns on cloth or any material, and includes an employee who makes the prototype markers;

**"mechanic"** means an employee (other than an artisan, machine belt fixer and/or maintenance assistant) who is wholly or mainly engaged in making repairs or adjustments to machinery or equipment used directly in the manufacture of the products of the workplace;

**"overlocker"** means an employee operating a sewing machine with one or more needles and thread which serges the edge of fabrics;

**"pattern grader"** means an employee who grades patterns to various sizes and makes ancillary patterns to a master pattern;

**"pattern maker"** means an employee engaged in designing and making patterns, but excludes a designer who makes only master patterns;

**"plain sewer"** means an employee performing one or more of the following operations by hand:

Felling crutch linings in trousers, felling hems, fastening permanent turn-ups, felling waistband linings or parts thereof, fastening catches in tops of trousers and various odds and ends of sewing, felling necks, shoulders or armholes of wastecoats, paddling collars or lapels, putting on bridles, fastening edgestraps and odds and ends of sewing, sewing buttons, felling hems of linings or seams of same already basted into position, felling bindings, making and sewing on hangers, canvases, and tacking, and all hand-sewing not elsewhere specified;

**"pleater"** means an employee engaged in one or more of the following operations:

Guiding material and paper through an automatic pleating machine, putting material between cardboard moulds and/or preparing for steam box in hand or mould-pleating process, taking materials out of moulds in hand or mould pleating process;

**"presser of garments"** means an employee who operates a pressing machine and presses a finished garment;

**"re-cutter"** means an employee who is engaged in cutting out and/or marking-in materials for replacing damaged or missing parts of a garment;

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

**"scooter driver"** means a driver of a three or two-wheeled motor vehicle used for the delivery of goods;

**"sample cutter"** means an employee engaged in marking-in and cutting out garment samples or parts thereof, where the conventional marking-in skill is not required;

**"sewing machinist"** means an employee engaged on operating a sewing machine using a needle and thread;

**"shaper"** means an employee engaged on shaping by hand designs of lapels and collars of coats preparatory to underbasting, but does not include trimming by hand;

**"shaper by template"** means an employee, other than a shaper, engaged on marking by template and cutting to shape of collars, lapels and/or fronts of ladies', men's and children's jackets and/or coats;

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

**"supervisor (Clothing)"** means an employee in a Clothing Sector establishment who, under supervision, is responsible for the efficient performance of the duties of the employees or a section of the employees in a workshop, but does not include an assistant supervisor;

**"supervisor (Millinery)"** means an employee in a Millinery Sector establishment, who is in charge of employees engaged on production in a workplace and who is responsible for the distribution and efficiency of their work;

**"tracer and/or marker"** means an employee who, with powdered chalk or other similar material, marks or traces the outlines of a pattern onto the material with the aid of a perforated lay marker;

**"under-presser"** means an employee who is engaged in pressing seams, linings, unfinished parts of garments and/or unfinished garments, or who may be engaged in any pressing operations incidental to further machining operations;

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

**"operations"** means all clothing manufacturing operations including those defined below:

"*beading*" means the application by means of needle and thread of beads, sequins or other similar articles to a garment for the ornamentation of such garment;

"*faggotting*" means the joining of two pieces of cloth side by side by means of ornamental stitches;

"*felling*" means the operation of folding one end of the fabric over the other and sewing it down in such a manner that the stitching does not appear on the other side;

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

"*patent fuming*" means turning out or over the edges of collar facings, belts, bands, cuffs, tabs, pockets and/or flaps by hand or machine and turning garments or parts thereof inside out;

"*pleating*" means the insertion of pleats or permanent folds into the cut-out parts of the skirt portion of a dress;

"*sloping*" means the marking and/or trimming of the shapes of the necks of shirts and underwear;

"*sorting*" means the sorting out of garments or parts of garments as required for various operations;

"*stamping*" means the stamping of sizes, identity or work numbers or other details on garments or parts of garments and/or labels.

### Screen Printing Operations

#### (1) Category 4D employees:

"**negative maker**" means an employee who prepares photographic negatives, separates colours in a design, paints onto clear film sheet in repeat with exact reference marks, as part of the preparation of screens for screen printing;

"**screen maker (engraver)**" means an employee who engraves and cures screens;

"**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;

#### (2) Category 4E employees:

"**assistant screen maker (engraver)**" means an employee who assists a screen maker (engraver);

"**assistant screen printer**" means an employee who assists in screen printing and who may screen print by hand;

**"darkroom assistant"** means an employee who makes photographic positives of clear sheets of design colours and masks positives for repeat;

**"mixing and filtering operator"** means an employee engaged in-

- (a) cleaning and preparing drums returned from printing machines;
- (b) cleaning mixing equipment;
- (c) ensuring thorough mixing and blending dyes and auxiliaries;
- (d) filtering mixed dyes;
- (e) handling drums from mixers to filter machines;
- (f) watching for malfunctions in mixing equipment;
- (g) operating a high-speed stirrer;
- (h) operating a tub washer;
- (i) removing solid or foreign articles from print paste;
- (j) supplying clean drums to colour weighers;
- (k) transferring identifying labels to drums of dye;

**"oven and curing operator"** means an employee engaged in drying and curing parts of garments after the printing operation;

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

- (a) applying masking tape set for automatic printing machine;
- (b) checking for faults and rectifying same;
- (c) clearing blockages by means of a high-pressure gun;
- (d) painting in any open motive pinholes;
- (e) painting in masking and making trial print proof;
- (f) placing screens in rack ready for use;
- (g) putting end rings into rotary screens;
- (h) retouching screens;

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

- (a) coating screens;
- (b) fitting gauze to frames;
- (c) operating a stretching machine;
- (d) placing screens in conditioning chamber;
- (e) preparing and checking screen frames;
- (f) removing grease from screens;

**"squeegee preparer"** means an employee who makes and prepares squeegees.

#### 4. WAGES

- A. The following provisions shall apply to employers and employees in the Clothing Sector of the Industry:
  - (1) Subject to the provisions of subclauses (2) (a), 2 (b), (3), (5) and (6), not less than the following minimum wages shall be paid to the undermentioned categories of employees employed in the Clothing Sector of the Industry, from the date of coming into operation of this part of the Agreement and on each pay day thereafter: Provided that trainees

whose increased experience as at 31 August 2008 entitles them to a higher wage in terms of the table below shall be paid the increased wage from the date of coming into operation of this part of the Agreement and on each pay day thereafter:

		<b>Wages - Group A (i.e Employers contributing to Productivity Incentive Scheme</b>	<b>Wages – Group B (i.e Employers NOT contributing to Productivity Incentive Scheme</b>
		<b>R</b>	<b>R</b>
<b>(A)</b>	<b>Pattern Maker and/or Grader:</b>		
	(i) Qualified:	1,254.80	1,260.60
	(ii) Learners:		
	first six months of experience	451.90	453.90
	second six months of experience	585.00	587.80
	third six months of experience	719.80	723.10
	fourth six months of experience	842.60	846.50
	fifth six months of experience	988.80	993.30
	next four months of experience	1,123.10	1,128.30
	Thereafter, the wage specified in (A)(i) i.e.	1,254.80	1,260.60
<b>(B)</b>	<b>Marker-In:</b>		
	(i) Qualified:	1,041.90	1,046.70
	(ii) Learners:		
	first six months of experience	451.90	453.90
	second six months of experience	549.50	552.10
	third six months of experience	648.10	651.10
	fourth six months of experience	746.60	750.00
	fifth six months of experience	845.10	849.10
	next four months of experience	943.80	948.00
	Thereafter, the wage specified in (B)(i) i.e.	1,041.90	1,046.70
<b>(C)</b>	<b>Mechanic:</b>		
	(i) Qualified:	1,016.20	1,020.90
	(ii) Learners:		
	first six months of experience	451.90	453.90
	second six months of experience	513.60	515.90
	third six months of experience	576.60	579.20
	fourth six months of experience	639.40	642.40
	fifth six months of experience	702.60	705.80
	sixth six months of experience	764.90	768.40
	seventh six months of experience	828.10	831.80
	eighth six months of experience	890.80	894.90
	next four months of experience	953.80	958.20
	Thereafter, the wage specified in (C)(i) i.e.	1,016.20	1,020.90
<b>(D)</b>	<b>Chopper Out, Cutter and/or Re-Cutter, Negative</b>		

		Wages - Group A (i.e Employers contributing to Productivity Incentive Scheme)	Wages – Group B (i.e Employers NOT contributing to Productivity Incentive Scheme)
		R	R
	<b>Maker, Screen Maker (Engraver), Screen Printer, Sample Cutter:</b>		
	(i) Qualified:	754.70	758.10
	(ii) Learners:		
	first six months of experience	451.90	453.90
	second six months of experience	527.00	529.50
	third six months of experience	603.20	606.00
	next four months of experience	679.90	683.00
	Thereafter, the wage specified in (D)(i) i.e.	754.70	758.10
<b>*(E1)</b>	<b>Sample Machinist:</b>	750.50	753.90
<b>(E)(a)</b>	<b>Sewing Machinist:</b>		
	(i) Qualified:	652.30	655.30
	(ii) Learners:		
	first six months of experience	451.90	453.90
	second six months of experience	501.40	503.80
	third six months of experience	550.90	553.50
	Thereafter, the wage specified in (E)(i)(a) i.e.	652.30	655.30
<b>(E)(b)</b>	<b>Finisher, Operator of a Linking, Overlocking and/or Sewing Machine; Invisible Mender Embroiderer, Embroidery Machinist (other than embroidery machine minder); Fagotter, Beader and/or Pleater by hand, Baster, Shaper, Fitter up; Checker, Presser of Garments, Assistant Screen Maker (Engraver), Assistant Screen Printer, Darkroom Assistant, Mixing and Filtering Operator, Oven and Curing Operator, Screen Controller, Screen Preparer, Squeegee Preparer and Despatch Packer:</b>		
	(i) Qualified:	652.30	655.30
	(ii) Learners:		
	first six months of experience	451.90	453.90
	second six months of experience	501.40	503.80
	third six months of experience	550.90	553.50
	next four months of experience	603.30	606.10
	Thereafter, the wage specified in (E)(i) i.e.	652.30	655.30
<b>(F1)</b>	<b>Machinist promoted to Assistant Supervisor:</b>		
	(i) Qualified:	775.30	778.80
	(ii) Learners:		
	first six months of experience	652.30	655.30
	second six months of experience	694.70	697.90
	third six months of	735.70	739.10

			Wages - Group A (i.e Employers contributing to Productivity Incentive Scheme	Wages – Group B (i.e Employers NOT contributing to Productivity Incentive Scheme
			R	R
		experience.		
		Thereafter, the wage specified in (F1)(i) i.e	775.30	778.80
<b>(F)</b>	<b>Asst Supervisor, other than a Machinist promoted to Asst. Supervisor; Despatch/Factory Clerk and Storeman:</b>			
	(i) Qualified:		775.30	778.80
	(ii) Learners:			
		first six months of experience	451.90	453.90
		second six months of experience	532.50	534.90
		third six months of experience	613.50	616.40
		next four months of experience	695.40	698.60
		Thereafter, the wage specified in (F)(i) i.e.	775.30	778.80
<b>(G)</b>	<b>Other Pressers, not provided for elsewhere; Underpresser; Presser of shirts, ties, pyjamas and other nightwear, hats, caps, underwear, knitwear, aprons, overalls and blouses without lace, embroidery, tucks and handmade pleats; Machine belt-fixer; Maintenance Assistance; Layer-up; Plain Sewer; Operator of a button covering, zip tacking and/or pleating machine; an employee engaged on the Trubenizing of collars and/or Clicker and Shaper by template; General worker; Applique Cutter; Tracer and/or Marker and/or Framer; Pleater and Embroidery Machine Minder:</b>			
	(i) Qualified:		541.20	543.80
	(ii) Learners:			
		first six months of experience	451.90	453.90
		second six months of experience	473.80	475.90
		third six months of experience	496.10	498.30
		next four months of experience	518.30	520.70
		Thereafter, the wage specified in (G)(i) i.e.	541.20	543.80
<b>(H1)</b>	<b>Foreman:</b>		1,711.90	1,719.80
<b>(H2)</b>	<b>Supervisor, Assistant Foreman, Head Cutter:</b>		933.70	938.10
<b>(H3)</b>	<b>Artisan:</b>		1,954.40	1,963.50
<b>(H4)</b>	<b>Labourer, Scooter Driver and/or Boiler Attendant:</b>		601.40	604.20
<b>(H5)</b>	<b>Watchman:</b>		694.90	698.10
<b>(H6)</b>	<b>Driver (Light Motor Vehicle):</b>		685.10	688.20
<b>(H7)</b>	<b>Driver (Medium Motor Vehicle):</b>		732.40	735.70

The wage levels specified in the table above shall be increased by 0,5%, for those companies who do not have an agreed productivity incentive scheme in place, by 1 November 2008 and

as per Clause 29.

- (2) (a) Save as provided in subclauses (1), (2) (d) and (3), nothing in this part of the Agreement shall operate to reduce the personal wage of an employee.
- (b) Notwithstanding the provisions of subclause (1), an employee, other than a trainee, who, on the date of coming into operation of this part of the Agreement was entitled to a weekly wage in excess of the wage reflected in column 1 below for that employee's category of work, shall be entitled to receive from his employer the increase reflected in column 2 below from the date of coming into operation of this part of the Agreement and on each pay day thereafter:

Category	Wage – Group A		Wage – Group B	
	Column 1 (R)	Column 2 (R)	Column 1 (R)	Column 2 (R)
A	1254.80	79.30	1260.60	79.70
B	1041.90	65.90	1046.70	66.20
C	1016.20	64.30	1020.90	64.60
D	754.70	47.70	758.10	47.90
E1	750.50	47.50	753.90	47.70
E (a)	652.30	41.20	655.30	41.40
E (b)	652.30	41.20	655.30	41.40
F1	775.30	49.00	778.80	49.20
F	775.30	49.00	778.80	49.20
G1	541.20	34.20	543.60	34.40
H1	1711.90	108.20	1719.80	108.70
H2	933.70	59.00	938.10	59.30
H3	1954.40	123.60	1963.50	124.20
H4	601.40	38.00	604.20	38.20
H5	694.90	43.90	698.10	44.10
H6	685.10	43.30	688.20	43.50
H7	732.40	46.30	735.70	46.50

- (c) The provisions of subclause (2) (b) shall not apply to an employee earning more than twice the Category B wage.
- (d) Notwithstanding the provisions of subclause (2) (a) and, subject to the minimum wages prescribed in this clause, the wage agreed to between an employer and a new employee shall become the wage payable.
- (3) 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 be 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 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 the assistant supervisor category shall be credited with six months' experience as an assistant supervisor and shall be entitled to a wage in accordance with credited plus actual experience in that category.
- (4) Notwithstanding anything to the contrary contained in this part of the Agreement, the increase to which a learner may become entitled in terms of subclause (1) shall be paid on the first day of each half-year, on the basis of the learner's experience on the last working day.
  - (5) Notwithstanding anything to the contrary contained in this part of the Agreement, the commencing wage of an employee who has had only bespoke dressmaking experience shall be determined, after a trial period not exceeding 20 working days, by the employer and employee concerned in conjunction with the Council. That employee shall then be deemed to be a learner starting with only that period of experience which could enable him to earn the wage agreed to by the employer, the employee and the Council.
  - (6) Notwithstanding the provisions of this clause and the provisions of clause 7 (1) relating to weekly payment of wages, an employer shall be permitted to pay an employee whose weekly wage is greater than one-and-a-half times the qualified machinists' wages at that time, a monthly salary: Provided that the amount so paid shall not be less than four-and-one-third times the weekly wage paid or prescribed in this clause, whichever is the greater: Provided further that such monthly salary shall be paid during working hours and not later than the last working day of the month to which it relates.
  - (7) **Transitional provision following the 2009 negotiations:** In addition to the wage that an employee is entitled to in terms of this part of the Agreement, he shall be entitled to receive, by no later than six weeks from the date from which the Minister declares this part of the Agreement binding by publication in the Gazette (hereinafter referred to as implementation date) and in equal weekly instalments, an amount equal to the difference between the remuneration paid to him calculated from 1 September 2009 until the implementation date and the remuneration based on his wage, as specified in this part of the Agreement, calculated from 1 September 2009 until the implementation date.

This provision shall apply to both the Clothing and Millinery Sectors of the Industry.

**B. The following provisions shall apply to employers and employees in the Millinery Sector of the Industry:**

- (8) Subject to the provisions of this part of the Agreement, the minimum wages that shall be paid to and accepted by the undermentioned classes of employees, employed at Millinery Sector establishments, shall be as follows:

		Wages - Group A (i.e Employers contributing to Productivity Incentive Scheme	Wages - Group B (i.e Employers NOT contributing to Productivity Incentive Scheme
		R	R
(a)	<b>Supervisor:</b>	1,053.20	1,055.70
(b)	<b>Milliner (Upgrade to Trimmer):</b>		
	(i) Qualified:	835.40	837.40
	(ii) Learners:		
	first six months of experience	591.80	593.20
	second six months of experience	647.10	648.60
	third six months of experience	710.50	712.20
	next four months of experience	788.00	789.90
	Thereafter, the wage specified in (b)(i) i.e.	835.30	837.30
(c)	<b>(1) Blocker-Front (Upgrade from Assistant Blocker):</b>		
	(i) Qualified:	702.90	704.60
	(ii) Learners:		
	first six months of experience	582.60	584.00
	second six months of experience	601.50	602.90
	third six months of experience	639.40	640.90
	next four months of experience	669.20	670.80
	Thereafter, the wage specified in (c)(1)(i) i.e.	702.90	704.60
	<b>(2) Driver:</b>	702.90	704.60
(d)	<b>Machine Operator &amp; Chopper-Out:</b>		
	(i) Qualified:	650.40	652.00
	(ii) Learners:		
	first six months of experience	410.10	411.10
	second six months of experience	468.70	469.80
	third six months of experience	501.90	503.10
	next four months of experience	579.30	580.70
	Thereafter, the wage specified in (d)(i) i.e.	650.40	652.00
(e)	<b>Trimmer/General Worker/Labourer/Assistant Blocker:</b>		
	i) Qualified:	554.40	555.70
	(ii) Learners:		
	first six months of experience	410.10	411.10
	second six months of experience	449.50	450.60
	third six months of experience	482.70	483.90
	next four months of experience	519.30	520.60
	Thereafter, the wage specified in (d)(i) i.e.	554.40	555.70
(f)	<b>Boiler Attendant &amp; Watchman:</b>	606.40	607.90

The wage levels specified in the table above shall be increased by 0,5%, for those companies who do not have an agreed productivity incentive scheme in place, by 1 November 2008 and as per Clause 29.

- (9) Nothing in this part of the Agreement shall operate to reduce the wage of an employee who was paid higher than the prescribed minimum rate. Such employee shall continue to receive the higher rate, as if it were the minimum in respect of that employee. This

provision shall also apply if an employee obtains employment with another employer in the Industry.

- (10) Any calculation of wages or deductions from wages shall be based on a five-day week, i.e. the weekly wage divided by five.
- (11) The minimum wage due to a monthly paid employee shall be calculated at four-and-a-third times the weekly wage due.
- (12) An employer who requires an employee of one class of his employees to perform the work of another class shall either pay-
  - (a) a wage calculated on the highest weekly rate than his own class for that period; or
  - (b) not less than the wage for the period calculated on the rate specified in the rising scale for the highest class, resulting in a higher wage than that of his own class: Provided that the provisions of this clause shall not apply where the difference between classes is based on age or experience.
- (13) Where an employer transfers an employee from one class of work to another, the Council shall be notified in writing of such transfer within 14 days of the date on which the change was put into operation: Provided that where any such change has been in operation for a period less than two weeks and the work which he was performing prior to the change, no notification need be sent to the Council as herein specified.

#### **5. BONUS SCHEMES, TASK WORK AND PIECEWORK**

- (1) No employees shall be employed on task work or piecework in any workplace: Provided that an employer may agree with any one or more of his employees for the payment of bonuses for any work performed by such employee or employees in excess of the normal day's or week's work, subject to clause 9, having been mutually agreed upon between the employer and the employee or employees: Provided further that such bonus system shall enable an employee to earn a bonus amounting to at least 10 per cent of the relative prescribed wage for an employee of his class.
- (2) Any employer who wishes to introduce a bonus system in his workplace or to effect alterations in one already operating, shall, prior to the introduction or alteration thereof, furnish the under-mentioned information to the Secretary of the Council and obtain the Council's approval of such system or alteration, and no bonus system shall be introduced or altered without the Council's approval:
  - (a) The rate of the bonus and the method of calculating the amount payable as a bonus;
  - (b) the period in respect of which the bonus is calculated from time to time;
  - (c) the day upon which the amount of the bonus earned by an employee during each such period is payable.
- (3) The provisions of subclause (2) hereof shall not have the effect of rendering it unlawful for any employer to continue to operate a bonus system of which he has notified the Council under any previous agreement for the Industry.

#### **6. SHORT TIME**

- (1) Where short time has been or is introduced on any workplace after notifying the Council in writing, an employee who is not required to work on any day shall be given notice of that fact not later than closing time on the working day prior to the day on which his services are not required, except that, if short time is to be worked on a Monday or starting from a Monday, an employee who is not required to work on such

Monday shall be given notice of the fact not later than closing time on the preceding Thursday in the case of the Clothing Sector of the Industry and by not later than 12:00 the previous Friday in the case of the Millinery Sector of the Industry.

- (2) An employee who attends the workplace on any day shall, unless he has received notice in terms of subclause (1) that his services will not be required on such day, be employed or be paid a full day's wages.
- (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.

## 7. PAYMENT OF AMOUNTS DUE TO EMPLOYEES

### A. The following provisions shall apply to employers and employees in the Clothing Sector of the Industry:

- (1) Subject to the provisions of clause 13 (5) of the Agreement, wages and other amounts due to employees shall be paid weekly in cash, during working hours on Friday, or may be deposited into the employee's account with a financial institution: Provided that where an employee's services terminate on a day other than a Friday, any amounts due to him shall be paid immediately upon such termination: Provided further that when an employee is working short time or the ordinary pay day is a holiday, payment in terms of this subclause shall be made before the employee finishes work for the week.

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) No deduction of any description shall be made from amounts due to an employee except as provided below:
  - (a) Where an employee is absent from work other than at the request or on the instructions of the employer, a pro rata amount for the actual time lost may be deducted from his total remuneration;
  - (b) subject to the provisions of clause 6 (1) of this part of the Agreement, where short time has been introduced, a deduction not exceeding the amount of the employee's hourly wage in respect of each hour not worked may be made;
  - (c) where an employer closes his workplace during the month of December and/or January owing to the holiday recess and his employees have been paid holiday pay in terms of the provisions of clause 12, wages may be deducted for the actual period of the holiday recess but not exceeding a period of 15 working days;
  - (d) where an employer supplies an employee with tea, he may deduct 40c per week from his wages;
  - (e) with the consent of the employee, deductions may be made by an employer for insurance or pension funds, or for dental plates and other dental work not otherwise provided for, or for purposes of repaying any money owing to Council funds or other benefit funds operated by the Council;
  - (f) contributions to Council funds shall be deducted;
  - (g) contributions to the Medical Benefit Society shall be deducted;
  - (h) the cost of equipment supplied to employees may be deducted in terms of clause 16 of this part of the Agreement;
  - (i) if, owing to the stoppage of machinery, no work is available for an employee, deductions may be made by the employer from the wages of such employee only for the time lost in excess of two hours;

- (j) any amount paid by an employer on behalf of an employee in order to comply with any law or order of court may be deducted;
  - (k) with the written consent of an employee, deductions may be made from the wages and/or holiday pay for amounts owing to an employer in respect of money borrowed and in respect of goods purchased by the employee from the employer: Provided that the amounts so deducted in respect of such goods purchased shall not exceed one-third of the amount due to the employee as wages or holiday pay;
  - (l) contributions to the Slack Pay Fund shall be deducted;
  - (m) contributions to the Provident Fund shall be deducted;
  - (n) an employer shall deduct trade union subscriptions and levies from trade union members on written authorisation, other than where an exemption has been granted by the Bargaining Council: Provided such monies have been determined in terms of the union's constitution; the employer shall forward such amounts so deducted to the Secretary of the Council; PO Box 5101, Johannesburg, 2000, for transmission to the union;
  - (o) contributions to the Sick Pay Fund shall be deducted;
  - (p) an amount may be deducted in respect of the cost of an over-all supplied as provided in clause 16 (2) of this part of the Agreement.
- (3) (a) All cash payments to employees shall be made in sealed envelopes which shall be retained by the employee.
- (b) Payments may be made by bank transfer, bank deposit or by cheque.
- (c) Payments must be accompanied by a payslip with the following details: Name and factory number of the employee, the weekly wage, number of hours worked, amount earned for the time worked, amount of any bonuses earned, amount of holiday pay (if any), details of all deductions made from such amount, the amount contained in the envelope and the week in respect of which the wages are paid.
- (4) Particulars of all deductions made shall be entered in the wage register.
- (5) An employee, on commencement of maternity leave, shall be entitled to a payment in terms of clause 7 (7) (d) of the Fund Collective Agreement.
- (6) (a) Each employee must be paid a bonus on the day of his employer's annual closure in December of each year, equivalent to 2,57% 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 bonus paid by an employer.
- (c) For purposes of calculating this bonus, absences of any nature may not be taken into consideration.

**B. The following provisions shall apply to employers and employees in the Millinery Sector of the Industry:**

- (1) Wages and other amounts due to an employee shall be paid weekly during working hours: Provided that where an employee's services are terminated on a day other than a pay day, any amounts due shall be paid immediately upon such termination. Failure to pay the amounts immediately, the employer shall pay the employee four hours' pay for every day that the employee is required to collect amounts due at the workplace.
- (2) Pay may be made in cash or by cheque, or may be deposited into the employee's account with a financial institution, or by bank transfer: Provided that there is prior

consultation to reach agreement on who would bear the additional costs which arise in consequence.

- (3) Payment shall be accompanied by a pay slip with the following details of the employee:
  - (a) The name, occupation and clock-card number;
  - (b) the date of employment;
  - (c) the rate of pay;
  - (d) the total ordinary hours worked;
  - (e) the overtime hours worked and the overtime rate;
  - (f) any other payments due to the employee;
  - (g) the deductions made and the reason for the deductions; (h) the period in respect of which payment is made; and
  - (i) the actual amount paid to the employee.
- (4) Payment in cash shall be made in an envelope and during working hours.
- (5) Where an employee is working short time, or the nominated pay day is a holiday, payment shall be made before the employee finishes work for the week.
- (6) No deductions of any description shall be made from an employee's remuneration, other than the following:
  - (a) Whenever an employee is absent from work, other than on the instruction or at the request of his employer.
  - (b) When an employee commences employment with an employer after the beginning of the working week of the workplace concerned, a deduction proportionate to the actual time lost may be made from the remuneration of such employee.
  - (c) Where short time has been introduced, a deduction may be made for the actual time not worked.
  - (d) Where an employer closes his workplace during the December shutdown, wages may be deducted for the actual period of the holidays recess up to a maximum of 15 working days.
  - (e) With the written consent of the employee, deductions may be made by an employer for insurance, provident or pension funds, or for dental plates or dental work not otherwise provided for, or for purposes of repaying a housing loan in terms of a housing loan scheme, approved by the Council.
  - (f) Contributions to the-
    - (i) Council;
    - (ii) Medical Benefit Society;
    - (iii) Sick Pay Fund;
    - (iv) Provident Fund.

- (g) Where, owing to the stoppage of machinery, no work is available for an employee, deductions may be made by the employer from the wage of such employee for time lost in excess of two hours.
  - (h) Where an employer is legally or by an order of a competent court required or permitted to deduct any amount.
  - (i) With the consent of the employee, deductions may be made by an employer for contributions to the funds of the trade union.
- (7) Each employee shall be paid a bonus on the day of his employer's annual closure in December of each year, equivalent to one week's wages: Provided that a pro-rata share of the bonus shall be paid to an employee who leaves employment before the annual closure.
  - (8) The bonus is inclusive of and not additional to any bonus paid by an employer.
  - (9) For purposes of calculating the bonus, absence of any nature may not be taken into consideration.

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

The following provisions shall apply to employers and employees in the Clothing Sector of the Industry:

- (1) An employer shall not employ an unqualified employee unless he has in his employ two qualified employees, and for every two qualified employees not more than three unqualified employees shall be employed: Provided that for the purpose of this subclause an unqualified employee receiving not less than the total wage of a qualified employee of his class shall be reckoned as a qualified employee: Provided further that employees, for whom a flat rate of payment is prescribed, shall not be included for the purposes of this subclause.
- (2) Notwithstanding the provisions of subclause (1), no employer shall employ an assistant supervisor unless he has in his employ a supervisor, and for each supervisor he has in his employ, not more than three assistant supervisors shall be employed.

The following provisions shall apply to employers and employees in the Millinery Sector of the Industry:

- (3) One qualified milliner and one qualified trimmer shall be employed before a trainee milliner or trimmers may be employed in a workplace. For every five trainee milliners and/or trimmers employed in a workplace, at least one qualified milliner and one qualified trimmer shall be employed.
- (4) One qualified machine operator shall be employed before employing any other trainee machine operators. For every qualified machine operator, two trainee machine operators shall be employed.

### **9. HOURS OF WORK**

- (1) An employer shall not require or permit an employee, other than an employee referred to in subclause (4)-
  - (a) (i) to work for more than 40 hours, excluding meal intervals, in any one week at a Clothing Sector establishment:
  - (ii) For more than 41 hours in any one week at a Millinery Sector establishment;

- (b) to work for more than five days in any week;
  - (c) on Saturdays or Sundays;
  - (d) (i) to work more than eight hours per day: Provided that extra time not exceeding 30 minutes per day may be worked on a Monday, Tuesday, Wednesday, and Thursday, if the working time on Friday of such wage week is shortened by the extra time worked or to be worked on the other four days if the employee is employed at a Clothing Sector establishment;
  - (d) (ii) for more than eight and a half hours a day, excluding Friday, where the normal hours shall be half an hour less if the employee is employed at a Millinery Sector establishment;
  - (e) (i) to work before 07:00 or later than 16:45 or during the rest intervals provided for in subclause (2), on any day from Monday to Friday, inclusive, if the employee is employed at a Clothing Sector establishment;
  - (e) (ii) before 07:30 or after 18:00 from Monday to Friday or during the rest interval, if the employee is employed at a Millinery Sector establishment;
  - (f) (i) to work more than five hours, without a meal interval of not less than 30 minutes and not more than one hour's duration, except in accordance with the provisions of clauses 10 of this part of the Agreement if the employee is employed at a Clothing Sector establishment;
  - (f) (ii) to work for longer than five hours without an uninterrupted interval of at least one hour if the employee is employed at a Millinery Sector establishment.
- (2) 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 hours after the commencement of the morning work period and as near 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 to the employees at the commencement of each rest interval and meal interval every day from Monday to Friday, inclusive.
- (3) An employer may only require or permit an employee to perform nightwork, if so agreed, and if-
- (a) the employee is compensated by the payment of an allowance, which may be a night shift allowance, or by a reduction of working hours; and
  - (b) transportation is available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's night shift.
- This provision shall not apply to the Millinery Sector.
- (4) **Exclusions:** The provisions of this clause shall not apply to a watchman: Provided that the watchman shall not be required to work-
- (a) for more than 45 hours per week as from 1 December 2000; or
  - (b) for more than six days in anyone week:
- Provided further that the employer may require his watchman to work on the seventh day of the week and 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.

This provision shall not apply to the Millinery Sector.

- (5) In the case of Millinery Sector establishments, the Council shall be notified of any change in the hours of work.
- (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 prescribed in clauses 9 (1) (a) and (d), and 4 (a) and (b), may not be worked in excess of the limitations laid down in subclause (2) without the prior written consent of the Council.
- (2) Notwithstanding the provisions of clause 9 (1), an employer may, subject to the provisions of this clause, permit an employee to work overtime: Provided that no employer shall permit any employee to work overtime-
- (a) for more than two hours on any working day;
  - (b) on more than three consecutive days;

- (c) for more than 10 hours in any calendar week;
- (d) on more than 60 days in any year;
- (e) after completion of his ordinary working hours, for more than one hour on any day, unless he has-
  - (i) given notice thereof to such employee before midday; or
  - (ii) provided such employee with an adequate meal before he has to commence overtime; or
  - (iii) paid such employee an allowance of R5,00 in sufficient time to enable the employee to obtain a meal before the overtime is due to commence.
- (3) Payment for overtime worked 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.
- (4) An employer shall pay an employee who works on a Sunday, double the employee's rate of pay for the number of hours worked.
- (5) No employee shall be required to work overtime without his consent.
- (6) No employee shall be dismissed or prejudiced in his employment by reason of his refusal to work overtime.
- (7) No employee shall be required or permitted to work overtime between the hours of 18:00 and 06:00.
- (8) *Exclusons:* The provisions of subclauses (2) (b), (3) and (4) shall not apply to a watchman.
- (9) 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.
- (10) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.

## **11. 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 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 in writing setting out full particulars of such change within seven days of its taking place:
  - (a) A change of name;
  - (b) a 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 the Agreement;
  - (g) the commencement of any other business covered by this part of the Agreement.

## 12. HOLIDAY LEAVE

- (1) Every employer shall, subject to the provisions of subclause (2), in the month of December of each year and not later than the 24th of that month, grant to each of his employees who has been in his employ from any date prior to the first day of February of the same year, and whose services have not been terminated before 1 December, 15 working days' holiday on full pay: Provided that an employee who during any year has been absent from work for a continuous period of six months or more on confinement or 12 weeks or more for any other reason, shall be paid holiday pay in terms of subclause (2). No such employee shall be paid less than three weeks' wages as annual leave pay. 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 commencement of the period of holiday leave.
- (2) An employee-
  - (a) who commenced work with an employer on or after 1 February in any year; or
  - (b) who commenced work with an employer before 1 February in any year, and whose employment terminated before 1 December of that year, shall be paid in lieu of holiday leave for the period of employment in that year an amount equal to "a" divided by "b" x "c" x "d", where-
    - a = 15 days
    - b = 12
    - c = actual weekly wage divided by 5
    - d = number of months of employment in the current year.

The holiday pay due in terms of this subclause shall be paid by the employer not later than the last working day of that year or, if the employee's employment terminates before that day, on the day he leaves the employer's service except as provided for in clause 13 (5) of this part of the Agreement.

The provision of paragraph (a) and (b) shall not apply to employees employed in the Millinery Sector of the Industry, to whom paragraph (c) below shall apply:
  - (c) An employee who commenced employment after 1 February, or who terminates

his services before the first day in December, shall be paid holiday pay equivalent to 1,25 days' pay for every completed month of service.

- (3) In determining the period of employment in respect of which holiday pay must 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 instructions 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;

amounting in the aggregate in any year to not more than 12 weeks in respect of the periods referred to in paragraphs (a) and (b) plus up to six months in respect of the period referred to in paragraph (c).

- (4) Every employer shall grant to each of his employees, including watchmen, New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day, Day of Goodwill as paid holidays, and no employer shall employ an employee and no employee shall work on these twelve (12) days and, in addition, each 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 meal 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 closing his factory in terms of subclause (1) for a period which includes the Day of Reconciliation, Christmas Day, Day of Goodwill and New Year's Day such employer shall pay a full day's pay in respect of each of such day to each of his employees in his employ on the date he so closes his factory. In addition, he shall pay a full day's pay in respect of these four paid public holidays to each employee whose contract of service is terminated on or after the 15th day of November but before the date he closes his factory: Provided that such an employee has been in continuous employment of his employer for a period of not less than six months immediately prior to the 15th day of November: Provided further that the contract is not terminated by the employee concerned or that he is not summarily dismissed for any good cause recognised by law as sufficient.

The provisions of this subclause shall not apply to cases where the reason for the employer's closing his factory is his intention forthwith to discontinue business in the Industry. For the purposes of this subclause, the expression "employment" shall have the same meaning as in subclause (3).

The above provisions of this subclause shall not apply to the Millinery Sector of the Industry, in respect of which the following shall apply:

An employee whose services are terminated on or after 1 December, shall be paid a full day's wage in respect of the Day of Reconciliation, Christmas Day, the Day of Goodwill and New Year's Day: Provided that this shall not apply in the case of an employee who is dismissed on the grounds of misconduct or who commenced employment later than 1 July of that year.

- (6) 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 in subclause (1).

- (7) 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 the Day of Goodwill, falling on a Saturday or Sunday, the employer shall, subject to subclause (5) of this clause, pay to each of his employees an extra day's pay on the first 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.
- (8) Notwithstanding the provisions of clause 7 (2), an employer may close his establishment 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 is entitled to six consecutive months' unpaid maternity leave.
- (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 a date from which a medical practitioner or 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 for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.
- (e) An employee must notify an employer, 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 subparagraph (e) must 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 must 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 nightwork, as defined in this part of the Agreement, or her work poses a 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 must grant an employee who has been in his employ for longer than four months, three days' unpaid family responsibility leave, which the employee is 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 paragraph (i) (a) for which the leave was required.
- (d) An employee's unused entitlement to leave in terms of this subclause lapses 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-and-a-fifth times his daily wage in respect of each complete month of employment, calculated from the date of commencement of his employment or from the first 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.
- The provisions of paragraph (e) above shall not apply to employees employed in the Millinery Sector of the Industry.
- (12) The following sick leave provisions shall apply only to employees employed in the Millinery Sector of the Industry:
- (a) All employees shall be entitled to 10 days' sick leave on full pay in any 12 months.
  - (b) During the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked.

### 13. TERMINATION OF EMPLOYMENT

- (1) Subject to the provisions of paragraphs (d), (e) and (f) of this subclause, written notice 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: Provided that this shall not affect-
- (a) the right of an employer or employee to terminate the contract of service without notice for any cause recognised by law as sufficient;
  - (b) any written agreement between the employer and the employee providing for a longer period of notice than one week: Provided further that-
    - (i) an employer may pay an employee wages for and in lieu of the period of

- notice specified in this clause or agreed upon in terms of subclause (1) (b);
- (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 days in respect of monthly paid employees, of the period of employment of an employee by an employer shall (unless otherwise stated in a written agreement) be deemed to be a trial period and such employment may be terminated either by the employer or by the employee at any time within such trial period by giving 24 hours' notice;
- (c) Monthly paid employees employed in the Clothing Sector of the Industry shall give or be given not less than 30 days' notice in writing, to be given in advance on the first or the 15th day of the month to take effect from such day;
  - (d) monthly paid employees employed in the Millinery Sector of the Industry shall give or be given not less than two weeks' notice, in writing.
- (2) An employee put off during the currency of any period of notice given in terms of subclause (1) shall receive full pay for such week, or in the case of a monthly paid employee, full pay for the unexpired period of such notice.
- (3) No employer shall terminate the services of any employee by reason of such employee's-
- (a) approaching confinement;
  - (b) absence from work through illness: Provided that-
    - (i) the employer is notified within three 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, upon obtaining written permission from the employer for such leave.
- (4) Subject to the provisions of subclause (3), 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-
- (a) the employer attempts to contact the employee in writing at the last-known address supplied by the employee;
  - (b) the employee shall be allowed to lodge with his employer a written appeal against his dismissal.
- (5) If an employee leaves without notice, the employer shall have the right to withhold an amount not exceeding the weekly wage if the employee is paid a weekly or monthly wage if such employee is paid monthly, in lieu of notice: Provided that the Council shall be notified in writing and any money owing to the employee after the above deduction, shall be sent to the Council's offices within seven days of the fifth day of absence.
- The provisions of this subclause shall mutatis mutandis apply to any termination of employment in terms of subclause (1) (a).
- (6) If an employee leaves without notice, the employer shall have the right to withhold an amount not exceeding the weekly wage of such employee, and the employee's service card, together with any balance of wages and holiday pay due, shall be forwarded to the Secretary of the Bargaining Council, P.O. Box 5101, Johannesburg, 2000, not earlier than the tenth day nor later than the 21st day of such absence. Any amount so

withheld by the employer shall be forfeited by the employee concerned unless such employee can prove that he did not leave without notice.

- (7) 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 12.
- (8) 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 12 (9).
- (9) Notwithstanding the provisions of subclauses (1), (3) and (4), no employer shall, in terms of the Act, unfairly terminate the services of on an employee.

#### **14. 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 wages for each completed year of continuous service with that employer: Provided that previous employment with the same employer must 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 60 years or older, the employer shall have no liability for retrenchment pay.

#### **15. PREMIUMS**

No premium shall be charged or accepted by an employer for the training of an employee.

#### **16. OVERALLS AND EQUIPMENT**

##### **A1. OVERALLS (provisions for employers and employees in the Clothing Sector of the Industry)**

- (1) Every employer shall, within three months of the commencement of employment of an employee, issue an employee with a new overall and shall thereafter issue such employee with a new overall annually: Provided that if overalls were issued to an employee in terms of the former clause 25, the new overall shall be issued to such

employee not later than 1 July of each year. 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, away from the workplace where he is employed, of such overalls: Provided further that an employer may launder such overalls and withdraw the right of employee to take such overalls away from the workplace where he is employed.

- (2) An employee shall, on termination of his services, return the overall last issued to him, and should an employee fail to return the overall, the employer shall be entitled to deduct R5,00 from his wages and/or holiday pay.
- (3) For the purpose of this clause, the terms "overall" shall include protective garments approved by the Council.
- (4) Every employer shall keep a record of overalls issued reflecting the name of the employee receiving the overall, the signature of the employee, the date of issue and date of return and shall retain such record for inspection by the Council's designated agents, as required.

**A2. OVERALLS (provisions for employers and employees in the Millinery Sector of the Industry)**

- (1) An employer shall, within six months of the commencement of employment of an employee or six months of the date of publication of this part of the Agreement, issue every employee with two new overalls of the required size and as approved by the Council. Thereafter, two overalls shall be issued to every employee every 12 months.
- (2) 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 such overalls and withdraw the right of an employee to take such overalls away from the workplace where he is employed. 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.
- (3) 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, such employer, having been given two weeks' written notice by the Council, shall be liable to pay to his employee, as penalty, an amount equal to R1,50 per overall not issued in respect of every period of 30 days which has lapsed from the due date of issue of such overall or overalls.
- (4) It shall be compulsory for an employee who has been issued with an overall or overalls in terms of subclause (1) to wear such overall or overalls while at work, and the employer shall have the right to warn an employee failing to wear an overall at work and to notify such employee, in writing, that he must appear at work wearing an overall on the working day following the day on which the notice is given. Should an employee fail to appear at work wearing an overall for five consecutive days, due notice in writing having been given to the employee, the employer shall have the right to issue such employee with an overall and deduct R1,50 from the wages of such defaulting employee. The deduction referred to in this clause shall be made from the due wages of the employee on the first pay day following the failure to appear with an overall or on the first pay day after the issue of the new overalls.

**B. EQUIPMENT (Provisions for employers and employees in the Clothing Sector of the Industry only)**

- (1) Every employer shall supply equipment to his employees who need them for the purpose of their employment, at the price paid therefor by the employer.
- (2) The cost of such equipment 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 equipment in good order, free of charge.
- (4) An employee shall be responsible for the replacement of equipment issued to him that has been lost, provided that the employer supplied the employee with individually lockable storage for such equipment.

## 17. CONTRACTS

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

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

(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 must be employed, subject to the same terms and conditions as prescribed in this Collective Agreement and other employees of the same job category;
- (c) a fixed-term contract must be reduced to writing and must 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 applications where applicable) concluded in the Industry must be forwarded to the Secretary of the Council, P.O. Box 5101, Johannesburg, 2000, for registration and processing by no later than seven days after commencement of duty of such employee.

## 18. ENGAGEMENT OF PERMANENT AND CONTRACT EMPLOYEES

- (1) An employer shall, before engaging an applicant for work, require such applicant to produce a service card issued by the Council, in the form and manner specified by the Council : Provided that, in the case of persons who have not previously been employed in the Clothing Industry (Northern Areas), a period of seven days may elapse before production of the service card shall be required.
- (2) If, during or on completion of the trial period in terms of clause 13 (1) (b) (iii), the contract of service is confirmed, the employer shall immediately on such confirmation enter in the service card the name of his factory, occupation of the employee, date of commencement of employment and prescribed wage of such employee and forward the card, within three days of such confirmation, to the Secretary of the Council, P.O. Box 5101, Johannesburg, 2000, for checking, together with a statement in the form and manner specified by the Council.
- (3) Such information as is required by the Council shall be taken from the service card as soon as reasonably possible, after which the card shall be returned to the employer who shall retain it until the employee leaves his employ, whereupon the employer shall enter on the card the date of termination of employment and the prescribed wage on termination and return the card to the employee. The employee shall thereupon surrender his doctor's card in exchange for his service card: Provided that if the

employee is unable to surrender his doctor's card the employer shall immediately forward the service card to the Council's office, where the employee may make application for the service card.

- (4) If, during a period of employment, an employee is transferred from one occupation to another, the employer shall, immediately on such transfer, enter in the service card the new occupation of the employee, the date of such transfer and the wage paid to such employee on the date of transfer, and forward the card to the Secretary of the Council, P.O. Box 5101, Johannesburg, 2000, for checking, together with a statement in the form and manner specified by the Council.

## 19. EXEMPTIONS

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

- (1) Any business entity, whether a party or a non-party to the Council, which is registered with and falls within the Council's registered scope for the purposes of this part of the Agreement may apply to the Council for exemption from any or all of the provisions of this part of the Agreement.
- (2) All applications for exemption shall be made in writing on a prescribed form provided by the Council.
- (3) All applications for exemption shall be motivated in accordance with the exemption criteria set out in subclause (7) below; shall be supported by relevant documentation and, in addition, shall contain the following information:
- (a) The period for which the exemption is sought;
  - (b) the number of employees affected and how many of such employees are members of a registered trade union;
  - (c) the clauses and subclauses of this part of the Agreement from which the exemption is sought;
  - (d) satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, which consultations shall include a registered party trade union, where such union has members employed at the workplace, and shall include the response resulting from such consultations; and
  - (e) the demonstrable commercial need of the applicant for the exemption sought.
- (4) (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other officer designated by the Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.
- (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in subclause (7) below, within 45 days from the date of lodgement of the application with the General Secretary, failing which the application shall be deemed to have been rejected.
- (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time period stipulated in subclause (b) above may be extended by agreement between the applicant and the Committee by the period the applicant takes to furnish the additional information or submissions.

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

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

stability. "Sufficiency", for the purposes of this subclause, means that in all material respects the alternative proposed is at least equal to, or better than, the relevant Council benefit fund.

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

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

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

**20. POWERS OF DESIGNATED AGENTS AND APPOINTED CONCILIATORS AND ARBITRATORS**

- (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 21 of this part of the Agreement or the Disputes' Procedure in terms of clause 22 of this part of the Agreement, may-
- (a) subpoena for questioning any person who may be able to give information or whose presence at the conciliation or arbitration proceedings may help to resolve the dispute;
  - (b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the resolution of the dispute to appear before the designated agent 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 of being found 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 in terms of subclause (1) must be signed by the Secretary of the Council and must-
- (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 a designated agent is authorised to enter and inspect, and every person employed by that owner or occupier, must provide facilities that a designated agent requires to enter those premises and to carry out the inspection or seizure.
- (5) The designated agent must 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 in terms of this clause.

- (7) The designated agent must pay to each person who appears before him in response to a subpoena issued the specified witness fee, as may be determined by the Council from time to time.
- (8) A person commits contempts of the designated agent-
- (a) if, after having been subpoenaed before him, the person without good cause does not attend at the time and place stated in the subpoena;
  - (b) if, after having appeared in response to a subpoena, that person fails to remain in attendance until excused by the designated agent;
  - (c) by refusing to take the oath or to make an affirmation as a witness when a designated agent so requires;
  - (d) by refusing to answer any question 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 a designated agent in performing any function conferred by or in terms of the Act;
  - (g) if the person insults or disparages or belittles a designated agent, or prejudices or improperly influences an investigation, or improperly anticipates a 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 refer any contempt to the Labour Court for an appropriate order.

## **21. 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 that 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 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 must appoint an arbitrator to hear and determine the alleged breach of this part of the Agreement.
- (f) The arbitrator, in consultation with all the parties who may have a legal interest in the outcome of the arbitration, shall decide the date, time and venue of the arbitration hearing.
- (g) The 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) legal practitioner; or
    - (ab) an office-bearer or official of his trade union or employers' organisation and, if the party is a juristic person, by a director or employer thereof.
- (i) The arbitrator shall have the following powers:
  - (i) To determine whether there has been a breach of the Agreement;
  - (ii) to make an appropriate award that gives effect to the Agreement and ensures compliance therewith;
  - (iii) to determine the appropriate form of and the procedure to be followed at the arbitration proceedings;
  - (iv) to make any order as to costs that he deems appropriate and where the Act provides for such an order to be made or for the Council 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 22 (3) (c) which is substantially the same as the award made by the arbitrator, the arbitrator shall make a costs order against the party concerned which shall, as a minimum, cover the Council's cost of dealing with the dispute;
  - (v) to make an award in the absence of a party who is alleged to have breached the Agreement if-
    - (aa) the party fails to appear in person or be represented at the arbitration proceedings; and
    - (ab) proof is presented that such party has been notified of the proceedings; notice of the arbitration proceedings shall be deemed to have been given if proof is presented that written notification has been forwarded to such party; and
    - (ac) prima facie evidence has been presented to the arbitrator that the party in question has failed to comply with this part of the Agreement;

- (vi) vary, rescind or amend any arbitration award made by him or any other arbitrator on good cause shown; without limiting the generality hereof the arbitrator shall have this power if-
  - (aa) the award was erroneously sought or erroneously made in the absence of any party effected by the award;
  - (ab) the award is ambiguous or contains an obvious error or omission, but only to the effect of that ambiguity, error or commission;
  - (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 on order of the Labour Court in terms of section 158 (1) of the Act.

## **22. 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.

**23. EXHIBITION OF AGREEMENT**

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

**24. PROHIBITION OF EMPLOYMENT OF CHILDREN AND OF FORCED LABOUR**

- (1) No person may employ a child-
  - (a) who is under 15 years of age; or
  - (b) who is under the minimum school-leaving age in terms of any law, if this is 15 or older.
- (2) No person may 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, 2996, all forced labour is prohibited.
  - (4) No person may, for his own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of subclause (1).
  - (5) A person who contravenes subclause 5 (1) to (4) commits an offence.

## **25. AGENCY SHOP: EMPLOYERS' ORGANISATION**

- (1) Every employer that belongs to the employers' organisation shall pay the membership fee referred to in subclause (3).
- (2) Every employer that does not belong to the employers' organisation shall pay the levy referred to in subclause (3).
- (3) The amount of the monthly membership fee or monthly levy shall be calculated in accordance with the following formulae:
  - (i) an employer employing 60 or fewer employees, a total of R219.30 per month (exclusive of VAT);
  - (ii) an employer employing 61 or more employees, R3.73 (exclusive of VAT) per employee times the number of employees for whom wages are prescribed in this part of the Agreement.
- (4) Every employer shall pay the monthly amount to the Regional Secretary of the Northern Chamber of the National Council, P.O. Box 5101, Johannesburg, 2000, before the 15th day of each month, together with an analysis of the amounts received, after withholding a collection fee as determined and agreed upon from time to time by the parties to the Council.
- (5) The Regional Secretary of the Northern Chamber of the National Council shall deposit all monies received in terms of this clause into the Northern Chamber's account and at the end of each month-
  - (a) pay all membership fees received to the employers' organisation; and
  - (b) deposit all the levies received into a separate account administered by
- (6) The monies held in the separate account may be used only for expenditure incurred by the employers' organisation relating to collective bargaining or dispute resolution in the Industry and may not be-
  - (a) paid to a political party as an affiliation fee; or
  - (b) contributed in cash or kind to a political party or a person standing for election to any political office.
- (7) The employers' organisation shall arrange for an annual audit of the separate account within six months of its financial year by an auditor who-
  - (a) conducts the audit in accordance with generally accepted auditing standards;

- (b) reports in writing to the employers' organisation, and in this report expresses an opinion as to whether or not the employers' organisation has complied with the provisions of its constitution relating to financial matters and the provisions of subclause (6).
- (8) The employers' organisation shall submit to the Northern Chamber of the National Council, within 30 days of receipt of the auditor's report referred to in subclause (7), a certified copy of that report.
- (9) Any person may inspect the auditor's report submitted to the Northern Chamber of the National Council in terms of subclause (8) at the Northern Chamber's offices, 148 Kerk Street, Johannesburg.
- (10) The Northern Chamber of the National Council shall provide a certified copy of, or extract from, the auditor's report to any person requesting such copy or extract.
- (11) The Independent Exemptions Body may, on application from an employer who conscientiously objects to associating with persons other than those who share his religious beliefs, grant an exemption from the provisions of this clause.
- (12) Any dispute about the application, including enforcement, or interpretation of the provisions of this clause shall be referred to a conciliator and arbitrator: Provided that the parties mutually agree on such conciliator and arbitrator. If no agreement is reached within 30 days of the lodging of the dispute, the conciliator and arbitrator, who must be senior counsel, shall be appointed from the ranks of an accredited agency.

## **26. TRADE UNION LABOUR**

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

- (1) No employer who is a member of the employers' organization shall continue to employ an employee-
  - (a) who, while being eligible for membership of the trade union, is not a member of the trade 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.
- (2) The provisions of this clause shall apply to persons who are eligible for membership in terms of the constitution of the trade union or employers' organisation, or who have been refused membership of or expelled from the trade union or employers' organisation.
- (3) Every employer shall forward all deductions made from the remuneration of employees in respect of trade union membership fees to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, within seven days of the end of the week in which the deductions fall due. The Regional Secretary of the Regional Chamber shall within 15 days of receipt forward the amounts to the secretary of the trade union, together with such analyses of the amounts as are received from employers.
- (4) For the purposes of 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.

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

- (1) Any office-bearer or official of a representative trade union is 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 is entitled to hold meetings with employees outside their working hours at the employer's premises.
- (3) The members of a representative trade union are 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 are subject to any conditions as to time and place that are reasonable and necessary to safe-guard 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 workshop.
- (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 that business, while normal output is maintained, including tea and lunch 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.
- (7) The trade union shall be entitled to distribute the union newspaper at the workplace.
- (8) 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.
- (9) 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**

- (1) Trade Union representatives shall be granted ten days' paid time off per annum, 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 days' 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. TRADE UNION AGENCY SHOP**

- (1) **Scope-** Agency fees will apply to employees who –
  - (a) are not members of the trade union party, but are eligible for membership thereof;
  - (b) are not bound by the provisions of the closed shop clause; and
  - (c) fall within the scope of this part of the Agreement.
- (2) **Union membership:** Employees are not compelled to become members of the trade union party.
- (3) **Agency fee deductions:** Every employer to whom this clause applies shall:
  - (a) deduct from the wages of an employee an amount equivalent to the union subscription; and
  - (b) shall pay such monies to the Regional Secretary of the Regional Chamber, P O Box 5101, Johannesburg, 2000, within seven days from the end of the month in which the deductions fall due.
  - (c) the deduction of the agency fee may be made 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.

#### **27. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION**

- (1) This part of the Agreement shall remain in force until 31 August 2010: 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 2009.
- (2) The parties to the Council, and in the event of this part of the Agreement being extended to non-parties, non-party employers and their employees, shall have the right to pursue industrial action within establishments bound by the provisions of this part of the Agreement, in compliance with the Act, after utilising applicable procedures, in the event of agreement not being reached on any issues in negotiations at the Council on

wages and other substantive issues designed to replace or amend the remuneration and/or other substantive provisions of this part of the Agreement.

- (3) The reference to negotiations in sub-clause (2) above shall mean negotiations as contemplated in sub-clause (1) above.
- (4) Section 65 (3) of the Act shall not render industrial action as contemplated in subclause (2) above unprocedural.

### **28. 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.

### **29. 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.

### **30. INDUSTRY PROTECTION FUND**

Contained in Annexure C.

### **31. 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.

### **32. CONTRACT EMPLOYEES**

Contained in Annexure D.

### **33. COUNCIL FUNDS**

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 the pay day of each week and from the first pay day after this Agreement comes into operation, deduct an amount equal to 0,23% of each employee's wages per week calculated at the qualified machinists rate of pay up to a maximum of R1.51 per week for whom minimum wages are prescribed in

the Main Collective 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 deduction falls due.

- (b) An employer, shall, in respect of each contributor from whose wages deductions are made in terms of paragraph (a) above, contribute an amount equal to 0.23% of each employee's wages per week, calculated at the qualified machinists' rate of pay up to the maximum of R1.63 per week.
- (2) The employer shall forward the total amounts so deducted, together with his contributions in terms of subclause (1) (b) above, and a statement in the form and manner specified by the Council, to the Secretary of the Council, P.O. Box 5101, Johannesburg, 2000, within seven days of the end of the week in which the deductions fall due.
- (3) Should any amount due in terms of this clause not be received by the Council by the seventh day after the due date in respect of which it is payable, the employer shall pay weekly interest on such amount or on such lesser amount as remain unpaid, calculated at the prime overdraft rate of the Council's Bankers plus two per cent per annum divided by 52 or part thereof from such seventh day until the day upon which payment in cash is actually received by the Council: 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.

#### **34. WORKING IN ARRANGEMENTS**

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

**ANNEXURE A****CODE OF GOOD PRACTICE ON KEY ASPECTS OF HIV/AIDS  
AND EMPLOYMENT WITHIN THE CLOTHING MANUFACTURING  
INDUSTRY OF SOUTH AFRICA****1. INTRODUCTION**

- 1.1. The Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) are serious public health problems, which have socio economic, employment and human rights implications.
- 1.2. It is recognised that the HIV/AIDS epidemic will affect every workplace, with prolonged staff illness, absenteeism, and death impacting on productivity, employee benefits, occupational health and safety, production costs and workplace morale.
- 1.3. HIV knows no social, gender, age or racial boundaries, but it is accepted that socio-economic circumstances do influence disease patterns. HIV thrives in an environment of poverty, rapid urbanisation, violence and destabilisation. Transmission is exacerbated by disparities in resources and patterns of migration from rural to urban areas. Women, particularly are more vulnerable to infection in cultures and economic circumstances where they have little control over their lives.
- 1.4. Furthermore HIV/AIDS is still a disease surrounded by ignorance, prejudice, discrimination and stigma. In the workplace unfair discrimination against people living with HIV and AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and the denial of employee benefits.
- 1.5. One of the most effective ways of reducing and managing the impact of HIV/AIDS in the workplace is through the implementation of an HIV/AIDS policy and programme. Addressing aspects of HIV/AIDS in the workplace will enable employers, trade unions and government to actively contribute towards local, national and international efforts to prevent and control HIV/AIDS. In light of this, the Code has been developed as a guide to employers, trade unions and employees.
- 1.6. Furthermore the Code seeks to assist with the attainment of the broader goals of:
  - eliminating unfair discrimination in the workplace based on HIV status;
  - promoting a non-discriminatory workplace in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection;
  - promoting appropriate and effective ways of managing HIV in the workplace;
  - creating a balance between the rights and responsibilities of all parties.

**2. OBJECTIVES**

- 2.1. The Code's primary objective is to set out a policy for employers and the trade union within the clothing manufacturing industry to implement so as to ensure individuals with HIV infection are not unfairly discriminated against in the workplace. This includes provisions regarding:
  - (i) creating a non-discriminatory work environment;
  - (ii) dealing with HIV testing, confidentiality and disclosure;
  - (iii) providing equitable employee benefits;
  - (iv) dealing with dismissals; and
  - (v) managing grievance procedures.

- 2.2. The Code's secondary objective is to provide a policy for employers, employees and the trade union within the clothing manufacturing industry on how to manage HIV/AIDS within the workplace. Since the HIV/AIDS epidemic impacts upon the workplace and individuals at a number of different levels, it requires a holistic response which takes all of these factors into account. The Code therefore includes principles, which are dealt with in more detail under the statutes listed in item 5.1., on the following:
- (i) creating a safe working environment for all employers and employees;
  - (ii) developing procedures to manage occupational incidents and claims for compensation;
  - (iii) introducing measures to prevent the spread of HIV;
  - (iv) developing strategies to assess and reduce the impact of the epidemic upon the workplace; and
  - (v) supporting those individuals who are infected or affected by HIV/AIDS so that they may continue to work productively for as long as possible.
- 2.3 In addition, the Code promotes the establishment of mechanisms to foster co-operation at the following levels:
- (i) between employers, employees and the trade union in the workplace; and
  - (ii) between the workplace and other stakeholders at a sectoral, local, provincial and national level.

### **3. POLICY PRINCIPLES**

- 3.1. The promotion of equality and non-discrimination between individuals with HIV infection and those without, and between HIV/AIDS and other comparable health/medical conditions.
- 3.2. The creation of a supportive environment so that HIV infected employees are able to continue working under normal conditions in their current employment for as long as they are medically fit to do so.
- 3.3. The protection of human rights and dignity of people living with HIV or AIDS is essential to the prevention and control of HIV/AIDS.
- 3.4. HIV/AIDS impacts disproportionately on women and this should be taken into account in the development of workplace policies and programmes.
- 3.5 Consultation, inclusivity and encouraging full participation of all stakeholders are key principles which should underpin every HIV/AIDS policy and programme.

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

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

- 4.4. The Code should be read in conjunction with other codes of good practice that may be issued by the Minister of Labour.

## 5. LEGAL FRAMEWORK

- 5.1. The Code should be read in conjunction with the Constitution of South Africa Act, No. 108 of 1996, and all relevant Legislation which includes the following:

- (i) Employment Equity Act, No. 55 of 1998;
- (ii) Labour Relations Act, No. 66 of 1995;
- (iii) Occupational Health and Safety Act, No. 85 of 1993;
- (iv) Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993;
- (v) Basic Conditions of Employment Act, No. 75 of 1997; and
- (vi) Medical Schemes Act, No. 131 of 1998.
- (vii) Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000.

- 5.2. The contents of this code should be taken into account when developing, implementing or reviewing any workplace policies or programmes in terms of the statutes listed above.

- 5.3. The following are selected, relevant sections contained in certain of the above-mentioned legislation. These should be read in conjunction with other legislative provisions.

5.3.1. The Code is issued in terms of Section 54(1)(a) of the Employment Equity Act, No 55 of 1998 and is based on the principle that no person may be unfairly discriminated against on the basis of their HIV status. In order to assist employers and employees to apply this principle consistently in the workplace, the Code makes reference to other pieces of legislation.

5.3.2. Section 6(1) of the Employment Equity Act provides that no person may unfairly discriminate against an employee, or an applicant for employment, in any employment policy or practice, on the basis of his or her HIV status. In any legal proceedings in which it is alleged that any employer has discriminated unfairly, the employer must prove that any discrimination or differentiation was fair.

5.3.3. No employee, or applicant for employment, may be required by their employer to undergo an HIV test in order to ascertain their HIV status. HIV testing by or on behalf of an employer may only take place where the Labour Court has declared such testing to be justifiable in accordance with Section 7(2) of the Employment Equity Act.

5.3.4. In accordance with Section 187(1)(f) of the Labour Relations Act, No. 66 of 1995, an employee with HIV/AIDS may not be dismissed simply because he or she is HIV positive or has AIDS. However where there are valid reasons related to their capacity to continue working and fair procedures have been followed, their services may be terminated in accordance with Section 188(1)(a)(i).

5.3.5. In terms of Section 8(1) of the Occupational Health and Safety Act, No. 85 of 1993; an employer is obliged to provide, as far as is reasonably practicable, a safe workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.

5.3.6. An employee who is infected with HIV as a result of an occupational exposure to infected blood or bodily fluids, may apply for benefits in terms of Section 22(1) of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993.

5.3.7. In accordance with the Basic Conditions of Employment Act, No. 75 of 1997, every employer is obliged to ensure that all employees receive certain basic standards of employment, including a minimum number of days sick leave [Section 22(2)].

5.3.8. In accordance with Section 24(2)(e) of the Medical Schemes Act, No 131 of 1998, a registered medical aid scheme may not unfairly discriminate directly or indirectly against its members on the basis of their "state of health". Further in terms of s 67(1)(9) regulations may be drafted stipulating that all schemes must offer a minimum level of benefits to their members.

5.3.9. In accordance with both the common law and Section 14 of the Constitution of South Africa Act, No. 108 of 1996, all persons with HIV or AIDS have a right to privacy, including privacy concerning their HIV or AIDS status. Accordingly there is no general legal duty on an employee to disclose his or her HIV status to their employer or to other employees.

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

6.1. No person with HIV or AIDS shall be unfairly discriminated against within the employment relationship or within any employment policies or practices, including with regard to:

- (i) recruitment procedures, advertising and selection criteria;
- (ii) appointments, and the appointment process, including job placement;
- (iii) job classification or grading;
- (iv) remuneration, employment benefits and terms and conditions of employment;
- (v) employee assistance programmes;
- (vi) job assignments;
- (ix) training and development;
- (x) performance evaluation systems;
- (xi) promotion, transfer and demotion;
- (xiii) termination of services.

6.2. To promote a non-discriminatory work environment based on the principle of equality, employers and the trade union should adopt appropriate measures to ensure that employees with HIV and AIDS are not unfairly discriminated against and are protected from victimisation through positive measures such as:

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

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

### **7.1. HIV Testing**

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

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

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

7.1.4. Authorised testing

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

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

7.1.5. Permissible testing

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

- (i) As part of a health care service provided in the workplace;
- (ii) In the event of an occupational accident carrying a risk of exposure to blood or other body fluids;
- (iii) For the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.

(b) Furthermore, such testing may only take place within the following defined conditions:

- (i) At the initiative of an employee;
- (ii) Within a health care worker and employee-patient relationship;
- (iii) With informed consent and pre- and post-test counselling, as defined by the Department of Health's National Policy on Testing for HIV; and
- (iv) With strict procedures relating to confidentiality of an employee's HIV status as described in clause 7.2 of this Code.

7.1.6 All testing, including both authorised and permissible testing, should be conducted in accordance with the Department of Health's National Policy on Testing for HIV issued in terms of the National Policy for Health Act, No. 116 of 1990.

7.1.7. Informed consent means that the individual has been provided with information, understands it and based on this has agreed to undertake the HIV test. It implies that the individual understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.

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

7.1.8. Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles regarding such research.<sup>2[2]</sup> Where such research is done, the information obtained may not be used to unfairly discriminate against individuals or groups of persons. Testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the results.

## **7.2. Confidentiality and Disclosure**

7.2.1. All persons with HIV or AIDS have the legal right to privacy. An employee is therefore not legally required to disclose his or her HIV status to their employer or to other employees.

7.2.2. Where an employee chooses to voluntarily disclose his or her HIV status to the employer or to other employees, this information may not be disclosed to others without the employee's express written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose his or her status.

7.2.3. Mechanisms should be created to encourage openness, acceptance and support for those employers and employees who voluntarily disclose their HIV status within the workplace, including:

- (i) encouraging persons openly living with HIV or AIDS to conduct or participate in education, prevention and awareness programmes;
- (ii) encouraging the development of support groups for employees living with HIV or AIDS; and
- (iii) ensuring that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatised.

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

8.1 An employer is obliged to provide and maintain, as far as is reasonably practicable, a workplace that is safe and without risk to the health of its employees.

8.2 The risk of HIV transmission in the workplace is minimal. However occupational accidents involving bodily fluids may occur, particularly in the health care professions. Every workplace should ensure that it complies with the provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents, and that its policy deals with, amongst others:

- (i) the risk, if any, of occupational transmission within the particular workplace;
- (ii) appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace;
- (iii) providing appropriate equipment and materials to protect employees from the risk of exposure to HIV;
- (iv) the steps that must be taken following an occupational accident including the appropriate management of occupational exposure to HIV and other blood borne pathogens, including access to post-exposure prophylaxis;
- (v) the procedures to be followed in applying for compensation for occupational infection;
- (vi) the reporting of all occupational accidents; and
- (vii) adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are being met.

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

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

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

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

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

## **10. EMPLOYEE BENEFITS**

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

## **11. DISMISSAL**

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

## **12. GRIEVANCE PROCEDURES**

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

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

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

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

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

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

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

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

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

14.2. Broadly, impact assessments should include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) hold regular HIV/AIDS awareness programmes;
- (ii) encourage voluntary testing;

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

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

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

## **16. INFORMATION AND EDUCATION**

- 16.1. The National Bargaining Council should ensure that copies of this code are available and accessible.
- 16.2. Employers and employer organisations should include the Code in their orientation, education and training programmes of employees.
- 16.3. The trade union should include the Code in their education and training programmes of shop stewards and employees.

**GLOSSARY**

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

**ANNEXURE B****PRODUCTIVITY****The following provisions shall be applicable to the plant level productivity incentive schemes:**

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

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

- (1) In terms of section 28 (1) (g) of the Act, read with clause 3.6 and 3.7 of the Council's Constitution, a fund to protect the fashion industry from further job losses and decline, which shall be known as the Fashion Industry Protection Fund (hereinafter referred to as "the Fund") is hereby established.
- (2) The objects of the Fund shall be to provide financial support to campaigns and programmes engaged in by the parties to the Bargaining Council, where such programmes are aimed at protecting the Industry in the respective Region.
- (3) The Fund shall commence on such date as decided by the parties to the Regional Council and shall continue to operate until such date as the Regional Chamber and the parties thereto may decide.
- (4) Every employer shall, each week, deduct from the wages of each of his employees for whom wages are prescribed in this part of the Agreement, an amount of 11 cents.
- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of sub-clause (4) above, contribute an amount of 11 cents per week.
- (6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the payment date specified in the relevant part of the Agreement and in the form and manner specified in relevant clause of each part of the Agreement.
- (7) The moneys collected by the Regional Chamber shall be paid monthly by the Regional Chamber into a bank account styled "Fashion Industry Protection Fund" opened by the Regional Chamber of the Bargaining Council for the purpose of receiving these funds and for disbursing them for the purpose for which they are intended.
- (8) The moneys collected shall be used by the Regional Chamber to finance the following bona fide strategies in pursuit of the objects of the Fund as set out in sub-clause (2), and including
  - (a) "Buy Local" campaigns;
  - (b) Combating customs fraud and illegal imports; or
  - (c) for such other strategies as meet the objectives of the Fund.
- (9) During the period of operation of the Fund, should the Southern African Clothing & Textile Workers' Union (SACTWU) and/or the Regional Employers' Associations who are members of the Bargaining Council become or wish to become engaged in additional strategies or bona fide activities in pursuit of the objectives of the Fund other than those specified in sub-clause (8), they may apply in writing to the Regional Chamber for the activities in question to be recognised by the Regional Chamber as an authorised strategy or activity which can be financed in terms of the Fund's provisions. The decision as to whether to recognise the strategy or activity in question shall be at the sole discretion of the Regional Chamber and shall be recorded as a resolution of the Regional Chamber.

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

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

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

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

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

**ANNEXURE D**

**CONTRACT EMPLOYEES**

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