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**DEPARTMENT OF LABOUR**

**No. 75 OF 1997: BASIC CONDITIONS OF EMPLOYMENT ACT, 1997**

## **SECTORAL DETERMINATION 2: CIVIL ENGINEERING SECTOR, SOUTH AFRICA**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 56 (1) of the Basic Conditions of Employment Act, 1997, amend Sectoral Determination 2 in *Government Gazette* No. 20618 dated 12 November 1999 by replacing the existing schedule with the schedule below, and fix the second Monday after the date of publication of this notice as the date from which the provisions of this determination shall be binding upon all employers and employees in the Sector.

**M. M. S. MDLADLANA, MP**  
**Minister of Labour**

### **SCHEDULE**

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### **SCHEDULE: CIVIL ENGINEERING SECTOR**

#### **DEFINITIONS**

1. Unless the context indicates otherwise, any expression which is used in this determination and which is defined in the Basic Conditions of Employment Act, 1997 has the same meaning as in that Act; further, unless inconsistent with the context -

**"administrative personnel"** mean employees who are charged by the employer with the performance of work entailing responsibility for taking decisions of an administrative nature in the conduct of any activity;

**"employee"** means -

- a. any person, excluding an independent contractor, who works for another person or for the state and who receives, or is entitled to receive, any remuneration; and
- b. any other person who in any manner assists in carrying on or conducting the business of an employer.

**"emergency work"** means any work which owing to unforeseen circumstances such as fire, storm, land subsidence, accident, epidemic, act of violence, theft, a breakdown of plant, motor vehicles or machinery or a breakdown or threatened breakdown of structures, or any critical operational requirement, must be done without delay;

**"establishment"** means any premises or construction site or part thereof in, on or in connection with which one or more employees are employed in the Civil Engineering sector;

**"foreperson"** means an employee who is in charge of employees in an establishment or section of an establishment, who exercises control over such employees, and who is responsible for the efficient performance by them of their duties;

**"hourly-rated employee"** means an employee whose remuneration is calculated on an hourly basis notwithstanding the frequency of the payment thereof, and who is not a salaried employee;

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

**"local authority"** means a 'local government body' as defined in the Local Government Transition Act, 1993;

**"manager"** means an employee who is charged by the employer with the overall supervision over, responsibility for, and direction of the activities of an establishment or a department of an establishment and the employees engaged therein;

**"overtime"** means the time that an employee works during a day, or a week, in excess of the ordinary hours of work prescribed for such employee in clause (1), but does not include work performed on a Sunday or a paid public holiday;

**"paid public holiday"** means any day that is a public holiday in terms of the Public Holiday Act, 1994 (Act No. 36 of 1994);

**"pay"** means payment of remuneration in cash or by cheque or by other means;

**"permanent employee"** means any employee who is not an employee employed in terms of a limited duration contract;

**"piece-work"** means any system under which an employee's remuneration is based on the quantity of work done;

**"salaried employee"** means an employee whose remuneration is calculated on a monthly basis notwithstanding the number of hours or days actually worked, who performs work generally understood to be that of a salaried employee, and who is not a "hourly-rated employee";

**"self-propelled plant"** means a power-driven or pedestrian-operated self-propelled vehicle, other than a motor vehicle, which is designed or adapted principally to perform with or without a towed attachment, one or more functions while moving, and may also-perform such functions while standing still;

**"short-time"** means a temporary reduction in the number of ordinary hours of work owing to vagaries of the weather, a slackness of trade, a shortage of materials, a breakdown of plant or machinery or a breakdown or threatened breakdown of structures, or any unforeseen contingencies and/or circumstances beyond the control of the employer or a temporary reduction in the number of ordinary hours of work owing to riots, unrest or acts of terrorism or disorder, which directly affect the employer's ability to provide work;

**"stationary plant"** means a power-driven device, whether or not mounted on a self-propelled or non-self-propelled vehicle, which is designed or adapted principally to perform one or more functions while standing still;

**"wage"** means the amount of money payable to an employee in terms of clause 3 in respect of the ordinary hours of work as prescribed in clause 8(1): Provided that -

- a. if an employer regularly pays an employee in respect of such ordinary hours of work an amount higher than that prescribed in clause 3, it means such higher amount;
- b. the first proviso shall not be so construed as to refer to or include any remuneration which an employee who is employed on any basis provided for in clause 20 receives over and above the amount which the employee would have received had he or she not been employed on such a basis.

## **AREA AND SCOPE OF THE DETERMINATION**

2. This determination shall apply to every employer and employee in the Civil Engineering Sector, as defined in subclause (2), in the Republic of South Africa, excluding any employee who is employed as a manager or in a position more senior than that of a manager.

1. The Civil Engineering Sector means the sector in which employers (other than local authorities) and employees are associated for the purpose of carrying out work of a civil engineering character and includes such work in connection with one or more of the following activities:

- a. The construction of aerodrome runways or aprons; aqueducts; bins or bunkers; bridges; cable ducts; caissons; rafts or other marine structures; canals; cooling, water or other towers; dams; docks; harbours; quays or wharves; earthworks; encasements; housings or supports for plant, machinery or equipment; factory or works chimneys; filter beds; land or sea defence works; mine headgear; pipelines; piers; railways; reservoirs; river works; roads or streets; sewerage works; sewers; shafts or tunnels; silos; sports fields or grounds; swimming baths; viaducts or water treatment plants;
- b. excavation work or the construction of foundations, lift shafts, piling, retaining walls, stairwells, underground parking garages or other underground structures;
- c. the asphaltting, concreting, gravelling, levelling or paving of parking areas, pavements, roads, streets, aerodrome runways or aprons, premises or sites; and further includes -
  - i. any work of a similar nature or work incidental to or consequent on any of the aforesaid activities; and
  - ii. the making, repairing, checking or overhauling of tools, vehicles, plant, machinery or equipment in workshops which are conducted by employers engaged in any of the activities referred to in subclauses (2)(a), (2)(b) and (2)(c); but excludes -

- aa. work in connection with any one or more of the activities specified in subclause (2) (b) where such work, when undertaken in connection with the erection of structures having the general character of buildings and irrespective of whether or not such work involves problems of a civil engineering character, is carried out by the employers erecting such structures;
- bbb. work in connection with any one or more of the activities specified in subclause (2)(c) when undertaken as an incidental operation in connection with the erection of structures having the general character of buildings or when undertaken by the employers erecting such structures;
- cccc. any work falling within the scope of the Iron, Steel, Engineering and Metallurgical Industries as defined in the Main Agreement of the Bargaining Council for that Industry.

- 2. The provisions of clauses 8 to 14 of this determination shall not apply to an employee whose earnings exceed an amount as determined by the Minister of Labour in terms of section 6(3) read with section 59(2)(c) of the Basic Conditions of Employment Act, 1997.
- 3. The provisions of the Basic Conditions of Employment Act, 1997 shall apply in respect of any employer or employee in the Civil Engineering Sector in so far as a provision thereof provides for any matter that is not regulated by this sectoral determination.

**REMUNERATION**

- 3. (1) **Exclusions:** The provisions of subclauses 2 and 3 shall not apply to an employer who is engaged in the Civil Engineering Industry only, and employs altogether not more than twenty employees at all times in or in connection with such business and whose annual turnover in such business does not exceed 8500 000.

(2) **Minimum wages:** The minimum wage which an employer, other than the employer referred to in subclause 1, shall pay to employees covered by this determination, with effect from the date on which this determination comes into operation the following:

**Table 1: Minimum wages for all employees in the Civil Engineering Sector**

MINIMUM ENTRY LEVEL WAGE c/HOUR				
PROVINCE	AREA	Date of coming into effect until 2/09/2002	3/09/2001 until 2/09/2001	3/09/2002 and thereafter

<b>Gauteng</b>	The whole of the Gauteng	<b>612c</b>	<b>660c</b>	<b>660c + CPI* + 2%</b>
<b>North West</b>	The magisterial district of Klerksdorp and Potchefstroom	<b>612c</b>	<b>660c</b>	<b>660c + CPI + 2%</b>
	The remainder of the North West	<b>483c</b>	<b>521c</b>	<b>521c + CPI + 2%</b>
<b>Mpumalanga</b>	The Magisterial Districts of Balfour, Bethal, Highveld Ridge, Middleburg, Standerton and Witbank.	<b>612c</b>	<b>660c</b>	<b>660c + CPI + 2%</b>
	The remainder of the Mpumalanga.	<b>483c</b>	<b>521c</b>	<b>521c + CPI + 2%</b>
<b>Northern Province</b>	The whole of the Northern Province	<b>483c</b>	<b>521c</b>	<b>521c + CPI + 2%</b>
<b>Free State</b>	The magisterial district of Bloemfontein, Odendaalsrus, Sasolburg, Virginia and Welkom	<b>612c</b>	<b>660c</b>	<b>660c + CPI + 2%</b>
	The remainder of the Free State	<b>483c</b>	<b>521c</b>	<b>521c + CPI + 2%</b>

**Table 3 (Continue): Minimum wages for all employees in the Civil Engineering Sector**

<b>MINIMUM ENTRY LEVEL WAGE c/HOUR</b>				
<b>Province</b>	<b>Area</b>	<b>Date of coming into effect until 2/09/2002</b>	<b>3/09/2001 until 2/09/2001</b>	<b>3/09/2002 and thereafter</b>
<b>Western Cape</b>	The whole of the Western Cape	<b>612c</b>	<b>660c</b>	<b>660c + CPI + 2%</b>
<b>Eastern Cape</b>	The whole of the Eastern Cap	<b>612c</b>	<b>660c</b>	<b>660c + CPI + 2%</b>
<b>Northern Cape</b>	The whole of the Northern Cape	<b>483c</b>	<b>521c</b>	<b>521c + CPI + 2%</b>
<b>KwaZulu-Natal</b>	The whole of the KwaZulu-Natal	<b>591c</b>	<b>638c</b>	<b>638c + CPI + 2%</b>

\* "CPI"- Consumer Price Index for the period May 2001 to May 2002.

**(3) Across the board increases:**

- a. every employee employed in the Civil Engineering Sector on the date on which this determination comes into operation shall be entitled to an increase of 16.6% on the wage currently paid to that employee: Provided that-
  - i. where an increase in terms of this subclause results in a wage lower than the minimum wage specified in subclause (2), such minimum wage should apply.
  - ii. any employer who has during the period 31 August 1998 and the date on which this determination comes into operation, granted an employee an increase or increases-
    - aa. equal to the increase specified in this clause, shall be deemed to have complied with the provisions of this clause; or
    - bbb. less than that specified in this clause, shall be required to grant an increase equal to the difference between the increase or increases already granted by the employer and that prescribed in this clause.
- b. every employee employed in the Civil Engineering Sector on the 3 September 2001 shall be entitled to an increase of 8% in the wage then paid to that employee.
- c. every employee employed in the Civil Engineering Sector on the 2 September 2002, shall be entitled to an increase of the Consumer Price Index (CPI) plus 2% of the wage then paid to that employee. The Consumer Price Index will be at that Index as published by Statistics South Africa for the year on year percentage increase in the Consumer Price Index for all income groups for the period May 2001 to May 2002.

**(4) Year-end bonus:** Subject to the provisions of this subclause, employers shall-

- a. pay their employees in December of each year, a bonus equal to 10 working days' pay.
- b. where agreements, substantive or otherwise, provide for bonuses in excess of that provided for in paragraph (a), such existing agreements shall prevail.
- c. an employee shall not be entitled to the bonus amounts referred to in paragraph (a) unless he or she is employed by the employer in December of the year in which the bonus amount is to be paid and he or she has been continuously so employed for at least one full year.
- d. an employee who is employed by the employer in December of the year in which a bonus amount is to be paid and who has been continuously so employed for at least 3 months, but for less than one full year, shall be entitled to a pro rata bonus payment.
- e. an employee whose employment is terminated through no fault of his or her own, through retrenchment, retirement, disability or death, shall be entitled to a pro rata bonus payment.

- f. no bonus payment shall be made to employees whose employment was terminated by reason of misconduct.
- g. where an employee is absent for more than 10 working days in any one year, the bonus payment to which he or she is entitled shall be reduced by the proportion of total working days lost to total possible working days in a year.

#### **CALCULATION OF WAGES**

- 4. (1) The wage of an employee shall be calculated as set out hereunder-
  - a. the hourly wage of an employee shall be the weekly wage divided by the number of ordinary hours of work prescribed for such employee in any week;
  - b. the daily wage of an employee shall be the hourly wage multiplied by -
    - i. nine, in the case of an employee who works a five-day week;
    - ii. seven and half, in the case of any other employee;
  - c. the weekly wage of an employee shall be the hourly wage multiplied by the number of ordinary hours of work prescribed for such employee in any week;
  - d. the monthly wage of an employee shall be four and a third times the weekly wage.

#### **PAYMENT OF REMUNERATION**

- 5. (1) An employee, except as provided for in clause 17(7) shall be paid: -
  - a. weekly, fortnightly or monthly;
  - 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.

#### **INFORMATION CONCERNING REMUNERATION**

- 6. (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 public holiday or 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 subclause (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 statement referred to in subclause (1).

#### **DEDUCTIONS AND OTHER ACTS CONCERNING REMUNERATION**

7. (1) An employer shall not levy any fines against an employee, nor shall an employer make any deductions from the employee's remuneration other than the following-
- a. With the written consent of the employee, a deduction that relates to the conditions of employment entered into between the employer and the employee, and/or subscriptions to a trade union.
  - b. With the written consent of an employee a deduction of any amount which the employer has paid or undertaken to pay to -
    - i. any banking institution, building society, insurance business, registered financial institution, local authority or the State in respect of a payment on a loan granted to such employee to acquire a dwelling;
    - ii. any other 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, a building society or a local authority.
  - c. A deduction of any amount which an employer by law or order of any competent court is required or permitted to make.

(2) Except where otherwise provided in this determination, whenever an employee is absent from work other than at the instruction of the employer, a deduction proportionate to the period of the employee's absence and calculated on the basis of the wage which such employee was receiving in respect of the ordinary hours of work at the time of such absence.

(3) **Training fees:** No payment shall be made to, or accepted by, an employer either directly or indirectly in respect of the employment or training of an employee, except as provided for by the Skills Development Act.

(4) **Short time:** Whenever the ordinary hours of work prescribed in clause 8 are reduced on account of short-time, excluding short-time owing to inclement weather-

- a. a deduction not exceeding the amount of the employee's hourly wage in respect of each hour of such reduction provided that -
  - i. such deduction shall not exceed one third of the employee's weekly wage, irrespective of the number of hours by which the ordinary hours of work were reduced;
  - ii. no deduction shall be made in the case of short-time arising from slackness of trade or shortage of raw materials, unless the employer has given the employee notice on the previous working day of the employer's intention to reduce the ordinary hours of work;
  - iii. no deduction shall be made in the case of short-time owing to a breakdown of plant or machinery or a breakdown or threatened breakdown of buildings or structures, in respect of the first two hours not worked, unless the employer has given the employee notice on the previous working day that no work would be available due to such breakdown.
- b. whenever the ordinary hours of work prescribed in clause 8 are reduced on account of inclement weather the following arrangements will apply-
  - i. where no work has begun at all on site, and if an employee has reported for work, the employee will be paid for 4 hours, provided the employee has at the request of the employer, remained at the workplace during this period;
  - ii. should work be stopped after the first four hours, the employee will be paid for the hours worked
  - iii. should work be stopped during the first four hours, the employee will be paid for four hours only;
  - iv. where the employer has given his employees notice on the previous working day that no work will be available due to inclement weather; then no payment will be made, provided that clause 7(4)(a)(i) is complied with.

## **ORDINARY HOURS OF WORK**

8. (1) An employer may not require or permit an employee to work more ordinary hours of work than-
  - a. 45 hours in any week; and
  - b. nine hours in any day if the employee works for five-days or fewer in a week; or
  - c. eight hours in any day if the employee works on more than five days in a week.

## **OVERTIME**

9. (1) An employer may not require or permit an employee
  - a. to work overtime except in accordance with an agreement;
  - b. to work more than -
    - i. 3 hours' overtime a day; or
    - ii. 10 hours' overtime a week.

## **PAYMENT FOR OVERTIME**

10. (1) An employer shall pay an employee who works overtime at a rate of not less than one and half times the ordinary wage in respect of the overtime referred to in clause 9(1):  
Provided that any time worked on Sundays and paid public holidays shall be paid in accordance with the provisions of clauses 15 and 16.

## **MEAL INTERVALS**

11. (1) 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 half an 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
  - i. periods of work interrupted by intervals of less than half an hour, except when proviso (iv) below applies, shall be deemed to be continuous;
  - ii. if such interval is longer than half an hour, any period in excess of one hour shall be deemed to be time worked;
  - iii. 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;
  - iv. when, on any day, by reason of overtime work, an employer is required to give an employee a second meal interval, such interval may, at the request of the employee, be reduced to not less than 15 minutes;
  - v. a driver or an operator of self- propelled or stationary plant who during such interval does not work other than being or remaining in charge of a vehicle or such plant shall be deemed for the purposes of this subclause not to have worked during such interval.

## **REST PERIOD**

12. (1) An employer shall allow an employee-
  - a. a daily rest period of at least 12 consecutive hours between ending and recommencing work; and
  - b. a weekly rest period of at least 36 consecutive hours, which, unless otherwise agreed, must include a Sunday.

(2) Clauses 9(1), 11(1) and 16(2) shall not apply to an employee while engaged in emergency work.

### **COMPRESSED WORKING WEEK**

13. (1) An agreement in writing between an employer and an employee may require or permit an employee to work up to twelve hours in a day, inclusive of the meal intervals required in terms of clause 11(1), without receiving overtime pay.

(2) An agreement in terms of subclause (1) may not require or permit 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.

### **AVERAGING HOURS OF WORK**

14. (1) Despite clauses 8 & 9 the ordinary hours of work and overtime of an employee may be averaged over a period of up to four months in terms of a collective agreement.

(2) An employer may not require or permit an employee whom is bound by a collective agreement in terms of subclause (1) 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.

(3) A collective agreement in terms of subclause (1) lapses after 12 months.

(4) Subclause (3) only applies to the first two collective agreements concluded in terms of subsection (1).

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

15. (1) Whenever an employee works on a Sunday, the employer shall either-

- a. pay the employee-
  - i. if he or she works for a period not exceeding four hours, not less than the daily wage; and
  - ii. if he or she works for a period exceeding four hours, at a rate of not less than double the ordinary wage in respect of the total period worked on such Sunday, or not less than double the daily wage, whichever is the greater; or
- b. pay the employee at a rate of not less than one and a third times his or her ordinary wage in respect of the total period worked on such Sunday, and grant the

employee within seven days of such Sunday one day's leave, which shall not constitute annual leave in terms of clause 17, and pay him or her in respect thereof not less than the daily wage: Provided that where such an employee is required or permitted to work for less than four hours on such Sunday he or she shall be deemed to have worked for four hours.

## **PUBLIC HOLIDAYS**

16. (1) Exclusion: Subclause (4) shall not apply to an employee earning a wage in excess of the remunerations stipulated by the Minister in the determination made in Regulation 1439 published on 13 November 1998 or in any other determination in substitution thereof.

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

(3) 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.

(4) 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.

(5) An employer must pay an employee for a public holiday on the employee's usual payday.

(6) 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.

## **ANNUAL LEAVE**

17. (1) An employer shall grant to an employee in respect of each completed period of 12 months of employment 15 working days leave on full pay of which 10 days shall be taken consecutively, normally during the Civil Engineering Sector shut-down period, and the

remaining days shall be granted, subject to subclause (4), at a time agreed to by the employee and his or her employer.

(2) An employer shall pay an employee, subject to section 84 of the Basic Conditions of Employment Act, 1997, if he or she has been in employment longer than four months in the aggregate:

- a. one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid; or,
- b. one hour of annual leave on full remuneration for every 17 hours on which the employee worked or was entitled to be paid.

(3) An employer shall grant an employee an additional day of paid leave if a public holiday falls on a day during an employee's annual leave on which the employee would ordinarily have worked.

(4) If the leave prescribed in subclauses (1) and (2) has not been granted and taken earlier, it shall, save as provided in subclause (5), be granted and be taken so as to commence within four months after the completion of the 12 months of employment to which it relates or, if the employer and employee have agreed thereto in writing before the expiration of the said period of four months, the employer shall grant such leave to the employee and the employee shall take the leave from a date not later than two months after the expiration of the said period of four months: Provided that the period of leave shall not be concurrent with-

- a. sick leave granted in terms of clause 18 or with absence from work owing to incapacity in the circumstances set out in clauses 18(9)(a) or 18(9)(b) amounting in the aggregate to not more than 12 days in any one period of 12 months;
- b. any period during which the employee is under notice of termination of **employment in** terms of clause 22.

(5) At the written request of the employee, an employer may permit the leave to accumulate over a period of not more than 24 months of employment: Provided that-

- a. the request is made by such employee not later than four months after the expiration of the first period of 12 months of employment to which the leave relates; and
- b. the date of receipt of the request is endorsed over the employee's signature by the employer, who shall retain the request at least until after the expiration of the period of leave.

(6) The leave referred to in subclause (5) shall be granted and be taken at a time to be fixed by the employer, and the provisos to subclause (4) shall apply to such leave.

(7) The remuneration in respect of leave granted in terms of this clause shall be paid not later than the last workday before the date of commencement of such leave, and shall be calculated at the employee's rate of remuneration at the time that the leave is granted.

(8) Upon termination of employment the employer shall pay the employee the pay in respect of any leave, which has accrued but not granted as at the time of such termination. Such leave payment shall be calculated at the employee's rate of remuneration as at the time of termination.

(9) For the purpose of this clause the expression "employment" shall be deemed to include-

- a. any period in respect of which an employer pays an employee in lieu of notice in terms of clause 22;
- b. any period during which an employee is absent on sick leave in terms of clause 18, or owing to incapacity in the circumstances set out in clause 18(6)(c);
- c. any period during which an employee is absent at the instruction of the employer;
- d. any time during which an employee is required by the employer not to work because of the vagaries of the weather, slackness of trade or a breakdown of machinery or plant.

(10) Notwithstanding 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 the establishment, or a portion of the establishment, for 14 consecutive days, plus an additional day for each paid public holiday which falls on a day during such period on which the employee would ordinarily have worked.

(11) An employee who as at the date of the closing of an establishment or the portion thereof in which he or she is employed, is not entitled to the full period of annual leave prescribed in terms of subclauses (1) and (2) shall, in respect of any leave due, be paid the leave accrued as at the date of such closure, and for the purposes of annual leave thereafter the employee's employment shall be deemed to commence on the date of such closing of the establishment or portion of the establishment, as the case may be.

## **SICK LEAVE**

18. (1) "sick leave cycle" means the period of 36 consecutive 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) During every sick leave cycle, an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.

(3) Despite subclause (2), during the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked.

(4) During an employee's first sick leave cycle, an employer may reduce the employee's entitlement to sick leave in terms of subclause (2) by the number of days sick leave taken in terms of subclause (3).

(5) Subject to subclause (7), an employer must pay an employee for a day's sick leave-

- a. the wage the employee would ordinarily have received for work on that day; and
- b. on the employee's usual payday.

(6) An agreement may reduce the pay to which an employee is entitled in respect of any day's absence in terms of this clause if-

- a. the number of days of paid sick leave is increased at least commensurately with any reduction in the daily amount of sick pay; and
- b. the employee's entitlement to pay-
  - i. for any day's sick leave is at least 75 percent of the wage payable to the employee for the ordinary hours the employee would have worked on that day; and
  - ii. for sick leave over the sick leave cycle is at least equivalent to the employee's entitlement in terms of subclause (2).
- c. in the first 36 months of employment, an employee is absent owing to incapacity for a period in excess of the sick leave accrued in terms of subclause (2), the employer shall not, at that stage, be required to effect any payment in respect of the excess sick leave taken.
- d. However, if the employer has not previously done so, he or she shall at the end of the first cycle of 36 months of employment pay the employee an amount equal to not less than the difference between the sick leave payment made earlier and the employee's wage for the full period of incapacity, up to a maximum of 36 work-days. Such compensation shall be affected at the rate of the employee's wage as at the commencement of the incapacity:
- e. Provided further that where the contract of employment terminates before the end of the said first cycle the employee shall be entitled to claim payment from the employer of an amount equal to the difference between the sick leave pay already received and the wage for the full period of incapacity, but not exceeding payment at a rate of more than one work-day's wage for each completed of 26 days worked, and for the purposes of this proviso the expression "wage" shall mean the wage the employee was receiving as at the commencement of incapacity;
- f. where an employer is by any law required to pay fees for hospital or medical treatment in respect of an employee, and pays such fees, the amount so paid may be set off against the payment due in respect of absence owing to incapacity in terms of this clause;
- g. no unused sick leave may be accrued from one cycle to another.

(7) An employer may, as a condition precedent to the payment of any amount claimed in terms of this clause by an employee in respect of any absence from work-

- a. for more than three consecutive work-days; or



- b. on the work-day immediately preceding or the work-day immediately succeeding a Sunday or a paid holiday, require the employee to produce a certificate signed by a registered medical practitioner stating the nature and duration of the employee's incapacity: Provided that, when an employee has, during any period of up to eight weeks, received payment in terms of this clause on two or more occasions without producing such a certificate, the employer may, during the period of eight weeks immediately succeeding the last such occasion, require the production of such certificate in respect of any absence. Furthermore, an employer may require an employee to obtain a certificate issued by a medical practitioner nominated by the employer but at the employer's expense in order to satisfy the requirements of this clause.

(8) For the purposes of this clause the expression-

- a. "employment" shall be deemed to include any period during which an employee is absent-
  - i. on leave in terms of clause 17 or on the instructions or at the request of his employer or on sick leave in terms of subclause (2) amounting in the aggregate in any period of 12 months to not more than 10 weeks; and
  - ii. due to the employee not being required to work because of the vagaries of the weather, slackness of trade or a breakdown of machinery or plant;
- b. "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 a scheduled disease for which compensation is payable under the Compensation for Occupational Injuries and Diseases Act, 1993, shall only be regarded as incapacity during any period in respect of which no disablement payment is payable in terms of that Act.

(9) Clause 18, save for this subclause, shall not apply-

- a. to an employee at whose written request the employer makes contributions, at least equal to those made by the employee, to any fund or organisation nominated by the employee, which fund or organisation guarantees to the employee in the event of incapacity in the circumstances set out in this clause, the payment to him or her of not less than in the aggregate the equivalent of the employee's wage for 36 workdays in each cycle of 36 months of employment, except that during the first 36 months of the payment of contributions by the employee, the guaranteed rate may be reduced by not less than the rate of accrual set out in the first proviso to subclause (2);
- b. in respect of any period of incapacity of an employee for which the employer is required by any other law to pay to the employee not less than his or her full wages.

## **MATERNITY LEAVE**

19. (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 subclause (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 it is practicable for the employer to do so.

## **FAMILY RESPONSIBILITY LEAVE**

20. (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 day's 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 subclause (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 part of a day.

(5) Before paying an employee for leave in terms of this clause, an employer may require reasonable proof of an event contemplated in subclause (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.

## **PIECE WORK**

21. (1.) An employer may, after giving at least one week's notice to an employee, introduce a piece-work system and, save as provided in clause 7, such employer shall pay such employee at the rate applicable under such system: Provided that, irrespective of the quantity of work done, the employer shall pay such employee not less than, in respect of each week in which such piece-work is performed, the amount which the employer would have been required to pay such employee for that week had the employee been remunerated on the basis of time worked.

(2) An employer shall keep a schedule of the rates referred to in subclause (1) in a conspicuous place in the establishment.

(3) An employer who intends to cancel or amend the piece-work system in operation, or the rates applicable there under, shall give the employee employed on such system not less than one week's notice of such intention: Provided that an employer and the 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.

## **PROHIBITION OF EMPLOYMENT**

22. (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 well-being, education, physical or mental health or spiritual, moral or social development.

(3) All forced labour is prohibited.

### **TERMINATION OF CONTRACT OF EMPLOYMENT**

23. (1) An employer or an employee, who wishes to terminate the contract of employment, shall give notice of termination of not less than

- a. one week, if the employee has been employed for four weeks or less;
- b. two weeks, if the employee has been employed for more than four weeks but not more than one year;
- c. four weeks, if the employee has been employed for one year or more.

(2) An employer may terminate the contract without notice by, subject to subclauses (3) and (4), paying the employee, in lieu of such notice not less than the remuneration the employee would have received, calculated in accordance with clause 4, if the employee had worked during the notice period.

(3) The provision in subclause (2) for notice pay shall not affect the operation of any forfeitures or penalties that by law may be applicable in respect of an employee who deserts.

(4) Where the wage of an employee at the date of termination has been reduced by deductions in respect of short-time, the employer is obliged to pay the employee in lieu of notice at a rate as if no deduction has been made in respect of short-time.

(5) The notice prescribed in subclause (1) may be given on any work-day: Provided that the period of notice shall not run concurrently with nor shall notice be given during an employee's absence-

- i. on leave in terms of clause 17;
- ii. on sick leave in terms of clause 18;
- iii. owing to incapacity in terms of circumstances set out in clause 18(8Xb) amounting in the aggregate to not more than 10 weeks in any period of 12 months.

## **SEVERANCE PAY**

24. (1) For the purpose of this clause, '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 alternate employment with that employer or any other employer, is not entitled to severance pay in terms of subclause (2).
- (4) The payment of severance pay in compliance with this clause does not *affect an* employee's right to any other amount payable according to law.
- (5) If there is a dispute only about entitlement to severance pay in terms of this clause, the employee may refer the dispute in writing to the CCMA.

## **CERTIFICATE OF SERVICE**

25. (1) On termination of employment an employee is entitled to ,a certificate of service substantially in the form of annexure "A" 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.

## **PROTECTIVE CLOTHING**

26. (1) An employer shall supply and maintain in serviceable condition, free of charge, any protective clothing that the employer requires the employee to wear, or that by any law the employer is compelled to provide to the employee, and any such protective clothing shall remain the property of the employer.

## **ATTENDANCE REGISTER**

27. (1) Exclusion: This clause shall not apply to a driver of a motor vehicle or an employee accompanying such a driver or to an employee earning a wage in excess of the

remuneration stipulated by the Minister in the determination made in Regulation 1439 published on 13 November 1998 or in any other determination in substitution thereof.

(2) An employer shall provide in his or her establishment an attendance register substantially in the form of annexure "B" 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 (4)(a), and sign such entries in the presence of a person nominated by the employee.

(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 subclause (2); -
  - i. the day of the week;
  - ii. the time he or she commenced work;
  - iii. the 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 that 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 subclause (3) 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 subclause (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.

## **28. 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 and the value of the payment in kind;
- 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 specific period, the date when employment is terminated;
- n. a description of any council or sectoral determination which covers the employer's business;
- o. any period of employment with a previous employer that covers towards the employee's period of employment;
- p. 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 subclause (1) changes-

- (a) the written particulars must be revised to reflect the change; and
- (a) 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, 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 termination of employment.

## **RETIREMENT BENEFIT FUND**

29. (1) All the employers who do not have a retirement benefit fund in favour of their employees in place, shall by 1 March 2001, either join the Construction Industry Retirement Benefit Fund, or, whether independently or with other employers, do whatever may be necessary to have a retirement benefit fund registered in terms of the Pension Funds Act, 1956, in favour of their employees and shall confer the benefits of membership of such fund on their permanent employees.

(2) The rules of the retirement benefit fund referred to above shall require that employers and employees contribute equally in respect of each employee's membership of the retirement benefit fund.

(3) The rules of the retirement benefit fund shall provide for a risk benefit fund, which shall provide for death, disability and funeral benefits.

#### **KEEPING OF SECTORAL DETERMINATION**

30. (1) Every employer on whom this sectoral determination is binding must-

- a. keep a copy of the sectoral determination available in the workplace at all times;
- b. make the copy available for inspection by an employee; and
- c. give a copy of the sectoral determination-
  - i. to an employee who has paid the prescribed fee; and
  - ii. free of charge, on request, to an employee who is a trade union representative or a member of a workplace forum.

**(All the provisions of Wage Determination 480: Civil Engineering, South Africa published under the Government Notice no. 366 on the 13 March 1998 and Sectoral Determination no. 2: Civil Engineering Sector, South Africa published under the Government Notice no. 1355 on the 12 November 1999 will be superseded by this determination with effect from the date of implementation.)**