



# NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY

## HEAD OFFICE

Address: 7<sup>th</sup> Floor, Industria House, 350 Victoria Road, Salt River, 7925  
Tel: 021 460 4000, Fax: 021 447 0628, Post: P O Box 1142, Woodstock, 7915 Website: www.nbc.org.za

### NATIONAL MAIN COLLECTIVE AGREEMENT

#### PART I: PROVISIONS FOR THE NON-METRO AREAS

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

Amended/Extended/Re-Enacted/ Corrected/Renewed	Government Notice	Government Gazette	Date of Publication
Re-Enacted, Amended & Extended	R.230	38582	20 .03.2015
Re-Enacted, Amended & Extended	R.989	39300	16.10.2015
Extension Notice to 31/08/22	R.197	40661	03.03.2017
Re-Enacted, Amended & Extended	R.198	40661	03.03.2017
Re-Enacted, Amended & Extended	R.504	41633	18.05.2018
Re-Enacted, Amended & Extended	R.100	42204	01.02.2019
Re-Enacted, Amended & Extended	R.80	42979	31.01.2020

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

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

#### REGIONAL CHAMBERS:

##### CAPE

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

##### KWAZULU NATAL

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

##### NORTHERN

1st Floor, Solly Sachs House  
111 Commissioner Street  
Johannesburg (CBD) 2001  
P.O. Box 5105  
Johannesburg 2000  
Tel: 011 402 2737  
Fax: 011 402 7375

## GOVERNMENT NOTICE

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DEPARTMENT OF LABOUR

No. R. 252

14 April 2014

LABOUR RELATIONS ACT, 1995

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

I, **MILDRED NELISIWE OLIPHANT**, Minister of Labour, hereby in terms of section 32 (2), read with section 32(5)(a) and (b) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the **National Bargaining Council for the Clothing Manufacturing Industry**, and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry, with effect from 14 March 2014 and for the period ending 31 August 2017.

**M N OLIPHANT**  
**MINISTER OF LABOUR**

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

**NATIONAL MAIN COLLECTIVE AGREEMENT**

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

Apparel and Textile Association of South Africa  
Eastern Province Clothing Manufacturers' Association  
South African Apparel Association  
South African Clothing Manufacturers' Association  
Transvaal Clothing Manufacturers' Association

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

Southern African Clothing and Textile Workers' Union

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

## **1. SCOPE OF APPLICATION**

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

Part A Provisions for the Eastern Cape Region

Part B Provisions for the Free State and Northern Cape Region

Part C Provisions for the KwaZulu-Natal Region

Part D Provisions for the Northern Region (Clothing)

Part E Provisions for the Northern Region (Knitting)

Part F Provisions for the Western Cape Region (Clothing)

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

Part H Provisions for the Western Cape Region (Knitting)

Part I Provisions for the Non-Metro Areas

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

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

- (1) This agreement is binding on the parties hereto from 1 September 2018 until 31 August 2024 unless the parties agree otherwise in writing.
- (2) The parties record that they intend to request the Minister of Labour to extend this agreement to non-parties in the Clothing Industry in terms of section 32 of the Labour Relations Act 66 of 1995. The period of operation of this agreement in respect of non-parties will be determined by the Minister.

## **3. SPECIAL PROVISIONS**

The provisions contained in clauses 11.1(1) and (5), 14.6(5) of Part A; clauses 23A (1) and (5) and 34 (5) of Part B; clauses 4 (7), 27 (1) and (4) and 38 (5) of Part C; clauses 22 (5), 25 (1) and 26A (1) and (2) of Part D; clauses 13A (1) and (2) and 28 (5) of Part E; clauses 14 (1) and (5) and 37 (5) of Part F; clauses 14 (1) and (5) and 37 (5) of Part G; clauses 14(1) and (5) and 37 (5) of Part H and clauses 34 (5) and 46 of Part I of the Agreement published under Government Notice R. 252 of 14 April 2014 (hereafter refer to as the "Former Agreement"), 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), 11.1 (2) to 14.4A, 14.5 to 14.6 (4) and 14.6 (6) to 18, 22 of Part A; clauses 3 to 19A, 20 to 22, 23A (2) to (4), 24 to 34 (4) and 34 (6) to 41 of Part B; clauses 3 to 4 (6), 4 (8) to 23A, 24 to 26, 27 (2) and (3), 27 (5) to 38 (4) and 38 (6) to 46 of Part C; clauses 3 to 19A, 20 to 22 (4), 22 (6) to 24, 25 (2) to (12) and 26A (3) to 34 of Part D; clauses 3 to 12, 13A (3) to 16A, 17 to 28 (4) and 28 (6) to 36 of Part E; clauses 3 to 11 (4)(a), 11 (5) to 13, 14 (2) to (4), 15 to 37 (4) and 37 (6) to 48 of Part F; clauses 3 to 11 (4)(a), 11 (5) to 13, 14 (2) to (4), 15 to 19A, 20 to 37 (4) and 37 (6) to 48 of Part G; clauses 3 to 11 (4)(a), 11(5) to 13, 14 (2) to

(4), 15 to 19A, 20 to 37 (4 ) and 37 (6) to 48 of Part H; clauses 3 to 34 (4) and 34 (6) to 45 and 47 of Part I of the Former Agreement, shall apply to employers and employees.

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

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**FREDA OOSTHUYSEN**  
Chairperson

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**MARTHIE RAPHAEL**  
Vice-Chairperson

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**SICELO NDUNA**  
General Secretary

## PART I : PROVISIONS FOR THE NON-METRO AREAS

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

- (1) The terms of this part of the Agreement shall be observed in the Clothing Industry –
- (a) by all employers who are members of the employer organisations 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 said Industry and by any employers' organisation and its members which may be admitted to membership of the Bargaining Council during the currency of this part of the Agreement;
  - (b) in all areas of the Republic of South Africa excluding those areas or Magisterial Districts covered by the scopes of the Bargaining Councils which amalgamated on 23 May 2002 to establish the current National Bargaining Council for the Clothing Manufacturing Industry, including which are detailed below and excluding also those garment knitting establishments which fall within the scope of the main collective agreement for the Northern Region (Knitting) as set out below and also those clothing establishments which fall within the scope of the Main Collective Agreement for the Northern Region (Clothing) and the Fund Collective Agreement for the Northern Region, as detailed below. The exclusions so referred to are as follows:
    - (i) In the Province of the Eastern Cape -
      - (aa) Port Elizabeth, including that portion of Hankey which, prior to the publication of Government Notice No. 1515 of 4 October 1963, fell within the Magisterial District of Port Elizabeth, including that portion which was transferred by the publication of Government Notice No. 1687 of 5 September 1975 to Uitenhage and excluding that portion of Hankey which was transferred by Government Notice No. R. 1974 of 26 September 1980 to Port Elizabeth; and
      - (bb) East London, including that portion which was transferred to Mdantsane by Government Notice No. 1481 of 27 August 1971, excluding those portions of the Ciskei that were transferred to East London by Government Notice No. 1877 of 4 September 1981 and Government Notice No. 1079 of 10 June 1988 and including that portion that was transferred to Ciskei by Government Notice No. 2354 of 5 October 1990.
    - (ii) In the Province of Kwazulu-Natal -
 

The Magisterial Districts of Chatsworth, Durban, Inanda, Lower Tugela, Pietermaritzburg and Pinetown;
    - (iii) In the Province of the Free State -
 

The Magisterial Districts of Bloemfontein, Frankfort, Kroonstad, Parys and Vredefort;
    - (iv) In the Province of the Northern Cape -
 

The Magisterial District of Kimberley;
    - (v) In the Province of Gauteng -

- (aa) in respect of garment knitting establishments which fall within the scope of application of the Main Collective Agreement for the Northern Region (Knitting) –

The Magisterial Districts of Alberton, Benoni, Germiston, Johannesburg and Roodepoort as well as only those portions of the City of Tshwane, including only those portions of the Southern Pretoria Metropolitan Substructure, the Central Pretoria Metropolitan Substructure and the Northern Pretoria Metropolitan Substructure established in terms of the Premier of the Province of PWV Proclamation No 38 of 1994 published in Provincial Gazette Extraordinary No 5064 of 8 December 1994 as amended by the Premier's Notice No 43 of 1995 published in Provincial Gazette Extraordinary No 66 of 1 September 1995, which previously made up the 'municipal area of Pretoria' as such existed immediately prior to the establishment of the Transitional Metropolitan Council with Transitional Metropolitan Substructures in respect of the Greater Pretoria Metropolitan Area published under aforementioned Proclamation No 38 of 1994;

- (bb) in respect of the scope of application of the Main Collective Agreement for the Northern Region (Clothing) and Fund Collective Agreement for the Northern Region –

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), but only in respect of clothing establishments which fall within the scope of application of the Main Collective Agreement for the Northern Region (Clothing) and the Fund Collective Agreement for the Northern Region;

- (vi) In the Province of the Western Cape -

The Magisterial Districts of Bellville, George, Goodwood, Malmesbury (including that portion from which the Magisterial District of Moorreesburg was constituted on 29 November 1985 by Government Notice 2649), Simon's Town, Somerset West, Strand, The Cape, Worcester and Wynberg, including those portions of the Magisterial Districts of Bellville, Goodwood, Simon's Town and Wynberg that were used to create the Magisterial District of Mitchell's Plain on 2 March 1992.

- (c) Insofar as those areas or Magisterial Districts covered by the scopes of the Bargaining Councils which amalgamated on 23 May 2002 to establish the current National Bargaining Council for the Clothing Manufacturing Industry are concerned, should one or more Magisterial Districts have been inadvertently omitted from sub-clause (b) (i) – (vii) above, the overriding test as to whether a particular Magisterial District is excluded from the provisions of this part of the Agreement or not, is whether such Magisterial District was covered by the geographical scope of the Bargaining Councils which amalgamated to form the National Bargaining Council for the Clothing Manufacturing Industry on 23 May 2002.

- (2) Notwithstanding the provisions of sub-clause (1), the terms of this part of the Agreement shall -

- (a) apply in respect of employees for whom wages are prescribed in this part of the Agreement; and
- (b) apply to every employer in the Clothing and Garment Knitting sectors as defined

herein and to all employees in these sectors save that the terms of this part of the Agreement shall not apply to employees whose basic wages exceed two and a half times the wage rate for a qualified Category B employee or whose occupation is monthly paid and of a managerial, specialist technical or non-production related nature.

- (3) (a) The purpose of this part of the Agreement shall be to establish levels of remuneration and other conditions of employment for employees without seeking to restrict entrepreneurial initiative and employment opportunities.
- (b) Employers employing five (5) or fewer employees shall, upon application to the Council in terms of clause 31 be exempted from this part of the Agreement.
- (c) Where an employer or an employee can satisfy the Council that any of the provisions of this part of the Agreement unduly restrict entrepreneurial initiative and/or employment opportunities such employer or employee may apply to the Council for exemption from those specific provisions in terms of clause 31 of this part of the Agreement.
- (4) Clauses 1 (1) (a), 2 and 34 (5) of this part of the Agreement shall not apply to employers and employees who are not members of the employers' organisations and trade union, respectively.
- (5) The Table of Contents of this Part I of the Main Collective Agreement is as follows:

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1.	SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT .....
2.	PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT .....
3.	DEFINITIONS .....
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8.	HOURS OF WORK AND OVERTIME .....
9.	NIGHT WORK.....
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11.	AVERAGING HOURS OF WORK .....
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20.	PROHIBITION OF EMPLOYMENT .....
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25.	ATTENDANCE REGISTER. ....
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32.	COUNCIL FUNDS.....
33.	AGENTS .....
34.	DISPUTE PROCEDURE .....
35.	TRADE UNION ACCESS TO WORKPLACE .....
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43.	INDUSTRY PROTECTION FUND (Annexure C) .....
44.	HIV/AIDS (Annexure A) .....
45.	CONTRACT EMPLOYEES (Annexure D) .....
46.	CLOSED SHOP .....
47.	WORKING IN ARRANGEMENTS.....
48.	JOINT AND SEVERAL LIABILITY FOR COMPLIANT COMPANIES OUTSOURCING AND/OR SUBCONTRACTING TO NON-COMPLIANT COMPANIES .....
49.	INCENTIVISED WAGE NATIONAL FRAMEWORK AGREEMENT (Annexure E).....

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

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

## 3. DEFINITIONS

Any expressions used in this part of the Agreement which are defined in the Act shall have the same meaning as in the Act. Any reference to an Act includes any amendments of such Act, and, unless the contrary intention appears, any reference to one gender shall include the other, further, unless inconsistent with the context -

In this part of the Agreement any word or expression to which a meaning has been assigned in the Basic Conditions of Employment Act, 1997, has the meaning so assigned, unless the context indicates otherwise –

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

**"agreement"** includes a collective agreement;

**"Bespoke Tailoring Industry"** means the making of outer garments for and to the measurements of individual persons but excludes the making of tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or are the responsibility of such dealers and the making of all classes of garments including quantity production tailoring made to the order of any department in the national or provincial sphere of government; Transnet and the South African Airways or local government;

**"CCMA"** means the Commission for Conciliation, Mediation and Arbitration established in

terms of section 112 of the Labour Relations Act, 1995;

**"Clothing Industry" or "Industry"** means, without in any way limiting the ordinary meaning of the expression, the Industry in which employers and employees are associated for the making of all classes of the under mentioned 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:**

1. 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;
2. 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;
3. 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;
4. any part(s) of garments whether by means of a knitting process or otherwise;
5. 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;
6. fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery;
7. screen process printing on garments and parts of garments performed in a clothing, textile and/or knitting establishment;
8. 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;
9. 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;
10. the making of button holes, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
11. 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;
12. the making up of garments from knitted fabric in the establishment in which the fabric was knitted;
13. 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;
14. the marking-in and/or cutting of garments or parts of garments, irrespective of whether or not such operation(s) 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
15. 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:**

1. Belts, Braces, Garters, Suspenders and Armlets manufactured from leather;
2. Boxing Gloves.
3. retail dressmaking, i.e. the making of single garments to the measurement of individual persons;
4. 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;
5. Tailor-made garments for individual persons, provided such garments are not manufactured in a factory.

**"clothing sector"** means the Clothing Industry excluding the Garment Knitting sector;

**"commission work"** means any system under which an employee receives additional remuneration calculated on the value or volume of sales effected or on the value or number of orders submitted to and accepted by the employer;

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

**"daily wage"** means an employee's weekly wage divided by the number of days on which he or she ordinarily works in a week;

**"day"** means a period of 24 hours measured from the time when the employee normally commences work;

**"emergency work"** means work which is required to be done without delay owing to circumstances for which the employer could not reasonably have been expected to make provision and which cannot be performed by employees during their ordinary hours of work;

**"employee"** means an employee as defined in s213 read with s200A of the Act;

**"establishment"** means any premises or part thereof, on or in connection with which one or more employees are employed in the clothing and garment knitting sectors;

**"Exemptions Committee" or "Regional Exemptions Committee"** means, for the purposes of this part of the Agreement, the Executive Committee of the Council or the Exemptions Committee established for purposes of considering applications for exemption received in terms of clause 31 of this part of the Agreement;

**"experience"** means the total period of employment an employee has had in the Bespoke Tailoring or the Clothing and Garment Knitting Industry, whether within the Republic of South Africa or elsewhere, in any capacity other than as a driver of a motor vehicle, or a mechanic, and shall include -

- (a) in the case of a clerical employee, all periods of employment which such employee has had as a clerical employee, irrespective of the trade, industry or undertaking in which such experience was gained;
- (b) in the case of a presser or folder who has been in the laundry trade, seeking employment as a presser, ironer or folder in the clothing industry, half of his or her total experience in the laundry trade;
- (c) in the case of all other employees, each completed period of six months' training in any work similar to that for which wages are set out in this part of the Agreement;

**"fully fashioned garment"** means a garment of which the form or body, body and sleeve, or sleeves, back and front, are fully shaped on a knitting machine;

**"garment knitting sector"** means that sector of the industry in which employers and employees are associated for the making only of all classes of hosiery (including socks, ladies' stockings and pantihose), knitted outerwear and knitted underwear;

**"hourly wage"** means an employee's weekly wage divided by his weekly ordinary hours of work;

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

**"laundry trade"** means the trade in which employers and employees are associated for the purpose of laundering, cleaning or dyeing all types of woven, spun, knitted or crocheted fabrics or articles made from such fabrics, including all operations incidental thereto or consequent thereon, if carried out by such employers and their employees;

**"law"** includes the common law;

**"Level B Compliance"** means an employer who;

- (i) Is paying between 80% and 100% of the gazette wage rates,
- (ii) has registered with the Council and has registered all permanent and contract employees with the Council,
- (iii) has given effect to all Collective Agreements of the Council which are applicable to it in each of its establishments, or
- (iv) has received exemption from any Collective Agreement to the extent of such exemption,
- (v) have entered into a Payment Plan and is conforming to the terms thereof,
- (vi) have applied for and has been approved by the Council as Level B complaint;

**"medical practitioner"** means -

- (a) a person entitled to practice as a medical practitioner in terms of section 17 of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No 50 of 1974); or
- (b) a traditional healer;

**"midwife"** means a person registered or enrolled to practice as a midwife in terms of section 16 of the Nursing Act, 1978 (Act No. 50 of 1978);

**"month"** means a calendar month;

**"monthly wage"** means an employee's weekly wage multiplied by four and a third;

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

**"new employer"** means a business newly established in the clothing and garment knitting sector, during the first 12 months of its existence in the sector; Provided that if an existing business undergoes a change of name or ownership (including a change of directors, members or partners) while largely retaining the same employees and/or clients, it shall not be regarded as a new employer. [See also the proviso to clause 4(1)].

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

**"non-metro"** means all areas in the Republic of South Africa except those excluded in clause 1(1)(b) of this part of the Agreement;

**"ordinary hours of work"** means the hours of work prescribed in clause 8 but if by agreement between an employer and the employee the latter works a lesser number of ordinary hours, it means such shorter hours;

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

"**public holiday**" means all public holidays declared as such in terms of the Public Holidays Act, 1994 (Act No. 36 of 1994);

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

"**regional chamber**" means a Chamber or Sub-Chamber appointed by the Council;

"**remuneration**" means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State, and "remunerate" has a corresponding meaning;

"**retail dressmaking**" means the making of single garments for girls and women to the measurement of individual persons, not as special measure orders from dealers whose customers' measurements are taken by or are the responsibility of such dealers;

"**retail millinery**" means the making of hats in shops for sale in such shops and the making of hats to the measurements of individual persons;

"**short time**" means a temporary reduction in the number of ordinary hours of work owing to slackness of trade, shortage of raw materials, vagaries of the weather, a breakdown of plant or machinery or buildings that are unfit for use or is or are in danger of becoming unfit for use;

"**wage**" means that amount of money payable to an employee in terms of clause 4(1) in respect of his or her ordinary hours of work: Provided that if an employer regularly pays an employee in respect of such ordinary hours of work an amount higher than that prescribed in clause 4, it means such higher amount, and "weekly wage" has a corresponding meaning;

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

"**work place**" means any place where employees work;

Definitions of the occupations, capacities and duties of employees in the Clothing Industry which encompasses the Clothing and Garment Knitting Sectors thereof:

(a) **Definitions of the occupations, capacities and duties of employees in the Clothing Sector Only**

(i) "**Category A Employee**" means an employee engaged in any one or more of the following duties or capacities in the clothing sector:

"**assistant storeperson**" means an employee other than a labourer who, under the supervision of a storeperson, assists in issuing or receiving goods;

"**belt operator**" means an employee engaged in riveting buckles, bending belt buckles, punching holes for buckles and prongs, pressing prongs into buckles, stapling buckles onto belt;

"**belt person**" means an employee other than a learner mechanic, engaged in fixing machine belts, oiling bearings, filling oil cans and similar work and assisting the establishment's mechanic;

"**boiler attendant (Clothing)**" means an employee under the supervision of a foreperson or factory manager, who is responsible for maintaining the water level and steam pressure of a boiler in an establishment, and who may stoke, rake, slice and draw the fire in such boiler;

"**box maker**" means an employee engaged in operating a cardboard box making machine;

"**buckle coverer**" means an employee engaged in covering buckles by hand or machine and/or trimming and cleaning belts after lining and belt have been machined together;

"**cleaner (Clothing)**", means an employee engaged in cutting or trimming off loose ends of cotton left in the garments by previous operators;

"**coat-turner**" means an employee engaged in turning coat facings out after machining;

"**despatch packer**" means an employee who, under the supervision of a foreperson or clerical employee, is wholly or mainly engaged in making up orders and in packing goods for transport, including the sealing of cellophane bags by hand or machine, or delivering in

connection with the despatch department of an establishment;

**“eyelet puncher”** means an employee engaged in eyelet punching and letting;

**“former”** means an employee engaged in putting material between two paper looms (formers) and preparing for steambox in hand or loom pleating process and shall include putting prepared formers in steam box and taking them out again in hand or loom pleating;

**"general worker (Clothing)"** means an employee who is engaged in one or more of the following occupations:

- (a) binding, wiring or strapping boxes or bales or other containers;
- (b) carrying or stacking goods;
- (c) delivering letters or messages or light parcels within the factory premises;
- (d) folding or inserting mail, affixing postage stamps or labels for posting;
- (e) general gardening work;
- (f) loading or unloading vehicles, trailers or international standard containers;
- (g) making and serving tea or similar beverages and washing crockery, cutlery and kitchen utensils;
- (h) marking, stencilling or affixing labels on boxes, bales or other containers by hand;
- (i) mixing rubber solution for rubberised garments;
- (j) mopping or washing of toilet facilities;
- (k) operating a duplicating or addressograph or franking machine;
- (l) sweeping with a broom or dusting and wiping down chairs and tables;
- (m) washing or polishing of floors and staircases by machine or by hand.

**"hat presser"** means an employee operating an automatic hydraulic hat press used solely for shaping hats;

**"hat sprayer"** means an employee engaged in spray painting hats,

**"ironer"** means an employee engaged in the ironing of fusible interlinings with hand iron positioning and spot fusing of fusible interlinings with special machine;

**"layer-up"** means an employee engaged in laying up materials by hand or machine preparatory to cutting;

**"marker"** means an employee engaged in marking the position of pockets, buttons and/or button holes;

**"operator"** means an employee who operates a -

- (a) hand operated button-covering machine;
- (b) a shrinking press;
- (c) a semi-automatic or automatic fusing machine;
- (d) semi-automatic press stud-machine; or
- (e) zip machine.

**"packer (Clothing)"** means an employee engaged in packing garments into boxes or other suitable wrappings or tying them into bundles prior to their being sent to the dispatch department;

**"patent turner"** means an employee engaged in turning out or over the edges of collars, facings, bands, cuffs, pockets or flaps whether by hand or machine;

**"pinner"** means an employee engaged in pinning unfinished or finished garments;

**“pleater”** means an employee engaged in guiding material with paper through automatic pleating machine and shall include raking material out of looms in hand or loom pleating process;

**"plain sewer (Clothing)"** means an employee engaged solely in performing by hand one or more of the following operations:-

- (a) tacking permanent turn-ups;
- (b) tacking waistband linings;

- (c) sewing on hooks and eyes, tickets or press studs;
- (d) fastening catch in tops of trousers;
- (e) sewing on buttons;
- (f) making and sewing on hangers;
- (g) felling crutch linings in trousers;
- (h) felling bottoms and waist-band linings, and various odds and ends of sewing;
- (i) felling necks of vests;
- (j) fastening edge stays and odds and ends of sewing;
- (k) felling bottoms of linings or seams of same already basted into position;
- (l) felling bindings;
- (m) fastening facings inside already basted in position;

**“rubberiser”** means an employee engaged in rubberising, i.e. waterproofing processes or the work of smearing rubber solution upon seams or edges and rolling them over with a small wooden hand roller, cleaning off any rubber solution, painting seams or oilskins and waterproof hats, and shall include spreading of P V C (plastic solution) in waterproofing process or on raincoats and protective wear and waterproofing seams;

**"sorter (Clothing)"** means an employee engaged in sorting out garments or parts of garments for the various operations;

**"stamper"** means an employee engaged in stamping the size or identity work numbers on garments or parts of garments, or on any article connected with packaging or despatching of garments;

**“swatch cutter”** means an employee engaged in cutting travellers’ swatches;

**"winder (Clothing)"** means an employee engaged in the winding or unwinding of lace, embroidery, braids, ribbons, bindings and elastic;

**"under-presser"** means an employee other than a presser employed in pressing processes.

(ii) **"Category B Employee"** means an employee engaged in one or more but not limited to the following duties or capacities in the clothing sector:

**"baster"** means an employee engaged in hand sewing in setting a coat or parts of a coat into position preparatory to other operations or underbasting, i.e. hand sewing of linings of coats into position preparatory to sewing the edge seams;

**“bowmaker”** means an employee engaged in making bows for dresses;

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

**"conveyor-feeder"** means an employee responsible for feeding prepared parts of garments on to a conveyor for further operations and who may be assisted by one or more sorters;

**"cutter (Clothing)"** means an employee who cuts out all articles of wearing apparel, linings, trimmings or interlinings by any method;

**"examiner (Clothing)"** means an employee who examines finished garments for quality;

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

- (a) calculating piece-work or bonus payments from production schedules;
- (b) checking attendance records or recording particulars of employees at work or absent from work; preparing wage cards or envelopes for subsequent use by another employee;
- (c) checking or recording for production control;
- (d) checking invoices or other documents and copying same by machine or hand;
- (e) issuing machine parts, tools, oil and other equipment from a workshop store and/or recording same;
- (f) issuing material, lining, canvas, trimming, buttons, cotton and zips to the different departments of an establishment and/or recording same;

- (g) issuing trimming, lining, cotton and zips to employees of an establishment from a sub-store and/or recording same;
- (h) receiving into stock, goods, material, trimming, tools and other equipment and checking goods received against specifications of goods ordered such as quantity, size and quality;
- (i) recording particulars of materials or general stores consumed or to be consumed or keeping stock records;
- (j) recording particulars of waste;

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

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

- (a) putting pads or wadding into shoulders of coats;
- (b) fastening or serging sleeve-heads;
- (c) wadding sleeve-heads;
- (d) felling silk facings already basted into position;
- (e) making button-holes by hand;
- (f) felling sleeve-head linings, holding such in position with the fingers;
- (g) beader or embroiderer by hand.

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

**"folder"** means an employee engaged in the folding of garments by machine or by hand and buttoning up of garments;

**"lace machinist"** means an employee who operates an automatic lace, embroidery or monogramming machine;

**"lay copier"** means an employee engaged in placing of numbered patterns on a lay to conform with a numbered photograph, diagram or plan;

**"NES"** means an employee not elsewhere specified in this part of the Agreement;

**"pleating setter"** means an employee engaged in setting of pleats on automatic pleating machines;

**"presser (Clothing)"** means an employee employed in pressing the finished garment by hand or machine;

**"seam welder"** means an employee who joins seams by any method other than by a thread-sewing machine;

**"sewing machinist (Clothing)"** means an employee who performs by sewing machine any operation in the making of clothing;

**"shaper (Clothing)"** means an employee engaged in shaping the lapels and collars of coats preparatory to under basting;

**"sloper"** means an employee engaged in marking or trimming the shape of the necks in the shirt section, preparatory to other operations.

**(b) Occupations, capacities and duties of employees in the Garment Knitting Sector Only:**

- (i) **"Category C Employee"** means an employee engaged in any one or more of the following capacities or duties in the garment knitting Sector:

**"assistant dyer"** means an employee who, under the supervision of a dyer, is engaged in mass-measuring or mixing colour substances or attending or operating machines used in the dyeing or finishing processes;



**"colouring measurer"** means an employee who, under the supervision of a dyer, mass-measures dye-stuff or other chemicals;

**"handyperson"** means an employee in a garment knitting establishment who does minor repairs or adjustments to machinery or equipment, other than machinery or equipment directly used in the manufacture of the products of an establishment, and who may effect minor repairs or renovations to buildings but who does not perform work normally done by an artisan;

**"knitter"** means an employee who operates one or a set of knitting machines and who may change needles, sliders and sinkers and straighten tricks, including chain and card control and running on after press-offs;

**"knitting cutter "** means an employee who by means of a power-driven cutting machine, knife or shears is engaged in cutting garment lengths, fronts, backs or sleeves of fully fashioned garments or trimmings, who marks or cuts attachments, points of necks or armholes or trimmings and who may use a template for this purpose;

**"linker"** means an employee who is engaged in operating a linking machine for toe-closing of stockings or socks or for joining parts of fully fashioned garments or attaching trimmings to fully fashioned garments or parts of garments;

**"loader"** means an employee engaged in the transferring of stitches onto the needles of a bar or magazine;

**"mender"** means an employee who is engaged in repairing knitting faults in garments or parts of garments, blanks, stockings or socks;

**"plain sewer (Knitting)"** means an employee engaged solely in performing by hand one or more of the following operations:

- (a) tacking permanent turn-ups; tacking waistband linings;
- (b) sewing on hooks and eyes, tickets and/or press studs;
- (c) fastening catch in tops of trousers;
- (d) sewing on buttons;
- (e) making and sewing on hangers;
- (f) felling crutch linings in trousers;
- (g) felling bottoms and waist-band linings, and various odds and ends of sewing;
- (h) felling necks of vests;
- (i) fastening edge stays and odds and ends of sewing;
- (j) felling bottoms of linings or seams of same already basted into position;
- (k) felling bindings and fastening facings inside already basted in position.

**"sewing machinist (Knitting)"** means an employee who by means of a sewing machine is engaged in any operation in the making of clothing including button, buttonhole and hemming machinist and shall include an employee who operates an overlocking machine;

**"warper"** means an employee who prepares warps from cones or bobbins for a warp knitting or similar machine and prepares the beam;

**"warp knitter"** means an employee operating one or a set of warp knitting machines and who may correct faults, change or straighten needles, fill bars or make minor adjustments to such machines.

(ii) **"Category D Employee"** means an employee engaged in any one or more of the following capacities or duties in the garment knitting sector division:

**"backwinder"** means an employee who recovers yarn from a knitted article by winding it back onto a bobbin, comb, magazine or spool;

**"boiler attendant (Knitting)"** means an employee who, under supervision, maintains the water level and steam pressure in a boiler and who may make, maintain and draw the fire in such boiler;

**"cleaner (Knitting)"** means an employee engaged in cutting or trimming off loose ends of cotton or cloth left on garments or parts of garments by previous operators;

**"despatch packer"** means an employee who, under the supervision of a despatch clerk, is engaged in packing, assembling, marking, addressing and mass-measuring goods for despatch or delivery;

**"draw threader"** means an employee who separates knitted articles by removing the drawthread;

**"examiner (Knitting)"** means an employee who examines finished garments for quality;

**"former"** means an employee who is engaged in placing or removing stockings, socks or garments on or from forms;

**"general worker (Knitting)"** means an employee who is engaged in one or more of the following duties:

- (a) binding, wiring or strapping boxes or bales or other containers;
- (b) carrying or stacking goods;
- (c) cutting up or otherwise destroying rejected hosiery or fabrics;
- (d) delivering letters or messages or light parcels within the factory premises;
- (e) folding or inserting mail, affixing postage stamps or labels for posting;
- (f) general gardening work;
- (g) lime-washing or colour-washing buildings or other structures;
- (h) loading or unloading vehicles, trailers or international standard containers;
- (i) making or maintaining fires, or removing refuse or ashes;
- (j) making and serving tea or similar beverages and washing crockery, cutlery and kitchen utensils;
- (k) marking, stencilling or affixing labels on boxes, bales or other containers by hand;
- (l) mixing rubber solution for rubberised garments;
- (m) mopping or washing of toilet facilities;
- (n) operating a duplicating or addressograph or franking machine;
- (o) sweeping with a broom or dusting and wiping down chairs and tables;
- (p) washing or polishing of floors and staircases by machine or by hand.

**"operator"** means an employee who is an operator of a -

- (a) calendar machine;
- (b) slitting machine;
- (c) brushing, raising or cropping;
- (d) dye machine;
- (e) dyeing or hydro-extracting machine.

**"packer (Knitting)"** means an employee engaged in closing or sealing parcels and cartons prior to despatch and delivery;

**"presser (Knitting)"** means an employee who is engaged in the ironing or pressing of finished garments by hand or machine, excluding open steam pressing or boarding of garments on automatic continuous steam belts;

**"runner" or "floorwalker"** means an employee engaged in carrying garments or parts of garments from one place to another within the workplace;

**"sampler"** means an employee engaged in the making up of sample cards;

**"seamer"** means an employee who is engaged in joining seams in stockings or socks by means of a seaming machine;

**"sorter (Knitting)"** means an employee who is engaged in sorting or grading hosiery into pairs according to length and size or sorting trimmings, materials or parts of fully fashioned garments;

**"turner"** means an employee engaged in turning out or over the edges of collars, facings, bands, cuffs, pockets or flaps whether by hand or machine;

**"yarn changer (pig tailor)"** means an employee who is responsible for loading and unloading the yarn on knitting machines, or an employee who brings yarn to and from the machines, removes fabric and cleans the machines and may stop the machine to change the

yarn and may restart the machine only if he or she stopped the machine for the purpose of changing the yarn and shall not carry out any other functions of the knitting machine operator.

"**yarn winder**" means an employee who is engaged in operating a yarn-winding machine;

(c) **Occupations, capacities and duties of employees in the Clothing and Garment Knitting Sectors:**

"**Category E Employee**" means an employee engaged in any one or more of the following duties or capacities:

"**assistant foreperson**" means an employee who under the supervision of a foreperson, is in charge of the employees, other than clerks, storepersons and dyers, in an establishment, who exercises control over such employees and who is responsible to the foreperson for the efficient performance by them and their duties;

"**dyer**" means an employee who is responsible for and engaged in dyeing or other finishing processes and who decides on the nature, mass, blending and application of the dyes or other chemicals to be used;

"**mechanic**" means an employee engaged in the installation, repair and maintenance of boilers and machinery;

"**pattern maker**" means an employee engaged in designing or making master patterns;

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

(d) **Other occupations, capacities and duties of employees in the Clothing and Garment Knitting Sectors:**

"**assistant head cutter**" means a person who assists the head-cutter in creating designs, styles, fashions and in making patterns, grading patterns and planning cutting jobs;

"**band knife cutter**" means an employee who cuts out all articles of wearing apparel, linings, trimmings or interlinings with a band knife;

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

- (a) writing, typing and filing;
- (b) operating a calculating machine, computer terminal, punch-card machine or accounting machine;
- (c) any other clerical work and includes a cashier, despatch clerk, storeperson, shipping clerk, invoice clerk, workstudy clerk and telephone switchboard operator but does not include any other class of employee elsewhere defined, even though clerical work may form part of such an employee's work.

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

"**head cutter**" means a person who actively supervises the cutting room and designs, styles and fashions makes patterns, grades patterns and who plans cutting jobs;

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

"**watchperson**" means an employee engaged in guarding premises, buildings or other property.

#### 4. REMUNERATION

- (1) **Minimum wages:** The minimum wages which an employer shall pay to employees shall be as specified herein: Provided that if a new employer, as defined in clause 3, has been engaged in the industry for a period of not more than 12 months, such wages may be reduced by not more than 10 per cent during such period, whereafter the minimum wages specified herein shall become payable:

Category / Occupation		In the Magisterial Districts of Camperdown, uMzinto, Paarl, Stellenbosch and Uitenhage (Non-Metro A)		All Other Areas (Non-Metro B)	
		Wage per week from 01 Sep 2019 to 31 Aug 2020 (Where applicable the Minimum Wage Payable plus Incentive has been adjusted to comply with the National Minimum Wage)	New Employees on Incentivised Scheme Effective 1 September 2019 = 80% (Where applicable the Minimum Wage Payable plus Incentive has been adjusted to comply with the National Minimum Wage)	Wage per week from 01 Sep 2019 to 31 Aug 2020 (Where applicable the Minimum Wage Payable plus Incentive has been adjusted to comply with the National Minimum Wage)	New Employees on Incentivised Scheme Effective 1 September 2019 = 80% (Where applicable the Minimum Wage Payable plus Incentive has been adjusted to comply with the National Minimum Wage)
		R	R	R	R
<b>Category A</b>					
	0 - 6 months	968.00	900.00	936.00	900.00
	Thereafter	1,035.50	900.00	976.50	900.00
<b>Category B</b>					
	0 - 6 months	966.50	900.00	948.00	900.00
	7 - 12 months	1,012.00	900.00	975.50	900.00
	13 - 18 months	1,059.50	900.00	1,003.00	900.00
	Thereafter	1,121.50	900.00	1,037.00	900.00
<b>Category C</b>					
	0 - 6 months	999.00	900.00	952.50	900.00
	7 - 12 months	1,099.00	900.00	1,010.50	900.00
	13 - 18 months	1,200.50	960.50	1,070.00	900.00
	19 - 22 months	1,297.50	1,038.00	1,133.50	907.00
	Thereafter	1,397.00	1,117.50	1,197.50	958.00
<b>Category D</b>					
	0 - 6 months	999.00	900.00	952.50	900.00
	7 - 12 months	1,073.00	900.00	996.00	900.00
	13 - 18 months	1,172.00	937.50	1,040.00	900.00
	19 - 22 months	1,220.00	976.00	1,083.00	900.00
	Thereafter	1,374.50	1,099.50	1,183.00	946.50
<b>Category E</b>					
	0 - 6 months	1,049.00	900.00	982.00	900.00
	7 - 12 months	1,165.50	932.50	1,051.50	900.00
	13 - 18 months	1,300.00	1,040.00	1,134.50	907.50
	19 - 22 months	1,431.50	1,145.00	1,221.00	977.00
	Thereafter	1,574.50	1,259.50	1,311.50	1049.00

Category / Occupation	In the Magisterial Districts of Camperdown, uMzinto, Paarl, Stellenbosch and Uitenhage (Non-Metro A)		All Other Areas (Non-Metro B)	
	Wage per week from 01 Sep 2019 to 31 Aug 2020 (Where applicable the Minimum Wage Payable plus Incentive has been adjusted to comply with the National Minimum Wage)	New Employees on Incentivised Scheme Effective 1 September 2019 = 80% (Where applicable the Minimum Wage Payable plus Incentive has been adjusted to comply with the National Minimum Wage)	Wage per week from 01 Sep 2019 to 31 Aug 2020 (Where applicable the Minimum Wage Payable plus Incentive has been adjusted to comply with the National Minimum Wage)	New Employees on Incentivised Scheme Effective 1 September 2019 = 80% (Where applicable the Minimum Wage Payable plus Incentive has been adjusted to comply with the National Minimum Wage)
	R	R	R	R
<b>Band Knife Cutter</b>				
0 - 6 months	960.00	900.00	929.50	900.00
7 - 12 months	1,035.50	900.00	973.50	900.00
13 - 18 months	1,107.00	900.00	1,017.00	900.00
19 - 22 months	1,186.00	949.00	1,062.50	900.00
Thereafter	1,305.00	1,044.00	1,140.00	912.00
<b>Clerical</b>				
0 - 6 months	984.50	900.00	944.00	900.00
7 - 12 months	1,078.50	900.00	999.50	900.00
13 - 18 months	1,154.50	923.50	1,044.00	900.00
Thereafter	1,326.00	1,061.00	1,150.50	920.50
<b>Assistant Head Cutter</b>	1,528.00	1,222.50	1,282.50	1026.00
<b>Head Cutter</b>	1,845.50	1,476.50	1,487.50	1190.00
<b>Foreperson</b>	1,655.00	1,324.00	1,400.50	1120.50
<b>Watchperson</b>	1,150.00	920.00	1,041.00	900.00
<b>Driver 1 (454kg)</b>	1,096.00	900.00	1,009.50	900.00
<b>Driver 2 (454 - 2722kg)</b>	1,173.00	938.50	1,055.50	900.00
<b>Driver 3 (2722 -4540kg)</b>	1,325.00	1,060.00	1,150.00	920.00
<b>Driver 4 (4540kg)</b>	1,445.00	1,156.00	1,294.50	1035.50
<b>NB: All employers who employed staff on 2011/2012 New Entry Wage Dispensation, must with effect from 1 September 2019 Increase the Weekly Wage for those employees by the agreed Wage Increase based on 2018/19 Rand value, in Non-Metro A and Non-Metro B.</b>				

- (2) The metro and non-metro B wage differential shall be narrowed, relative to the KZN metro qualified machinist rate (not the incentivised wage), as follows:

with effect from 1 September 2013:	to 71%
with effect from 1 September 2014:	to 73%
with effect from 1 September 2015 and thereafter):	to 75%

**(3) Incentivised Wage Rates**

The following incentivised wage rates provisions, applicable to new employees only:

Commencing 1 September 2016, all employees will on the scheme shall, in year two, progress from 80% to 90% of their respective gazette wages and in year three to 100% of their wage.

This means that:

**Employees employed before 1 September 2016**

- Must be increased to 90% as of 1 September 2017.
- Until year 3 the incentive will still operate as described below just with a new floor/minimum earning level.
- In year 3, i.e. 1 September 2018, all employees are to move up to 100%.

**Employees employed after 1 September 2016**

- will be on 80% in year one;
- on their anniversary date they will move to 90%;
- Then in year 3 on their anniversary date they will move to 100%.

Subject to the following provisions:

- 3.1 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a minimum period of 3 years, unless the applicant employee agrees otherwise with his/her prospective employer.
- 3.2 The guaranteed wage rate as specified in sub-clause 3.1 above shall be supplemented with an incentivised wage component which shall allow new employees to earn up to 100% or more of the gazetted rate, provided the employee(s) meets the required performance standards as contained in the plant level incentive scheme. This incentive shall be applicable to all new employees engaged under the incentivised wage provisions and employed after 1 September 2012, once a national framework agreement governing the incentive portion has been agreed.
- 3.3 The provisions of clause 4 of this agreement are only applicable to companies which are registered with the National Bargaining Council for the Clothing Manufacturing Industry of South Africa, subject further to sub-clause 3.5 below.
- 3.4 The provisions of clause 4 of this agreement are only applicable to those current compliant companies which were in existence and operational as at 1 June 2011. It is not applicable to those companies who are members of an employer association which has not signed this agreement and/or not to companies which have not implemented the wage increases envisaged in this agreement.

The parties will explore further mechanisms which will protect current companies and current employees in the event of it being agreed that this provision be extended to new companies which enter the industry for the first time.

- 3.5 All other provisions of the industry's Main Agreement shall be applicable to new employees.
- 3.6 The closed shop shall be applicable to all new employees.

- 3.7 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to re-employ employees at the rates specified in sub-clause 3.1 above.
  - 3.8 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
  - 3.9 Qualified employees shall be employed at the qualified rate, subject to sub-clause 3.2.
  - 3.10 Current employees employed in terms of the new entry rate provision envisaged in the 2011/2012 party-to-party agreement and who were so employed prior to 1 September 2012 shall by exemption be ring-fenced on those rates plus all the subsequent annual increases due, and subject to the companies at which they are employed meeting the compliant employment growth targets as set out in the 2011/2012 wage agreement.
  - 3.11 Effective 1<sup>st</sup> September 2012, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.
  - 3.12 The parties have negotiated a national framework agreement at national bargaining council level, to give enabling effect to the plant level incentivised wage component as contemplated in sub-clause 3.3 of this agreement. Companies who qualify for the provisions of clause 4 of this agreement and who wish to implement it shall have a 2 months period to conclude plant-level incentive arrangements in terms of the provisions of the national framework agreement, which national framework agreement is attached as Annexure E hereto.
  - 3.13 The deadlock breaking mechanism for the national framework agreement is either binding interest arbitration or, at the end of the prescribed period, the entire 80% dispensation falls away, unless other forms of deadlock breaking mechanisms are agreed between the parties.
  - 3.14 Should the 80% dispensation fall away in consequence of the provision in sub-clause 3.13 above, new employees employed on the incentive wage provisions should be paid 100% of the applicable agreement rate.
  - 3.15 The deadlock breaking mechanism for operationalising the incentive component at plant level shall consist firstly of a facilitation process by a panel of experts jointly appointed by the employer and trade union parties to this agreement and if not resolved, by an advisory award by the panel, unless other forms of deadlock breaking mechanisms are agreed to between the parties.
- (4) Basis of contract - For the purposes of this clause the contract of employment of an employee shall be on a weekly basis, and except as provided for in clause 7(4) or where law otherwise permits, he or she shall be paid in respect of a week not less than the full weekly wage prescribed in sub-clause (1), read with the definition of "wage" in clause 3 and with sub-clause (5), for an employee of his or her category in the area in which he or she works. The provisions of this sub-clause are not intended to have the effect that permanent employees are deemed to be, or be regarded as, fixed term contract employees.
  - (5) Differential wage - An employer who requires or permits a member of one category of

employees to perform work for longer than one hour on any day, either in addition to his or her own work or in substitution therefore, in another category for which:

- (6) a wage higher than that of his or her own category is set out in sub-clause (1), shall pay to such employee in respect of that day, not less than the daily wage calculated at the higher rate; or
- (7) a rising scale of wages terminating in a wage higher than that of his or her own category is set out in sub-clause (1), shall pay to such employee in respect of that day not less than the daily wage calculated on the notch in the rising scale immediately above the wage which the employee was receiving for his or her ordinary work: Provided that -
- (i) this sub-clause shall not apply where the difference between categories in terms of sub-clause (1) is based on experience;
- (ii) unless expressly otherwise provided in a written contract between an employer and an employee, nothing in this part of the Agreement shall be so construed as to preclude an employer from requiring an employee to perform work of another category for which the same or a lower wage is prescribed.
- (8) Calculation of wages– The hourly, daily or monthly wage of an employee shall be calculated as indicated in the definitions of these expressions in clause 3.
- (9) Dual Operations – Where an establishment performs operations in both the garment knitting and clothing sectors of the Industry, the wage schedule to be applied in respect of the following occupations namely-
- |                      |   |            |       |
|----------------------|---|------------|-------|
| (a) boiler attendant | : | Categories | A + D |
| (b) cleaner          | : | “          | A + D |
| (c) cutter           | : | “          | B + C |
| (d) examiner         | : | “          | B + D |
| (e) general worker   | : | “          | A + D |
| (f) packer           | : | “          | A + D |
| (g) plain sewer      | : | “          | A + C |
| (h) presser          | : | “          | B + D |
| (i) sewing machinist | : | “          | B + C |
| (j) sorter           | : | “          | A + D |

shall be that of the sector in respect of which the majority of employees are employed at the establishment.

- (10) Notwithstanding anything to the contrary herein, the wage of an employee who, immediately prior to the date on which this part of the Agreement comes into operation, is in receipt of a wage higher than that specified for the class of work in which he is engaged shall, with effect from the date on which this part of the Agreement comes into operation, be increased by an amount not less than the difference between the wage as agreed by the Parties as at 1 September 2019 and the wage specified for the same class of work in the agreement in force immediately prior to that date.
- (11) Annual Bonus -
- (a) Each employee shall be paid an annual bonus on the day of his employer's annual closure in December each year, equivalent to 1,5% of his annual basic prescribed wage (excluding overtime earnings and production bonuses) calculated from 1 January to 31 December. A pro rata share thereof shall be paid to an employee who leaves employment before 31 December.



- (b) The bonus is inclusive of and not additional to any annual bonus paid by an employer.
- (c) An employee shall not suffer a reduction in the amount of the annual bonus as a result of periods of authorised absence from work.

## **5. PAYMENT OF REMUNERATION**

- (1) An employee, except as provided for in clause 14(6) and (7) shall be paid:
  - (a) weekly or fortnightly;
  - (b) in cash, by cheque or by direct deposit into an account designated by the employee, and in South African currency;
  - (c) remuneration in cash or by cheque -
    - (i) at the workplace or at a place agreed to by the employee;
    - (ii) during the employee's working hours or within 15 minutes of the commencement or conclusion of such hours;
  - (d) remuneration not later than seven days after -
    - (i) the completion of a period for which the remuneration is payable;
    - (ii) the termination of the contract of employment.
  - (e) payment to employees shall not be for periods longer than fortnightly, unless otherwise agreed between the employer and the trade union at plant level. Such agreement shall be in writing.

## **6. INFORMATION CONCERNING REMUNERATION**

- (1) The remuneration shall be in a sealed envelope which shall become the property of the employee, on which must be recorded or which must be accompanied by, a statement showing:
  - (a) the employer's name and address;
  - (b) the employee's name and occupation;
  - (c) the period in respect of which payment is made;
  - (d) the employee's rate of remuneration and overtime rate;
  - (e) the number of ordinary hours worked by the employee during that period;
  - (f) the number of overtime hours worked by the employee during that period;
  - (g) the number of hours worked by the employee on a paid holiday or on a Sunday;
  - (h) the employee's wage;
  - (i) details of any other remuneration arising out of the employee's employment;

- (j) details of any deductions made; and
  - (k) the actual amount paid to the employee.
- (2) The particulars set out in sub-clause (1) may be coded on the envelope and such code shall be fully set out and explained in an accompanying notice or in a notice kept posted in a conspicuous place in the establishment, accessible to all employees affected thereby.
  - (3) Where the remuneration is deposited into the employee's account the employer shall hand to him or her the statement referred to in sub-clause (1).

## **7. DEDUCTIONS AND OTHER MATTERS CONCERNING REMUNERATION**

- (1) Training fee - Subject to any other law no payment by or on behalf of an employee shall be accepted by an employer, either directly or indirectly, in respect of the employment or training of that employee.
- (8) Purchase of goods - An employer shall not require his or her employee to purchase any goods from him or her or from any shop, place or person nominated by him or her.
- (3) Accommodation - Subject to any other law, an employer shall not require his or her employee to accept accommodation, meals or rations from him or her or from any person or at any place nominated by him or her.
- (4) Deductions - An employer shall not levy any fines against his or her employee nor make any deductions from the employee's remuneration other than the following:
  - (a) With the written consent of the employee, a deduction for any holiday, sick, medical, insurance, savings, provident or pension fund, or in respect of subscriptions to a trade union;
  - (b) A deduction of any amount which an employer by law or order of any competent court is required or permitted to make;
  - (c) Whenever the ordinary hours of work are reduced because of short-time, a deduction not exceeding the amount of the employee's hourly wage in respect of each hour of such reduction: Provided that -
    - (i) no deduction shall be made in the case of short time arising from slackness of business or a shortage of raw materials or packing materials unless the employer has given his or her employee notice on the previous work-day of his or her intention to reduce the ordinary hours of work;
    - (ii) no deduction shall be made in the case of short time owing to vagaries of the weather or a breakdown of plant or machinery or a breakdown or threatened breakdown of buildings, in respect of the first hour not worked, unless the employer has given his or her employee notice on the previous day that no work will be available;
  - (d) with the written consent of an employee, a deduction of any amount which the employer has paid or has undertaken to pay to:
    - (i) any banking institution, building society, insurance business, registered financing institution, local authority in respect of a payment on a loan granted to such employee to acquire a dwelling;

- (ii) any organisation or body in respect of the rent of a dwelling or accommodation in a hostel occupied by such employee if such dwelling or hostel is provided through the instrumentality of such organisation or body wholly or partly from funds advanced for that purpose by the State or a body referred to in subparagraph (i);
- (e) with the written consent of an employee, a deduction towards the repayment of any amount loaned or advanced to him or her by the employer: Provided that any such deduction shall not exceed one quarter of the total remuneration due to the employee on the pay-day concerned: Provided further that no such deduction shall be made in respect of any period during which the employee's wage is reduced in terms of paragraph (d).

## 8. HOURS OF WORK AND OVERTIME

- (1) **Exclusions -**
  - (a) Sub-clauses (3), (4) (5) and (6) shall not apply to an employee while he or she is engaged on emergency work.
  - (b) Sub-clause (3) and (4) shall not apply to a watchperson: Provided that if a meal interval is granted to such an employee the time taken up by such interval shall be deemed to be time during which he or she worked;
  - (c) Sub-clause (4) shall not apply to a driver or an employee who assists such driver on the vehicle;
  - (d) Sub-clause (3), (4), (5) and (6) shall not apply to an employee who is remunerated according to an agreement under clause 19.
- (2) **Ordinary hours of work -** An employer shall not require or permit an employee to work more ordinary hours of work than:
  - (a) 45 in any week from Monday to Saturday, inclusive, and
  - (b) subject to subparagraph (i), in the case of an employee who normally works on:
    - (aa) not more than five days in a week, nine on any day;
    - (bb) more than five days in a week, eight on any day, unless the hours on one day do not exceed five.
- (3) **Meal Intervals-** An employer shall not require or permit an employee to work for more than five hours continuously without a meal interval of not less than one hour, during which interval such employee shall not be required or permitted to perform any work, and such interval shall not form part of the ordinary hours of work or overtime: Provided that:
  - (a) such interval may be reduced to not less than half an hour by written mutual agreement between an employer and an employee;
  - (b) periods of work interrupted by intervals of less than one hour, except when proviso (a) or (e) applies, shall be deemed to be continuous;
  - (c) if such interval is longer than one hour any period in excess of one and one quarter hours shall be deemed to be time worked;
  - (d) only one such interval during the ordinary hours of work of an employee on any

day shall not form part of the ordinary hours of work;

- (e) when on any day by reason of overtime worked an employer is required to give an employee a second meal interval, such interval may be reduced to not less than 15 minutes;
  - (f) a driver who during such interval does not work other than being or remaining in charge of the vehicle or its load shall for the purpose of this sub-clause be deemed not to have worked during such interval;
  - (g) such interval need to be granted to a shift worker during his or her ordinary hours of work on any shift if he or she is given the opportunity during such hours of having a meal while at his or her post in terms of any law.
- (4) **Rest intervals** – An employer shall grant to each of his or her employees a rest interval of not less than 10 minutes as nearly as practicable in the middle of each first work period and second work period of the day, and during such interval such employee shall not be required or permitted to perform any work, and such interval shall be deemed to be part of the ordinary hours of work of such employee: Provided that where an employer grants his or her employee a rest interval of not less than 20 minutes during each morning work period, the afternoon rest interval may be dispensed with.

Except as provided for in sub-clause (3) and (4) all hours of work of an employee on any day shall be consecutive.

(5) **Daily and weekly rest periods -**

- (a) An employer must allow an employee:
    - (i) a daily rest period of at least twelve consecutive hours between ending and recommencing work; and
    - (ii) a weekly rest period of at least 36 consecutive hours which, unless otherwise agreed, must include Sunday.
  - (b) A daily rest period in terms of sub-clause 5(a) may, by written agreement be reduced to 10 hours for an employee -
    - (i) whose meal interval lasts for at least three hours; or
    - (ii) who is a driver of a motor vehicle or an employee assisting on or accompanying a motor vehicle driven over a distance of more than 480 kms in one direction from the point of departure to the destination, if the ordinary hours of work of such a driver or other member of the vehicle staff, together with any overtime worked, do not exceed 14 hours on any day.
  - (c) Despite sub-clause (a)(ii), an agreement in writing may provide for -
    - (i) rest period of at least 60 consecutive hours every two weeks; or
    - (ii) an employee's weekly rest period to be reduced by up to eight hours in any week if the rest period in the following week is extended equivalently.
- (6) **Overtime** - An employer shall not require or permit an employee to work overtime otherwise than in terms of an agreement concluded by him or her with the employee and such overtime shall not exceed:
- (a) three hours on any day; or

- (b) 10 hours in any week;

Provided that this limitation shall not apply in respect of the employees referred to in sub-clause (5)(b)(ii).

- (7) **Payment for overtime** - An employer shall pay an employee, who works overtime, at a rate of not less than one and a half times his or her hourly wage.

## 9. NIGHT WORK

- (1) An employer may only require or permit an employee to perform night work, if so agreed and if:
  - (a) the employee is entitled to and shall receive payment of an allowance, which may be a 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 shift.
- (2) An employer who requires an employee to perform work on a regular basis after 23:00 and before 06:00 the next day must:
  - (a) inform the employee in writing, or orally if the employee is not able to understand a written communication, in a language that the employee understands:
    - (i) of any health and safety hazards associated with the work that the employee is required to perform; and
    - (ii) of the employee's right to undergo a medical examination in terms of paragraph (b);
  - (b) at the request of the employee, enable the employee to undergo a medical examination, for the account of the employer, concerning those hazards:
    - (i) before the employee starts, or within a reasonable period of the employees starting, such work, and
    - (ii) at appropriate intervals while the employee continues to perform such work; and
    - (iii) transfer the employee to suitable day work within a reasonable time if
    - (iv) the employee suffers from a health condition associated with the performance of night work; and
    - (v) it is practicable for the employer to do so.
- (3) For the purposes of sub-clause (2), an employee works on a regular basis if the employee works for a period of longer than one hour after 23:00 and before 06:00 at least five times per month or 50 times per year.

## 10. COMPRESSED WORKING WEEK

- (1) An agreement in writing between an employer and an employee may require or permit the latter to work up to twelve hours in a day, inclusive of the meal intervals required in terms of clause 8(3), without receiving overtime pay.

- (2) An agreement in terms of sub-clause (1) may not require or permit an employee to work -
- (a) more than 45 ordinary hours of work in any week;
  - (b) more than ten hours' overtime in any week; or
  - (c) on more than five days in any week.

### **11. AVERAGING HOURS OF WORK**

- (1) Despite clause 8 (2) and clause 8 (7), the ordinary hours of work and overtime of an employee may be averaged over a period of up to four months.
- (2) An employer may not require or permit an employee to work more than:
- (a) an average of 45 ordinary hours of work in a week over the agreed period;
  - (b) an average of five hours' overtime in a week over the agreed period.

### **12. PAYMENT FOR WORK ON A SUNDAY**

- (1) An employer must pay an employee who works on a Sunday at double the employee's wage for each hour worked, unless the employee ordinarily works on a Sunday, in which case the employer must pay the employee at one and one-half times the employee's wage for each hour worked.
- (2) If an employee works less than the employee's ordinary shift on a Sunday and the payment that the employee is entitled to in terms of sub-clause (1) is less than the employee's ordinary daily wage, the employer must pay the employee the employee's ordinary daily wage.
- (3) Despite sub-clause (1) and (2), an agreement may permit an employer to grant an employee who works on a Sunday paid time off equivalent to the difference in value between the pay received by the employee for working on the Sunday and the pay that the employee is entitled to in terms of sub-clause (1) and (2).
- (4) Any time worked on a Sunday by an employee who does not ordinarily work on a Sunday is not taken into account in calculating an employee's ordinary hours of work in terms of clause 8, but is taken into account in calculating the overtime worked by the employee in terms of clause 8 (6),
- (5) If a shift worked by an employee falls on a Sunday and another day, the whole shift is deemed to have been worked on the Sunday, unless the greater portion of the shift was worked on the other day, in which case the whole shift is deemed to have been worked on the other day.
- (6) An employer must grant paid time off in terms of subclause (3) within one month of the employee becoming entitled to it.
- (7) An agreement in writing may increase the period contemplated by sub-clause (6) to 12 months.

### **13. PUBLIC HOLIDAYS**

- (1) An employer may not require an employee to work on a public holiday except in accordance with an agreement.

- (2) If a public holiday falls on a day on which an employee would ordinarily work, an employer must pay:
- (a) an employee who does not work on the public holiday, at least the wage that the employee would ordinarily have received for work on that day;
  - (b) an employee who does work on the public holiday -
    - (i) at least double the amount referred to in paragraph (a); or
    - (ii) if it is greater, the amount referred to in paragraph (a) plus the amount earned by the employee for the time worked on that day.
- (3) If an employee works on a public holiday on which the employee would not ordinarily work, the employer must pay that employee an amount equal to -
- (a) the employee's ordinary daily wage; plus
  - (b) the amount earned by the employee for the work performed that day, whether calculated by reference to time worked or any other method.
- (4) An employer must pay an employee for a public holiday on the employee's usual pay day.
- (5) If a shift worked by an employee falls on a public holiday and another day, the whole shift is deemed to have been worked on the public holiday, but if the greater portion of the shift was worked on the other day, the whole shift is deemed to have been worked on the other day.

#### **14. ANNUAL LEAVE**

- (1) In this clause "annual leave cycle" means the period of 12 months employment with the same employer following -
- (a) the employee's commencement of work; or
  - (b) the completion of that employee's prior leave cycle.
- (2) Subject to sub-clause (4), an employer shall grant to an employee, and the employee shall take, in respect of an annual leave cycle, leave as follows -
- (a) a watchperson whose ordinary hours of work -
    - (i) exceeds 48 in a week and who normally works on -
      - (aa) not more than five days in a week, 20 consecutive work-days;
      - (bb) more than five days in a week, 24 consecutive work-days;
    - (ii) do not exceed 48 in a week and who normally works on -
      - (aa) not more than five days in a week, 15 consecutive work-days;
      - (bb) more than five days in a week, 18 consecutive work-days;
  - (b) any other class of employee who normally works on -
    - (i) not more than five days in a week, 15 consecutive workdays;

- (ii) more than five days in a week, 18 consecutive work-days;
- (c) an employee who works on an hourly or a daily basis, one hour for every 17 hours worked; Provided that an employee who normally works on -
  - (i) not more than five days in a week, one day for every 153 hours or 17 days worked;
  - (ii) more than five days in a week, one day for every 136 hours or 17 days worked.

Provided that an employee who before this part of the Agreement became binding had been entitled to a longer period of annual leave than that prescribed in this sub-clause, shall retain the right to such leave while employed by the same employer;
- (3) The employer shall pay an employee in respect of the leave mentioned in sub-clause (1), in the case of an employee referred to in -
  - (a) sub-clause (2) (a) (i), an amount of not less than four times the employee's weekly wage;
  - (b) sub-clause (2) (a) (ii) or (2) (b), an amount of not less than three times the employee's weekly wage, no such employee shall be paid less than three weeks' wages as annual leave pay;
  - (c) sub-clause (2)(c), an amount proportional to the weekly wage which the employee was receiving immediately prior to the date on which the leave commenced.
- (4) The leave mentioned in sub-clause (2) shall be granted and be taken, as the case may be, at a time to be fixed by the employer: Provided that -
  - (a) if such leave has not been granted and taken earlier, it shall be granted and be taken so as to commence within six months after the completion of the 12 months of employment to which it relates;
  - (b) the period of leave shall not be concurrent with any period:
    - (i) of sick leave in terms of clause 15(2) or with absence from work owing to incapacity in the circumstances set out in clause 15 (8)(b) or (c); amounting in the aggregate in any period of 12 months to not more than 15 weeks;
    - (ii) during which the employee is under notice of termination of employment in terms clause 22, or
  - (c) an employer may set off against such period of leave any days of occasional leave granted up to a maximum of 7 days per annum on full pay to his employee at such employee's written request during the period of employment to which the annual leave relates;
  - (d) when an employer requires an employee to take leave before the expiration of the 12 months of employment to which such leave relates, the employer shall grant such employee the full period of leave accruable for 12 months of employment and, with due regard to the accrual of any increments in terms of clause 4, shall pay such employee in respect of such leave an amount of not less than that which the employee would have been entitled to at the date on which the leave would normally have accrued.



- (e) If the employment of an employee referred to in paragraph (d) terminates before the expiration of 12 months in respect of which leave was granted in terms of that paragraph, the employer may set off the difference between the amount paid to the employee and the amount to which the employee would have been entitled in terms of sub-clause (7) had leave not been granted to him or her against the remuneration due to such an employee at the termination of the contract.
- (5) The remuneration in respect of the leave mentioned in sub-clause (2), shall be paid not later than the last work-day before the date of commencement of the leave or, at the written request of the employee, not later than the first pay-day after the expiration of the leave.
- (6) An employee whose employment terminates during an incomplete leave cycle and who has been in employment for longer than 4 months shall, upon such termination and in addition to any other remuneration which may be due to him or her, be paid one day's remuneration in respect of every 17 days on which he or she worked or was entitled to be paid;

Provided that an employer may make a proportionate deduction in respect of any period of leave granted to an employee in terms of proviso (c) to sub-clause (4).

- (7) An employee who has become entitled to the period of leave mentioned in sub-clause (2), read with sub-clauses (4) (c) and whose employment terminates before such leave has been granted and been taken, shall and with due regard to sub-clause (9), upon such termination be paid the amount he or she would have received in respect of the leave had the leave been granted to and taken by him or her as at the date of the termination.
- (8) For the purposes of this clause:
- (a) the weekly wage at any date of an employee who is engaged in piecework or commission work shall be his or her average weekly remuneration for the preceding 13 weeks or, if a lesser period has been worked, for the number of completed weeks so worked;
- (b) "employment" and "period of employment" shall be deemed to include:
- (i) any period in respect of which an employer pays an employee in lieu of notice in terms of clause 22;
- (ii) any period amounting in the aggregate in any period of 12 months, to not more than 15 weeks during which an employee is absent
- (aa) on leave in terms of this clause;
- (bb) on sick leave in terms of clause 15 (2) or owing to incapacity in the circumstances set out in clause 15 (8)(b) or (c);
- (cc) at the instance of his or her employer;
- (dd) with the consent or condonation of his or her employer;
- (ee) for any other reason that is not in breach of the contract of employment.
- (iii) previous employment with the same employer if the break in employment is less than one year.

- (c) employment shall be deemed to commence:
  - (i) in the case of an employee who, before this part of the Agreement become binding, had become entitled to a period of annual leave in terms of any law, on the date on which he or she last became entitled to leave under that law;
  - (ii) in the case of an employee who was in employment before this part of the Agreement became binding and to whom any law providing for annual leave applied but who had not yet become entitled to a period of leave in terms thereof, on the date on which such employment commenced;
  - (iii) in the case of any other employee, on the date on which such employee entered the employer's service or the date on which this part of the Agreement became binding, whichever is the later;
- (9) (a) Despite anything to the contrary contained in this clause, an employer may for the purposes of annual leave, at any time, but not more than once in any period of 12 months, close his or her establishment for 14 consecutive days or suspend an activity for 14 consecutive days and in that case he or she shall remunerate his or her employee in terms of sub-clause (2) or in terms of paragraph (c) hereof, as the case may be.
- (b) Whenever a paid holiday falls on a day which otherwise would be a work day for an employee and such paid holiday falls within the closed or suspension period referred to in paragraph, (a), another work-day shall be added to the said closed or suspension period as a further period of leave and the employee shall be paid an amount of not less than his or her daily wage in respect of each such day added.
- (c) An employee who, at the date on which an establishment or activity in which he or she is employed is closed or suspended, is not entitled to the full period of annual leave mentioned in sub-clause (2) shall, in respect of any leave due to him, be paid by his or her employer on the basis set out in sub-clause (7), and for the purposes of annual leave thereafter his or her employment shall be deemed to commence on the date of such closing of the establishment or suspension of the activity.
- (10) An employer may not pay an employee instead of granting paid leave in terms of this clause, except upon termination of employment and in accordance with sub-clauses (6) and (7).

## **15. SICK LEAVE**

- (1) For purposes of this clause "sick leave cycle" means the period of 36 months employment with the same employer immediately following -
  - (a) an employee's commencement of employment; or
  - (b) the completion of that employee's prior sick leave cycle.
- (2) An employee is entitled to an amount of paid sick leave, during every sick leave cycle, equal to the number of days the employee would normally work during a period of six weeks.
- (3) Despite sub-clause (2) during the first six months of employment, an employee is entitled to one day's sick leave for every 26 days worked.
- (4) An employer may, during the employee's first leave cycle, reduce the employee's

entitlement to sick leave in terms of sub-clause (2) by the number of days' sick leave taken in terms of sub-clause (3).

- (5) If during the a sick leave cycle an employee is absent due to incapacity for longer than the number of days sick leave to which he or she is entitled in terms of sub-clause (2) the employer shall not be required to pay the employee for the excess sick leave taken.
- (6) Where an employer in terms of any law pays fees for hospital or medical treatment in respect of an employee, the fees so paid may be set off against the payment of sick leave.
- (7) Payment for any period of absence on sick leave to an employee who is employed on piecework or commission work shall be at the rate of not less than the employee's average remuneration for the last 13 weeks before the start of the sick leave or if a shorter period has been worked, for the number of completed weeks so worked.
- (8) Limitation -

An employer is not required to pay sick leave to an employee in terms of this clause:

- (a) If the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and the employee fails to produce a medical certificate stating the nature and duration of his or her incapacity, after having been requested to do so by the employer.

The medical certificate referred to in this sub-clause must be issued by a medical practitioner or any other person who is certified to diagnose and treat patients and is registered with a professional council established by an Act of Parliament.

- (b) If the employer, at the written request of an employee, makes a contribution that is at least equal to that made by the employee, to any fund or organisation nominated by the employee which in the event of the employee's incapacity in the circumstances set out in this clause would ensure the payment to the employee of an amount not less than the equivalent of his or her wage for any period of such leave in terms of sub-clause (2).
- (c) for any period of incapacity of an employee in respect of which the employer is required by any law to pay to the employee not less than his or her full wage.

Application to occupational accident or diseases -

- (9) This clause shall not apply to inability to work caused by an accident or occupational disease as defined in the Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993), except in respect of any period during which no compensation is payable in terms of that Act.

## 16. MATERNITY LEAVE

- (1) An employee is entitled to at least four consecutive months' maternity leave.
- (2) An employee may commence maternity leave -
  - (a) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
  - (b) on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.

- (3) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
- (4) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.
- (5) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to -
  - (a) commence maternity leave; and
  - (b) return to work after maternity leave.
- (6) Notification in terms of sub-clause (5) must be given -
  - (a) at least four weeks before the employee intends to commence maternity leave;
  - (b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- (7) Protection of employees before and after birth of a child -
  - (a) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her 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 night work, as defined in clause 8 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.

## **17. FAMILY RESPONSIBILITY LEAVE**

- (1) This clause applies to an employee -
  - (a) who has been in employment with an employer for longer than four months; and
  - (b) who works for at least four days a week for that employer.
- (2) An employer must grant an employee, during each annual leave cycle, at the request of the employee, three days' paid leave, which the employee is entitled to take -
  - (a) when the employee's child is born;
  - (b) when the employee's child is sick; or
  - (c) in the event of the death of -
    - (i) the employee's spouse or life partner; or
    - (ii) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

- (3) Subject to sub-clause (5), an employer must pay an employee for a day's family responsibility leave -
  - (a) the wage the employee would ordinarily have received for work on that day; and
  - (b) on the employee's usual payday.
- (4) An employee may take family responsibility leave in respect of the whole or a part of a day.
- (5) Before paying an employee for leave in terms of this section, an employer may require reasonable proof of an event contemplated in sub-clause (2) for which the leave was required.
- (6) An employee's unused entitlement to leave in terms of this clause lapses at the end of the annual leave cycle in which it accrues.

### **18. PIECE-WORK**

- (1) An employer may when engaging an employee or after at least one week's notice if the employee is already in his or her employ, introduce any piece-work system and, except as provided for in clause 7(4), such employer shall pay the employee who is employed on such piece-work system remuneration at not less than the wage mentioned in clause 4(1) for an employee of his or her category and experience, plus the rates applicable under such system.
- (2) An employer shall keep posted up in a conspicuous place in his or her establishment a schedule reflecting the rates referred to in subclause (1) or he or she may in lieu thereof supply every employee engaged on piece-work with a letter signed by himself/herself, or on his or her behalf, setting out the said rates.
- (3) An employer shall not require or permit an employee to undertake any work for him or her solely on piece-work basis and any amount payable to an employee in terms of sub-clause (1) shall be aside from and in addition to his or her wage, which shall not be less than the wage mentioned in clause 4(1) for an employee of his or her category and experience.
- (4) An employer who intends to cancel or amend any piecework system in operation, or the rates applicable thereunder shall give an employee not less than one month's notice of such intention: Provided that an employer and an employee may agree on a longer period of notice, in which case the employer shall give notice for a period not shorter than that agreed upon.

### **19. COMMISSION WORK**

- (1) An employee who by agreement with an employer undertakes commission work on a regular basis shall be supplied by the employer, before such work is commenced, with a true copy of the agreement or a statement setting out the terms of the agreement, which shall include -
  - (a) the wage payable to the employee, which shall not be less than the wage mentioned in clause 4(1) for an employee of his or her category and experience, the rate of the commission and the conditions of entitlement thereto;
  - (b) the day of the week or month on which commission earned is due and payable;
  - (c) the type, description, number, quantity or value of sales or orders (individual, weekly, monthly or otherwise) which the employer is from time to time prepared to accept;

- (d) the day of payment of commission earned by the employee before termination of the contract of employment: Provided that such day of payment shall be no later than the last work-day of the month succeeding the month during which employment was terminated; and
  - (e) where applicable, the area in which the employee is required or permitted to work.
- (2) Except as provided for in clause 7(4), an employer shall pay an employee at not less than the wage and rate of commission agreed upon between them.
  - (3) The employee's wage and commission shall be paid on the day stipulated in the agreement referred to in sub-clause (1), and the provisions of clause 5(1) shall not apply in respect of such payment;
  - (4) An employer shall not require or permit an employee to undertake any work for him or her on the basis of commission only and any amount payable to an employee as commission under an agreement entered into in terms of sub-clause (1) shall be aside from and in addition to the wage stipulated therein.
  - (5) An employer or an employee who intends to cancel or to negotiate for an alteration of an agreement in regard to commission work shall give written notice of such intention, and the period of such notice shall not be less than nor run concurrently with that required to terminate the contract of employment of such employee in terms of clause 21.

## **20. PROHIBITION OF EMPLOYMENT**

- (1) An employer shall not -
  - (a) employ any person under the age of 15 years; or
  - (b) a child who is under the minimum school leaving age in terms of any law, if he or she is 15 years or older.
- (2) An employer shall not employ a child in employment -
  - (a) that is inappropriate for a person of that age;
  - (b) that places at risk the child's wellbeing, education, physical or mental health or spiritual, moral or social development.
- (3) All forced labour is prohibited.

## **21. TERMINATION OF CONTRACT OF EMPLOYMENT**

- (1) Despite clause 4(5), an employer or an employee who desires to terminate the contract of employment, shall give -
  - (a) during the first four weeks of employment, not less than one week's notice;
  - (b) after the first four weeks of employment, not less than two week's notice of termination of contract;
- (2) The notice of termination of a contract of employment must be given in writing except when it is given by an employee who is not able to write.
- (3) Where a notice of termination is given to an employee who is unable to read and

understand it, the employer must arrange that the notice is explained to the employee in a language that the employee reasonably understands.

- (4) An employer or an employee may terminate the contract of employment without notice by paying the employee or paying the employer, as the case may be, in lieu of such notice not less than in the case of -

- (a) one week's notice, the weekly wage the employee is receiving at the time of such termination;
- (b) two weeks' notice, the wages the employee is entitled to in the two weeks.

Provided that this shall not affect -

- (i) the right of an employer or an employee to terminate the contract without notice for any cause recognised by law as sufficient;
- (ii) the right of a dismissed employee to dispute the lawfulness or fairness of the dismissal in terms of the Labour Relations Act, 1995 or any other law.

- (5) The notice referred to in sub-clause (1) shall be given on a work-day:

Provided that the period of notice shall not run concurrently with nor shall notice be given during an employee's absence -

- (a) on leave in terms of clause 14;
- (b) on sick leave in terms of clause 15(2);
- (c) owing to incapacity in the circumstances set out in clause 15(8)(b) or (c), amounting in the aggregate to not more than 15 weeks in a period of 12 months;
- (d) on maternity leave in terms of clause 16.

## **22. SEVERANCE PAY**

- (1) For the purposes of this section, operational requirements' means requirements based on the economic, technological, structural or similar needs of any employer.
- (2) An employer must pay an employee who is dismissed for reasons based on the employer's operational requirements severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer, calculated in accordance with clause 4.
- (3) An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer, is not entitled to severance pay in terms of sub-clause (2).
- (4) The payment of severance pay in compliance with this section does not affect an employee's right to any other amount payable according to law.
- (5) If there is a dispute only about the entitlement to severance pay in terms of this clause, the employee may refer the dispute in writing to the Council.

## **23. CERTIFICATE OF SERVICE**

- (1) On termination of employment an employee is entitled to a certificate of service stating-

- (a) the employee's full name;
- (b) the name and address of the employer;
- (c) a description of any council or sectoral employment standard by which the employer's business is covered;
- (d) the date of commencement and date of termination of employment;
- (e) the title of the job or a brief description of the work for which the employee was employed at date of termination;
- (f) the remuneration at date of termination; and
- (g) if the employee so requests, the reason for termination of employment.

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

- (1) An employer shall supply, free of charge, any uniform, overall, gumboots, cap or other protective clothing which he or she is required by any law to provide to an employee or which the employee is required by any law to wear.
- (2) An employer to whom sub-clause (1) does not apply but nevertheless, explicitly or implicitly, requires an employee to wear any such protective clothing shall supply it free of charge.
- (3) Any such protective clothing which has been provided to an employee free of charge shall remain the property of the employer.

#### **25. ATTENDANCE REGISTER**

- (1) An employer shall provide in his or her establishment an attendance register substantially in the form and manner as specified by the Council from time to time in which he or she shall record in ink or indelible pencil the name and class of each of his or her employees, and if such employee is unable to write his or her employer shall on his or her behalf for each day worked and for that day make the necessary entries in respect of items (i) to (iv) inclusive of subclause (3) (a), and sign such entries in the presence of a person nominated by the employee.
- (2) An employer may, instead of an attendance register provide a semi automatic time recorder together with the necessary cards, which shall be as nearly as practicable in the form and manner as specified by the Council from time to time and supply to each employee such a card indicating the name or number of the employee and the date of termination of the week in respect of which it is to be used.
- (3) Unless prevented from doing so by unavoidable circumstances, an employee shall in respect of each day worked by him or her and on that day -
  - (a) record in ink or indelible pencil in the attendance register referred to in sub-clause (1):
    - (i) the day of the week;
    - (ii) the time he or she commenced work;
    - (iii) the time of commencement and termination of all meal or other intervals which are not reckonable as ordinary hours of work;



- (iv) the time of finishing work the day;
  - (v) the time of commencement and termination of overtime worked for the day;
  - (vi) the total number of hours worked for the day; and
  - (vii) his or her signature.
- (b) in an establishment where a semi-automatic time recorder is provided, make an entry by means of such recorder on a card supplied in terms of sub-clause (2) to show the following:
- (i) the time he or she commenced work;
  - (ii) the time of commencement and termination of all meal or other intervals which are not reckonable as ordinary hours of work; and
  - (iii) the time of finishing work for the day.
- (4) An employer shall retain the attendance register referred to in sub-clause (2), as the case may be, for a period of not less than three years after the date of the last entry therein or thereon.

## **26. WRITTEN PARTICULARS OF EMPLOYMENT**

- (1) An employer must supply an employee, when the employee commences employment, with the following particulars in writing -
- (a) the full name and address of the employer;
  - (b) the name and occupation of the employee, or a brief description of the work for which the employee is employed;
  - (c) the place of work, and, where the employee is required or permitted to work at various places, an indication of this;
  - (d) the date of employment;
  - (e) the employee's ordinary hours of work and days of work;
  - (f) the employee's wage or the rate and method of calculating wages;
  - (g) the rate of pay for overtime work;
  - (h) any other cash payments that the employee is entitled to;
  - (i) any payment in kind that the employee is entitled to and the value of the payment in kind;
  - (j) how frequently remuneration will be paid;
  - (k) any deductions to be made from the employee's remuneration;
  - (l) the leave to which the employee is entitled;
  - (m) the period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate;

- (n) any period of employment with a previous employer that counts towards the employee's period of employment;
  - (o) a list of any other documents that form part of the contract of employment, indicating a place that is reasonably accessible to the employee where a copy of each may be obtained.
- (2) When any matter listed in sub-clause (1) changes -
    - (a) the written particulars must be revised to reflect the change; and
    - (b) the employee must be supplied with a copy of the document reflecting the change.
  - (3) If an employee is not able to understand the written particulars, the employer must ensure that they are explained to the employee in a language and in a manner that the employee understands.
  - (4) The employer must keep written particulars in terms of this clause for a period of 12 months after the termination of employment.

## **27. LOG BOOK**

- (1) An employer shall provide his or her driver with a log-book as nearly as practicable in the form and manner as specified by the Council from time to time.
- (2) Every driver shall, in the log-book referred to in sub-clause (1), keep a daily log in duplicate in respect of each day's work and shall within 24 hours of the completion of the work to which it relates deliver a copy thereof to his employer and the employer shall retain such copy for a period of at least three years subsequent to such delivery.

## **28. KEEPING OF THIS PART OF THE AGREEMENT**

- (1) Every employer on whom this part of the Agreement is binding must -
  - (a) keep a copy of the Agreement available in the workplace at all times;
  - (b) make the copy available for inspection by an employee; and
  - (c) give a copy of the Agreement -
    - (i) to an employee who has paid the prescribed fee; and
    - (ii) free of charge, on request, to an employee who is a trade union representative or a member of a workplace forum.

## **29. REGISTRATION OF EMPLOYERS**

- (1) Every employer who has not already done so in pursuance of a previous agreement at the date of coming into operation of this part of the Agreement and every employer who enters the Industry after that date shall within seven days of such date or on the date on which such employer commenced operations, as the case may be, either electronically as provided on the Council's website, or forward to the General Secretary of the Council, P.O. Box 1142, Woodstock, 7915 or to the Regional Secretary of the Regional Chamber or Sub-Chamber in whose area of responsibility the employer's business falls, by registered post, the following particulars which shall

be in writing and signed by the employer or a person duly authorised to sign on behalf of the employer:

- (a) The trading name, business address and registered address of the establishment;
  - (b) the full names and residential addresses of all partners and/or directors and/or members;
  - (c) the full name and residential address of the responsible manager;
  - (d) the section or sections of the Industry in which the establishment is engaged;
  - (e) date of commencing operations.
  - (f) the company's or corporation's registration number;
  - (g) the company's or corporation's or partnership's registration number with the South African Revenue Services (SARS);
  - (h) the company's or corporation's or partnership's registration number with the Unemployment Insurance Fund (UIF);
  - (i) a copy of the registration or incorporation certificate of the company or corporation, as the case may be.
- (2) Written notification shall be sent by registered post to the Council by every employer of any alteration in respect of any details supplied in terms of sub-clauses (1) (a) to (e) of this clause, and such notification shall be given within 7 days of such alteration.

### **30. REGISTRATION OF EMPLOYEES**

- (1) No employer shall require his employees to work and no employee shall work in premises other than an establishment provided, equipped, maintained and controlled by such employer, and which shall be registered with the Council in terms of Clause 29 of this part of the Agreement.
- (2) An employer shall not allow any work in the Clothing Industry to be performed in a dwelling-house.
- (3) No employee engaged in the employ of one establishment may perform work in another establishment without first having been discharged by the first establishment and re-registered by the second establishment.
- (4) An employer shall, before engaging an applicant for work, require the applicant to produce a service card issued by the Council. If the applicant is a new entrant into the Clothing Industry or cannot produce a Council service card, the provisions of sub-clause (5) (c) below shall apply.
- (5) Upon engagement, the employer shall-
  - (a) enter in the relevant columns of the service card: the name of his factory, the date of engagement, occupation, wage on engagement and total previous experience and shall retain the card in safekeeping so that it can be dealt with in terms of sub-clause (7) upon termination of service of the employee; and
  - (b) complete a "Registration of Employee" form either electronically as contained on the Council's website, or in triplicate, forward the original to the Regional Chamber in whose area of responsibility the employer's business falls, not later

than Friday of that week, hand the duplicate copy to the employee and retain the triplicate copy for his records; and

- (c) in the case of an employee who is a new entrant into the Industry or an employee who cannot produce a Council service card -
  - (i) complete the "Registration of Employee" form either electronically as contained on the Council's website, or in triplicate and send the original and duplicate copy together with a copy of the employee's identity document to the Regional Chamber in whose area of responsibility the employer's business falls, where he will be allocated a Council registration number, issued with a Council service card and be registered in the employ of the employer. The triplicate copy shall be retained by the employer for his records;
  - (ii) the employer shall acquire the service card of the employee before he commences work and the employer shall retain same until the employee's services are terminated and the service card is dealt with in terms of sub-clause (4).
- (6) An employer shall forward to the Regional Chamber in whose area of responsibility the employer's business falls, for amendment the service card of any employee who is transferred from one category to another, the latter of which requires a higher rate of remuneration, within seven (7) days of such transfer.
- (7) The service card shall be retained by the employer until the employee leaves his employer, whereupon the employer shall enter on the card the date of termination of employment, the occupation and the rate of pay on termination, and return the card to the employee after signing it.
- (8) On the Friday of the week during which an employee's services are terminated, the employer shall forward to the Regional Chamber in whose area of responsibility the employer's business falls, a report of termination of service stating the reason for the employee's termination of service.
- (9) The Council shall have the power to withdraw any record of service card which is subsequently found to contain incorrect information. The Council shall upon being furnished with the correct information, issue a fresh record card *in lieu* thereof.

### 31. EXEMPTIONS

- (1) Any business entity, whether a party or 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 must be made in writing on a prescribed form provided by the Council.
- (3) All applications for exemption must be motivated in accordance with the exemption criteria set out in sub-clause (7) below; must be supported by relevant documentation and in addition must 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 sub-clauses of the agreement from which the exemption is requested;
  - (d) Satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, such consultations to include a registered party trade union, where such union has members employed at the workplace, including the response resulting from such consultations.
  - (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 person 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 sub-clause (7) below, within 30 days from the date of lodgement of the application with the General Secretary, failing which the application will be deemed to have been refused.
  - (c) The Exemptions Committee may call for any further information or submissions as it deems appropriate from the applicant, prior to making a decision. The time period stipulated in sub-clause (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 as 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 will be deemed to have been refused.
  - (e) Subject to the time period for considering the application as provided in sub-clause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been refused and the reasoning of the members of the committee who wish to reject the application, shall constitute the reasons of the Exemptions Committee for the purposes of sub-clause (j) below.
  - (f) The Exemptions Committee shall notify the applicant of its decision within 7 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 sub-clauses of the agreement in respect of which exemption was granted or partially granted;
    - (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 a interest in the matter;

- (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in subclause (5) below, since the latter may make a decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.
- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or withdraw the application, may be referred on appeal to the Independent Exemptions Body (Exemptions Board) hereby established in terms of the Act and the Constitution of the Council.

Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.

- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the quantum thereof: Provided that such a fee shall be consistent with-
  - (i) the cost incurred for the hearing of the appeal; and/or
  - (ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.
- (c) The Exemptions Board shall also have the power to raise a cost order on the applicant in respect of costs incurred by the parties to the appeal where it is satisfied that it will be proper to do 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 sub-clause (4) above shall, read with the changes required by the context, apply equally to the appeal process;
- (d) The Exemption Board's decision 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 that-
  - (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) 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;
  - (d) the exemption will not undermine collective bargaining and labour peace in the Industry;
  - (e) there has been compliance with subclause (3) above;

- (f) the majority of affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies and, in such instance, either the employer, or the trade union may request that a ballot be conducted.
- (8) In addition, the Exemptions Committee and the Exemptions Board, when determining applications for exemptions, shall take into account-
- (a) the merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has put up a compelling case for the exemption;
  - (b) whether the applicant firm will constitute a viable concern after the expiry of the exemption;
  - (c) if the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee, transferability, administration, management, costs, growth and stability;
  - (d) the terms of the exemption sought, including the period 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 is entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the 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 sub-clause (7) above;
- (b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of sub-clause (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.

### 32. COUNCIL FUNDS

- (1) The employer and the employee NBC Levy contribution shall be converted to a percentage-based contribution.
- (2) The following table shall be used in determining the new NBC levy contributions:

<b>Employees</b>	<b>Employers</b>
Payable by THE EMPLOYEE by means of a deduction from an employee's wages: Calculated at 0,37% of a qualified machinist's rate of pay in "other areas" as defined in the attached wage schedule (This equates to R3,84 with effect from 1 <sup>st</sup> September 2019)	Payable by THE EMPLOYER: Calculated at 0,47% of a qualified machinist's rate of pay in "other areas" as defined in the attached wage schedule (This equates to R4,87 with effect from 1 <sup>st</sup> September 2019)

- (3) The total so deducted together with an equal amount which shall be contributed by the employer shall be forwarded together with a list showing Council registration numbers of employees detailing particulars of contributions, to the General Secretary of the Council, or Regional Secretary of the Regional Chamber of this Council in whose area of responsibility the employer's business falls to reach him no later than 14 days after the end of each calendar month.
- (4) Should any amount due in terms of subclause (1) not be received by the Regional Chamber by the 14th day after the date on which it is payable, the employer shall pay weekly interest on such amount or such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two % per annum: Provided that the Regional Chamber shall be entitled in its absolute discretion to waive payment of such interest or part thereof in any individual instance.
- (5) In the event of the Council or Regional Chamber incurring any costs or becoming obliged to pay any collection commission by reason of the failure of the employer to make any payment on or before the due date, the employer shall then also be liable to pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission, and the Council or Regional Chamber shall be entitled in its absolute discretion to allocate any payment by the employer first in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.

### 33. AGENTS



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

- (v) inspect, question a person about, and if necessary remove, an article, substance or machinery present at a place referred to in sub-clause (1) and (2);
  - (vi) question a person about any work performed; and
  - (vii) perform any other prescribed function necessary for monitoring or enforcing compliance with a collective agreement.
- (f) A designated agent may be accompanied by an interpreter and any other person reasonably required to assist in conducting an inspection.
- (g) A designated agent must -
- (i) produce on request a copy of the authorisation referred to in sub-clause (3);
  - (ii) provide a receipt for any record or document removed in terms of sub-clause (5)(e); and
  - (iii) return any removed record, document or item within a reasonable time.
- (h) Any person who is questioned by a designated agent in terms of sub-clause (5) must answer all questions lawfully put to that person truthfully and to the best of that person's ability.
- (i) An answer by any person to a question by a designated agent in terms of this item may not be used against that person in any criminal proceedings, except proceedings in respect of a charge of perjury or making a false statement.
- (j) Every employer and each employee must provide any facility and assistance at a workplace that is reasonably required by a designated agent to effectively perform the designated agent's functions.
- (k) The Council may apply to the Labour Court for an appropriate order against any person who —
- (i) refuses or fails to answer all questions lawfully put to that person truthfully and to the best of that person's ability;
  - (ii) refuses or fails to comply with any requirement of the designated agent in terms of this clause; or
  - (iii) hinders the designated agent in the performance of the agent's functions in terms of this clause.
- (l) For the purposes of this clause, a collective agreement is deemed to include any basic condition of employment which constitutes a term of a contract of employment in terms of Section 49(1) of the Basic Conditions of Employment Act.

### **34. DISPUTE PROCEDURE**

- (1) Unless otherwise provided in the Council's Constitution or this collective agreement, any dispute within the registered scope of the Council must be resolved as set out below.
- (a) The General Secretary of the Council must decide, after consultation with the Secretary of any relevant Regional Chamber, whether any dispute referred to the Council must be dealt with by the Council or the Regional Chamber.
  - (b) The Council must, 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 will 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 must 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 must 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 must 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 must 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 must prepare a list of nominees to fill the remaining vacancies on each panel, and the employer parties to the Council must do likewise;
  - (ii) the lists prepared by the parties must be exchanged, and the union parties must rank the nominees of the employer parties in order of their preference, and the employer parties must 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 must 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 will 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 must attempt to reach agreement on the persons to be appointed to the panel or senior panel, failing which the remaining vacancies will be filled according to the method described in sub-clause 3(c) above.
- (e) Despite sub-clause 3(d) above, the Council may remove a member of the panel of conciliators or arbitrators from office:
  - (i) for serious misconduct; or
  - (ii) due 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 according to the method described in sub-clause 3(c) above for the unexpired portion of the predecessor's term of office.
- (g) Subject to sub-clause 3(i), a person may be appointed to one or more of the panel of conciliators and the panel of 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 will not be eligible to arbitrate the dispute.
- (i) An employee of the Council shall not be eligible for appointment to the senior panel of 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 other designated official must appoint a member of the relevant panel to conciliate or arbitrate the dispute on a rotational basis, with the next available conciliator, arbitrator or senior arbitrator being appointed, as the case may be, should any panel member(s) not be available in terms of such rotation.

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

Any dispute contemplated in Section 51(3) of the Act, where any party to the dispute is not a party or a member of a party to the Council must be resolved by the Council according to 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 must 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 must appoint a member of the panel of conciliators who must attempt to resolve the dispute through conciliation within thirty (30) days from the date of the Council 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 must 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 sub-clause 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 must issue a certificate stating whether or not the dispute has been resolved.
- (vii) Nothing in this part of the Agreement prevents 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 must appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (iii) Such written request for arbitration must be made within the time period prescribed in the Act, provided that the arbitrator may permit the late request for arbitration on good cause.
- (iv) The General Secretary or other designated official of the Council must 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 sub-clause 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 Section 138 and Section 140 of the Act.
- (vii) The arbitration proceedings must 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 will 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 has 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 is 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 must 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 must 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 must appoint a member of the panel of conciliators, who must attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was minuted or referred to the Council, or within any extended period as agreed to in writing by the parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act.
- (c) Any other dispute between parties to the Council, which the Act requires to be arbitrated or which disputes would otherwise be adjudicated by the Labour Court but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, must be resolved by the Council in accordance with the procedure set out in sub-clause 4 above, subject to the proviso in sub-clause 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 must 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 must request the Minister to appoint certain identified persons as 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 a 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 must 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 must 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 must 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 must 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 sub-clauses 4(b)(v) to 4(b)(xii) above apply to an arbitration in terms of this clause.
- (ix) In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including:
  - (aa) ordering any person to pay any amount owing in terms of a collective agreement;
  - (bb) imposing a fine for a failure to comply with a collective agreement in accordance with Item 29 of Schedule 7 and Section 33A(13) of the Act;
  - (cc) charging a party to the arbitration an arbitration fee;
  - (dd) ordering a party to the arbitration to pay the costs of the arbitration;
  - (ee) confirming, varying or setting aside a compliance order issued by a designated agent;
  - (ff) any award contemplated in Section 138(9) of the Act;
  - (gg) any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collective agreement.
- (x) Subject to the provisions of the Act, an award in an arbitration conducted in terms of this sub-clause 6 is final and binding on the parties to the dispute.
- (xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitration award is an award contemplated in Section 143(1) of the Act.



- (xii) The provisions of this procedure stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

**(7) Non-Compliance**

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

**(8) Compliance Promotion**

- (1) All current non-compliant companies which meet a minimum of 80% of the party-to-party negotiated wage rate for current employees, shall be regarded as level B compliant, subject to sub-clause 2 below.
- (2) All companies described in 8.1 above shall achieve 100% wage compliance within a period of 18 months from 1 September 2012, in 6 monthly equal increments, failing which full compliance enforcement including the execution of writs shall apply to them.
- (3) The arrears of non-compliant companies shall be ring-fenced in a 'suspense account' at 100% of the verified arrears value and a written time-bound repayment plan agreed with the bargaining council. They should also sign a legally enforceable acknowledgement of debt.
- (4) The current policy that allows for a maximum of 6-months as a repayment period for arrears shall be amended, to allow for a maximum eighteen (18) months repayment period with effect from 1 November 2012.
- (5) The arrears will become payable in full should the employer become non-compliant, or default on the repayment plan at any time in future, unless otherwise agreed by the parties.
- (6) At every future meeting of the National Bargaining Council, each party shall make one practical concrete suggestion on how to further promote compliance in the industry.
- (7) The National Bargaining Council General Secretary shall have unfettered authority to serve any writ of execution upon any employer who fails to become compliant in terms of the new compliance provisions envisaged in this agreement, unless the parties agree otherwise.
- (8) Nothing in clause 4 or clause 5 of this agreement shall have the effect of downward migration of conditions of employment for any current employee.
- (9) The Trade Union shall have the unfettered right to embark on industrial action against any company which fails to implement the terms of this agreement.

**35. TRADE UNION ACCESS TO WORKPLACE**

- (1) Any office-bearer or official of the trade union party to the Council is entitled to enter the employer's premises in order to recruit members or communicate with members, or otherwise serve members' interests.
- (2) The trade union party to the Council, is entitled to hold meetings with employees outside their working hours at the employer's premises.
- (3) The members of the trade union party to the Council are entitled to vote at the employer's premises in any election or ballot contemplated in the trade union's constitution.
- (4) The rights conferred by this section are subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent the undue disruption of work.
- (5) 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.
- (6) Access to email and internet facilities for shop stewards will be encouraged, provided that such access shall be during shop stewards' own time and dealt with in a manner that is not disruptive to production.

### **36. DEDUCTION/PAYMENT OF TRADE UNION SUBSCRIPTIONS OR LEVIES**

- (1) Any employee who is a member of the trade union party to the Council may authorise the employer in writing to deduct subscriptions or levies payable to the trade union from the employee's wages.
- (2) An employer who receives an authorisation in terms of subclause (1) must begin making the authorised deduction as soon as possible and must remit the amount deducted to the Regional Chamber in whose area of responsibility the employer's business falls by not later than the 14<sup>th</sup> day of the month first following the date each deduction was made.
- (3) An employee may revoke an authorisation given in terms of subclause (1) by giving the employer and the trade union one month's written notice.
- (4) An employer who receives a notice in terms of subclause (3) must continue to make the authorised deduction until the notice period has expired and then must stop making the deduction.
- (5) With each monthly remittance the employer must give the relevant Regional Chamber of the Council –
  - (a) a list of the names of every member from whose wages the employer has made the deductions that are included in the remittance;
  - (b) details of the amounts deducted and remitted and the period to which the deductions relate; and
  - (c) a copy of every notice of revocation in terms of subclause (3).
- (6) HIV/AIDS Contribution -
  - (a) Every employer to whom this part of the Agreement applies shall each week for each employee in his employ contribute an amount of 62 cents to the SACTWU HIV/AIDS Project.

- (b) The amount shall be submitted to the Regional Secretary of the Regional Chamber of the Council in whose area of responsibility the employer's business fall, by not later than the 14th day of the month first following the month in respect of which the payment is due.
  - (c) The total amount so collected by the Council shall be transferred to SACTWU's Finance Department.
- (7) Trade Union Agency Shop
- (a) **Scope-** Agency fees will apply to employees who –
    - (i) are not members of the trade union party, but are eligible for membership thereof;
    - (ii) are not bound by the provisions of the closed shop clause; and
    - (iii) fall within the scope of this part of the Agreement.
  - (b) **Union membership:** Employees are not compelled to become members of the trade union party.
  - (c) **Agency fee deductions:** Every employer to whom this clause applies shall:
    - (i) deduct from the wages of an employee an amount equivalent to the union subscription; and
    - (ii) pay such monies to the Regional Secretary of the Regional Chamber of the Council in whose area of responsibility the employer's business fall, by not later than the 14th day of the month first following the month in respect of which the payment is due.
    - (iii) 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.
  - (d) **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.
  - (e) **Utilisation of agency fees:** No agency fee deducted may be -
    - (i) paid to a political party as an affiliate fee;
    - (ii) contributed in cash or kind to a political party or a person standing for election to any political office; or
    - (iii) used for any expenditure that does not advance or protect the socio-economic interests of employees.

### 37. TRADE UNION'S REPRESENTATIVES ON THE COUNCIL

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

- (2) Duly elected shop stewards are each entitled to ten working days paid leave per calendar year pooled per establishment and the head shop steward shall be eligible to an additional 1 (one) day paid time off, to be used at the discretion of the trade union for bona fide trade union activities, provided that the employer is given at least ten (10) working days prior notice thereof. (For the purpose of this clause a "working day" shall mean any day excluding a Saturday and Sunday, a public holiday in terms of this part of the Agreement and the period of annual shut-down).

- (3) Payment of shop stewards for attending bargaining council or related meetings -

Any day or part thereof used for attending bargaining council or related meetings shall not be debited from normal shop stewards time off for trade union activities. Payment for such days or hours shall be the responsibility of the relevant regional chamber of the NBC.

### **38. DISPUTES IN REGARD TO ORGANISATIONAL RIGHTS**

- (1) If any dispute arises out of the interpretation or the application of clauses 35, 36 or 37 above, then such dispute must be dealt with in accordance with the dispute resolution procedures contained in this part of the Agreement.
- (2) An arbitration award regulating any of the matters referred to in these clauses remains in force until the expiration of this part of the Agreement.

### **39. TERMS AND CONDITIONS MORE FAVOURABLE**

All terms and conditions of employment applicable to employees at the various companies or concerns covered by the scope of this part of the Agreement will, where they are more favourable than those concluded in this part of the Agreement, remain in full force and effect, unless otherwise agreed or determined through lawfully permissible means.

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

- (1) This Amending Agreement shall remain in force until 31 August 2020, save that the parties to the Council shall annually negotiate through collective bargaining amendments to this Amending Agreement, unless they agree to negotiate at different intervals, provided that no amendment(s) shall take effect before 1 September 2019.
- (2) Either party 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 contemplated in sub-clause (2) above unprocedural.

### **41. 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 co-operate with the survey.

#### **42. PROVIDENT FUND CONTRIBUTIONS**

- (1) Employees' contributions: Every employer shall, each week or each month, as the case may be, deduct from the wages of each of his weekly paid or monthly paid employees, in respect of whom wages are prescribed in this part of the Agreement, and who has worked 9 ordinary hours or more during any pay week, an amount of equal to 4,0% of his wages towards a provident fund or a retirement fund administered by the Council.

No deductions shall be made from the wages of an employee who is 65 years of age or older.

- (2) Employers' contributions: An employer shall each week, in the case of weekly paid employees or each month, in the case of monthly paid employees, contribute an amount equal to 4,0% of the wage of each of his employees. In respect of whom wages are prescribed in this Agreement and who has worked 9 ordinary hours or more during any pay week, towards a provident fund or retirement fund administered by the Council.
- (3) The total deducted in terms of subclause (1) above, together with the employer's contributions in terms of subclause (2) above, shall be forwarded together with a list showing Council registration numbers of employees detailing particulars of contributions, to the General Secretary of the Council, or Regional Secretary of the Regional Chamber of this Council in whose area of responsibility the employer's business falls to reach him no later than 14 days after the end of each calendar month.

#### **43. INDUSTRY PROTECTION FUND**

Contained in Annexure C.

#### **44. HIV/AIDS**

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

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

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

#### **45. CONTRACT EMPLOYEES**

Contained in Annexure D.

#### **46. CLOSED SHOP**

No employer shall continue to employ an employee:

- (1) Who, while being eligible for membership of the union, is not a member of the trade union as at the date of coming into operation of this part of the agreement, or
- (2) Who does not become a member of the trade union within a period of 90 days from such date
- (3) The provisions of this clause shall apply to persons who are eligible for union membership in terms of the constitution of the trade union
- (4) For this section of the agreement, no union membership fees accruing from the close shop provision 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 which does not advance or protect the socio-economic interests of employees.
- (5) The provisions of section 26(3)(c) and 26(4) of the Labour Relations Act shall be observed by the parties to the Council and to whom this clause is applicable.

#### **47. 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.

#### **48. JOINT AND SEVERAL LIABILITY FOR COMPLIANT COMPANIES OUTSOURCING AND/OR SUBCONTRACTING TO NON-COMPLIANT COMPANIES**

The joint and several liability provisions regarding subcontracting to Non-Compliant companies shall apply to all factories who pay below 80% of the NBC gazetted wage rates. Companies paying between 80% and 100% of the NBC gazetted wage rates may apply to the NBC for Level B Compliance registration, in which case, once approved by the Council, the joint and several liability provisions would not apply.

#### **49. INCENTIVISED WAGE NATIONAL FRAMEWORK AGREEMENT**

Contained in Annexure E.

**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

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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.

necessary, the benefits, risks, alternatives and any possible social implications of the outcome.

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

## **7.2. Confidentiality and Disclosure**

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

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

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

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

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

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

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

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

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

## **10. EMPLOYEE BENEFITS**

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

## **11. DISMISSAL**

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

## **12. GRIEVANCE PROCEDURES**

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

- 12.2. Employers should create an awareness and understanding of the grievance procedures and how employees can utilise them.
- 12.3. Employers should develop special measures to ensure the confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private.

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

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

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

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

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

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

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

14.2. Broadly, impact assessments should include:

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

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

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

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

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

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

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

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

15.1.1. Every workplace should develop an HIV/AIDS policy<sup>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 C****INDUSTRY PROTECTION FUND**

- (1) In terms of section 28 (1) (g) of the Act, read with clause 3.6 and 3.7 of the Council's Constitution, a fund to protect the fashion industry from further job losses and decline, which shall be known as the Fashion Industry Protection Fund (hereinafter referred to as "the Fund") is hereby established.
- (2) The objects of the Fund shall be to provide financial support to campaigns and programmes engaged in by the parties to the Bargaining Council, where such programmes are aimed at protecting the Industry in the respective Region.
- (3) The Fund shall commence on such date as decided by the parties to the Regional Council and shall continue to operate until such date as the Regional Chamber and the parties thereto may decide.
- (4) Every employer shall, each week, deduct from the wages of each of his employees for whom wages are prescribed in this part of the Agreement, an amount of 10 cents.
- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of sub-clause (4) above, contribute an amount of 19 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.

**ANNEXURE E****INCENTIVISED WAGE NATIONAL FRAMEWORK AGREEMENT**

Subject to the terms of the 2014/2016 main substantive agreement to which this annexure is attached taking precedence of interpretation, the following provisions of the incentivised wage national framework agreement shall be applicable:

**1. Introduction and Key Principles**

- 1.1 This Framework Agreement is intended to be of an enabling nature and to provide for maximum flexibility for plant level incentive schemes to be concluded on a unique and case-by-case basis. This does not preclude companies from sharing information and implementing similar incentive schemes should that be desirable.
- 1.2 The overall objective of the incentivised wage dispensation is to improve company level productivity and competitiveness.
- 1.3 The incentivised wage scheme(s) will operate in addition to current company production (or related) incentive schemes. It shall not replace current schemes already in operation at plant level, unless this is expressly agreed to at plant level.
- 1.4 The guaranteed wage rate shall be supplemented with an incentivised wage component which shall allow new employees to earn up to 100% or more of the gazetted rate, provided the employee(s) meets the required performance standards as contained in the plant level incentive scheme. This incentive shall be applicable to all new employees engaged under the incentivised wage provisions and employed after 1st September 2012, once a national framework agreement covering governing the incentive portion has been agreed.
- 1.5 Incentive Schemes should be as simple as possible, both to comprehend and to administer.

**2. Employee Protection**

- 2.1 The incentive scheme(s) at plant level shall not be used as a disciplinary tool or measure. The schemes shall operate separate and distinct from company disciplinary procedures and management disciplinary measures.
- 2.2 Events outside the control of the company shall not prejudice employees provided that the principle of earnings for time worked and earnings for performance achieved shall apply, subject to the relevant provisions of the Main Agreement.
- 2.3 The provisions of clause 2.2 above shall also apply in respect of protected strike action and shop stewards' authorised time off.

**3. Plant Level Incentive Schemes**

- 3.1 The proposed incentive schemes contemplated herein shall be drafted by management, then consulted on with the shop stewards and thereafter forwarded to the trade union for its consideration. It then needs to be finally agreed between the parties and upon agreement, must be implemented in consultation with shop stewards at plant level.

- 3.2 Incentive schemes shall not operate to give effect to any downward variation of employment standards or conditions of employment as provided for in the bargaining council's Main Agreement.
- 3.3 The provisions of all incentive schemes shall be reduced to writing, signed by management as well as the relevant branch, regional or national union official and submitted to the Bargaining Council for registration, within one week of its conclusion.
- 3.4 Incentive schemes shall be time bound and reviewed at the end of the agreed period of its operation.
- 3.5 The panel of experts to be appointed by the parties may also be consulted at the expense of the party concerned to provide guidance and offer advice in respect of the design and operation of any plant level incentive scheme.

#### **4. Deadlock-Breaking Mechanism**

- 4.1 A panel of experts shall be appointed by the parties to the 2014/16 Substantive Agreement. Such appointees shall be knowledgeable in the field of clothing production and objective evaluation performance management- and reward systems.
- 4.2 The panel of experts shall be fairly spread across the registered scope of the bargaining council, wherever possible.
- 4.3 As provided for in clause 4.16 of the 2014/2016 Substantive Agreement, the deadlock breaking mechanism for the implementation of the incentive component at plant level shall in the first instance consist of a facilitation process by a member or members drawn from the panel of experts.
- 4.4 If the matter under consideration is not resolved as per sub-clause 4.3 above, the panellist(s) involved shall submit an advisory award to the leadership of the relevant employer and the trade union for their consideration.
- 4.5 Should the affected parties not agree to the advisory award recommendations and are unable to resolve their disagreements, the deadlock breaking mechanism shall be either binding interest arbitration by agreement, or any other deadlock breaking mechanism as agreed between the affected parties.
- 4.6 The provisions of sub- clauses 4.3 and 4.4 above shall also apply in respect of any dead-lock regarding the review of plant level incentive schemes as contemplated in clause 3.4 above.
- 4.7 Should the parties be unable to finalise agreement on the deadlock breaking mechanism for the national framework agreement by the time of signature of the main substantive agreement (envisaged for 15 September 2014), the parties agree to provide for a final extended opportunity to finalise this matter within two (2) weeks from the date of signing this agreement, failing which the provision of sub-clause 4.14 above will become effective.

#### **5. Dispute Resolution**

- 5.1 Should any dispute arise at plant level relating to the interpretation and/or application of any provision of an incentive scheme under this Framework Agreement, the dispute resolution provisions of the bargaining council constitution and/or Main Agreement shall apply.

5.2 Any referral of a dispute as contemplated in terms of sub-clause 5.1 above shall be conciliated and/or arbitrated by a member of the panel of experts, unless otherwise agreed between the disputing parties.

**6. Reporting and Administration**

6.1 Companies participating in this dispensation shall be required to report on a six monthly basis to the bargaining council in respect of the staff contemplated in clause 1.4 above.

6.2 Such report shall cover at least the following matters:

- Number of employees on scheme
- Trends in overall employment in the company
- Single or multi-factor productivity (OR OTHER) improvements
- Average earnings of those in the scheme as a percentage of the full guaranteed bargaining council agreement rates

6.3 The trade union shall be entitled to all information related to a plant level incentive scheme.

**7. Qualification and Commencement of Plant Level Consultation**

Companies who qualify under the provisions of clause 4 of the 2014/2016 Substantive Agreement and who decide to utilise it, shall have 2 full calendar months ("the prescribed period") to conclude plant level incentive arrangements, time effective as follows:

For companies which have not yet employed employees on the incentivised wage scheme: from the date of employment of any employee employed in terms of the provisions of clause of the 2014/2016 agreement or from the date of notice to the trade union of intention to employ (whichever occurs first), and

For all other companies: with effect from 15 September 2014, unless a longer period is agreed by the trade union.