

BASIC CONDITIONS OF EMPLOYMENT ACT, NO 75 OF 1997

SECTORAL DETERMINATION 14: HOSPITALITY SECTOR, SOUTH AFRICA

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2. SCOPE OF APPLICATION

The determination applies to employers and employees engaged in Hospitality Sector activities in the Republic of South Africa.

Hospitality Sector means any commercial business or part of a commercial business in which employers and employees are associated for the purpose of carrying on or conducting one or more of the following activities for reward:

- (1) providing accommodation in a hotel, motel, inn, resort, game lodge, hostel, guest house, guest farm or bed and breakfast establishment, including short stay accommodation, self-catering, timeshare, camps, caravan parks; and
- (2) restaurants, pubs, taverns, cafes, tearooms, coffee shops, fast food outlets, snack bars, industrial or commercial caterers, function caterers, contract caterers that prepare, serve or provide prepared food or liquid refreshments, other than drinks in sealed bottles or cans whether indoors or outdoors or in the open air, for consumption on or off the premises; and
- (3) includes all activities or operations incidental to or arising from any of the activities mentioned above.

This determination does not apply to employers and employees who are:

- (1) involved in the trade of letting flats, rooms or houses;
- (2) covered by another sectoral determination in terms of the Basic Conditions of Employment Act, 75 of 1997; or
- (3) covered by a collective agreement of a Bargaining Council in terms of the Labour Relations Act; 66 of 1995.

The provisions of the Basic Conditions of Employment Act apply to all employees covered by this determination and their employers in respect of any matter that is not regulated by this sectoral determination.

The provisions of the Ministerial Determination for Small Business apply to those employers employing less than 10 employees in respect of overtime, averaging of working hours and family responsibility leave.

3. MINIMUM WAGES

3.1 Minimum Wage Levels

With effect from 1 July 2007, an employer must pay an employee at least the minimum wage, excluding any gratuity or tips.

An employer must pay an employee who works 45 ordinary hours of work per week at least the weekly or monthly wage set out in table 1 or 2; or by written agreement between the employer and the employee, at least the hourly rate

set out in table 1 or 2 for every hour or part of an hour that the employee works.

An employee who works for less than 4 hours on any day must be paid for at least 4 hours work on that day.

Table 1: Minimum wages for employers with 10 or less employees								
Minimum rate for the period			Minimum rate for the period			Minimum rate for the period		
1 July 2007 to 30 June 2008			1 July 2008 to 30 June 2009			1 July 2009 to 30 June 2010		
R.p.m	R.p.w	R.p.h	R.p.m	R.p.w	R.p.h	R.p.m	R.p.w	R.p.h
R1480.00	R341.60	R7.59	Previous minimum wage + CPIX + 2%			Previous minimum wage + CPIX + 2%		

Table 2: Minimum wages for employers with more than 10 employees								
Minimum rate for the period			Minimum rate for the period			Minimum rate for the period		
1 July 2007 to 30 June 2008			1 July 2008 to 30 June 2009			1 July 2009 to 30 June 2010		
R.p.m	R.p.w	R.p.h	R.p.m	R.p.w	R.p.h	R.p.m	R.p.w	R.p.h
R1650.00	R380.80	R8.46	Previous minimum wage + CPIX + 2%			Previous minimum wage + CPIX + 2%		

3.2 Commission Work

An employer and employee may agree in writing that the employee will perform commission work on a regular basis.

An employer must pay an employee the rates applicable for commission work as agreed to, provided that irrespective of the commission earned, the

employer shall pay such an employee not less than the prescribed minimum wage for the period worked.

An agreement to perform commission work must be concluded before the work commences and must include the employee's wage and rate of pay as well as the basis for calculating commission, the period over which the payment is calculated which may not be longer than 1 month, when the employer must pay the commission to the employee which may not be longer than 7 days after the end of the period in which the commission is earned and the type, description, number, quantity, margin, profit, or orders (individual, weekly, monthly or otherwise) for which the employee is entitled to earn commission.

The employer must supply the employee with a copy of the agreement to perform commission work.

If during any period for the purpose of calculation the employee does not earn an amount equivalent to at least the prescribed minimum wage, excluding any gratuity or gift received from a customer for service rendered, because of any act or omission by or on behalf of the employer or the employer has restricted the employee's ability to earn commission in terms of the agreement, the employer must pay the employee at least the applicable minimum wage as prescribed.

An employer who intends to cancel or amend the agreement entered into between the parties relating to commission work or the rates applicable thereunder, shall give the affected employee not less than 4 weeks written notice of such intention.

3.3 Calculation of Wages or Remuneration

The remuneration or wages of an employee must be calculated by reference to the employee's ordinary hours of work.

For the purposes of any calculation the hourly wage or remuneration of a worker is obtained by dividing the weekly wage or remuneration by the ordinary number of hours worked in a week.

The daily wage or remuneration of an employee is obtained by multiplying the hourly wage or remuneration by the number of ordinary hours worked in a day or dividing the weekly wage or remuneration by the number of days worked in a week.

The weekly wage or remuneration of an employee is obtained by multiplying the hourly wage or remuneration by the number of ordinary hours worked in a day multiplied by the number of days ordinarily worked in a week or multiplying the daily wage or remuneration by the number of days ordinarily worked in a week or dividing the monthly wage or remuneration by 4.33.

The monthly wage or remuneration of an employee is obtained by multiplying the weekly wage or remuneration by 4.33.

3.4 Payment of Remuneration

An employer must pay an employee in South African currency daily, weekly, fortnightly or monthly in arrears in cash, by cheque or by direct deposit into an account designated by the employee.

Any remuneration paid in cash or by cheque must be given to each employee at the workplace during the employee's normal working hours in a sealed envelope which then becomes the property of the employee.

An employer must pay an employee on the normal pay day agreed to in writing with the employee.

3.5 Information Concerning Remuneration

On every pay day the employer must give the employee a statement showing:

- (1) the employer's name and address;
- (2) the employee's occupation;
- (3) the period in respect of which payment is made;
- (4) the employee's wage rate and overtime rate;
- (5) the number of ordinary hours worked by the employee during that period;
- (6) the number of overtime hours worked by the employee during that period;
- (7) the number of hours worked by the employee on a paid public holiday or on a Sunday;
- (8) the employee's wage;
- (9) details of any other pay arising out of the employee's employment;
- (10) details of any deductions made;
- (11) the employer's registration number with the Unemployment Insurance Fund and the employer's contribution to the Fund; and
- (12) the actual amount paid to the employee.

An employer must retain a copy or record of each remuneration statement for at least 3 years.

3.6 Deductions and Other Acts Concerning Remuneration

An employer may not make any deduction from an employee's remuneration unless the employee agrees in writing to the deduction in respect of a debt

specified in the agreement or the deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.

A deduction may be made to reimburse an employer for loss or damage only if:

- (1) the loss or damage occurred in and during the course and scope of the employee's employment and was due to the fault of the employee; and
- (2) the employer has followed a fair procedure and has given the employee a reasonable opportunity to show why the deduction should not be made; and
- (3) the total amount of the debt does not exceed the actual amount of the loss or damage incurred; and
- (4) the total deduction from the employee's remuneration does not exceed 25 percent of the employee's remuneration in money.

A deduction in respect of any goods purchased by the employee must specify the nature and quantity of the goods purchased.

An employer who deducts an amount from an employee's remuneration for payment to another person must pay the amount to the person in accordance with the time period and other requirements specified in the agreement, by law, court order or arbitration award.

An employer may not require or permit an employee to:

- (1) repay any remuneration except for overpayments made previously by the employer resulting from an error in calculating the employee's remuneration; or
- (2) acknowledging receipt of an amount greater than the remuneration actually received; or
- (3) pay the employer or any other person in respect of employment or training of that employee, the supply of any work, equipment or tools or the supply of any clothing to be worn at work.

An employer may not require an employee to purchase any goods from the employer or from any person, shop or other business nominated by the employer.

An employer may not levy a fine against an employee.

3.7 Payment of Contributions to Benefit Funds

A benefit fund is a pension, provident, retirement, medical aid or similar fund.

An employer that deducts from an employee's remuneration any amount for payment to a benefit fund must pay the amount so deducted to the fund within 7 days of the deduction being made from the employee's remuneration.

Any contribution that an employer is required to make to a benefit fund, on behalf of an employee, that is not deducted from the employee's remuneration must be paid to the fund within 7 days after the end of the period in respect of which payment is made to the employee.

This section does not affect any obligation on an employer in terms of the rules of a benefit fund to make any payment within a shorter period.

4. PARTICULARS OF EMPLOYMENT

4.1 Written Particulars of Employment

An employer must supply an employee, when the employee commences work with the employer, with the following particulars in writing:

- (1) the full name and address of the employer;
- (2) the name and occupation of the employee or a brief description of the work for which the employee is employed;
- (3) the place of work and where the employee is required or permitted to work at various places, and an indication of this;
- (4) the date on which the employment began;
- (5) the employee's ordinary hours and days of work;
- (6) the employee's wage as well as the rate and method of payment;
- (7) the rate of pay for overtime work;
- (8) any other cash payments that the employee is entitled to;
- (9) any food or accommodation that the employee is entitled to and the value of that food and accommodation;
- (10) any payment in kind received by the employee;
- (11) how frequently wages will be paid;
- (12) any deductions to be made from the employee's wages;
- (13) the leave to which the employee is entitled to; and
- (14) the period of notice required to terminate employment or if employment is for a specified period the date on which such employment is to be terminated.

If an employee is not able to understand the written particulars of employment, the employer must ensure that they are explained to the employee in a language and in a manner that the employee understands.

The employer must revise the written particulars of employment if there are any changes in the employee's terms of employment.

An employer must retain a copy of the written particulars of employment whilst the employee is employed by the employer and for a period of 3 years thereafter.

5. HOURS OF WORK

5.1 Ordinary Hours of Work

An employer may not require or permit an employee to work more than 45 ordinary hours in any week or 9 ordinary hours on any day if the employee works for 5 days or less in a week or 8 ordinary hours on any day if the employee works for more than 5 days in any week.

5.2 Overtime

An employer may not require or permit an employee to work overtime except in accordance with an agreement concluded between the employer and the employee, to work more than 10 hours overtime a week or to work more than 12 hours including overtime on any day.

An agreement concluded with an employee when the employee commences employment, or during the first 3 months of employment, is valid for 1 year thereafter and must be renewed annually thereafter.

5.3 Payment of Overtime

An employer must pay an employee at least 1.5 times the employee's ordinary wage for overtime worked.

An agreement may provide for an employer to pay an employee not less than the employee's ordinary wage for overtime worked and grant the employee at least 30 minutes time off on full pay for every hour of overtime worked or grant an employee at least 90 minutes paid time off for each hour of overtime worked.

An employer must grant an employee paid time off within 1 month of the employee becoming entitled to it.

An agreement in writing may increase the period of entitlement to 12 months.

5.4 Compressed Working Week

An agreement in writing may require or permit an employee to work up to 12 hours in a day inclusive of the daily meal interval required without receiving overtime pay.

An agreement to this effect may not require or permit an employee to work more than 45 ordinary hours of work in any week, more than 10 hours overtime in any week or for more than 5 days in any week.

5.5 Averaging of Hours of Work

The ordinary hours of work and overtime of an employee may be averaged over a period of up to 4 months in terms of a written agreement entered into between the parties.

An employer may not permit an employee who is bound by a written agreement to this effect to work more than an average of 45 ordinary hours of work in a week over the agreed period or an average of 5 hours overtime in a week over the agreed period.

An agreement to this effect entered into between the parties lapses after 12 consecutive months.

5.6 Work on Sundays

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 1.5 times the employee's wage for each hour worked.

If the payment is less than the employee's daily wage the employer must pay the employee for the time worked on that Sunday the employee's daily wage.

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 employer for working on the Sunday and the pay that the employee is entitled to.

Any time worked on a Sunday by an employee who does not normally work on a Sunday is not taken into account in calculating an employee's ordinary hours of work.

If a shift worked by an employee who does not ordinarily work on a Sunday 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.

An employer must grant paid time off within 1 month of the employee becoming entitled to it.

An agreement in writing may increase the period to 12 months.

5.7 Night Work

Night work means work performed after 18:00 and before 06:00 the next day.

An employer may only require or permit an employee to perform night work if so agreed and if the employee is compensated by the payment of an allowance, which may be a shift allowance, or by a reduction of working hours and that transport is available between the employee's place of residence and the workplace at the beginning and end of the employee's shift.

If the transport cost associated with night work is more than the daily cost of transport for the employee, an employer who requires such an employee to perform night work must subsidise the employee's transport expenses associated with night work.

An employer who requires an employee to perform night work on a regular basis after 23:00 and before 06:00 the next day must inform the employee in writing, or orally if the employee is not able to understand written communication, in a language that the employee reasonably understands of any health and safety hazards associated with the work that the employee is required to perform and of the employee's right to undergo a medical examination.

At the request of the employee, the employer must enable the employee to undergo a medical examination, for the account of the employer, concerning those hazards before the employee starts, or within a reasonable period of the employee starting, such work or at appropriate intervals while the employee continues to perform such work.

The employer must transfer the employee to suitable day work within reasonable time if the employee suffers from a health condition associated with the performance of night work and if it is practicable for the employer to do so.

This only applies to an employee who works after 23:00 and before 06:00 at least 5 times a month or 50 times a year.

5.8 Meal Intervals

An employer must give an employee who works continuously for more than 5 consecutive hours a meal interval of at least 60 minutes.

During the meal interval, an employee may be required or permitted to perform only duties that cannot be left unattended and cannot be performed by another employee.

An employee must be paid for a meal interval in which the employee is required to be available for work or for any portion of a meal interval that is in excess of 75 minutes, unless the employee lives on the premises where the workplace is situated.

A written agreement entered into between the parties may reduce the meal interval to not less than 30 minutes or dispense with a meal interval for an employee who works fewer than 6 hours on a day.

5.9 Daily and Weekly Rest Period

An employer must grant an employee a daily rest period of at least 12 consecutive hours between ending work and starting work the next day and a weekly rest period of at least 36 consecutive hours which, unless otherwise agreed, must include a Sunday.

A daily rest period may, by written agreement, be reduced to 10 hours for an employee who lives on the premises where the workplace is situated and whose meal interval lasts for at least 3 hours.

An agreement in writing between the parties may provide for a rest period of at least 60 consecutive hours every second week.

5.10 Public Holidays

An employer may not require an employee to work on a public holiday, except in accordance with an agreement entered into between the parties.

If a public holiday falls on a day on which an employee would ordinarily have worked, an employer must pay 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 and an employee who does work on the public holiday at least double the daily wage.

If an employee who works on a public holiday on which the employee would not ordinarily have worked, the employer must pay that employee an amount equal to the employee's daily wage plus the employee's hourly wage for each hour worked on the public holiday.

An employer must pay an employee for a public holiday on the employee's normal payday.

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 then deemed to have been worked on that other day.

In accordance with section 2(2) of the Public Holidays Act, 36 of 1994 the parties may exchange a public holiday for any other day.

6. LEAVE

6.1 Annual Leave

An employer must grant an employee at least 3 calendar weeks (21 consecutive days) annual leave on full pay in respect of every 12 completed months of employment.

By agreement between the parties at least 1 day of annual leave on full pay accrues for every 17 days on which the employee worked or was entitled to be paid.

By agreement between the parties at least 1 hour of annual leave on full pay accrues for every 17 hours on which the employee worked or was entitled to be paid.

An employer must 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 otherwise have worked.

An employer may reduce an employee's entitlement to annual leave by the number of days of occasional leave on full pay granted to the employee at the employee's request during an annual leave cycle.

An employer must grant annual leave to an employee not later than 6 months after the end of the annual leave cycle or the year in which the annual leave was accrued by the employee.

An employer must grant the annual leave accrued by an employee in 1 year over a continuous period if so requested by the employee.

Annual leave must be taken in accordance with an agreement between the parties or if there is no agreement at a time determined convenient to do so by the employer.

An employer may not require or permit an employee to take annual leave during any other period of leave to which the employee is entitled or any period of notice of termination of employment.

An employer may not require or permit an employee to work for the employer during any period of annual leave.

An employer may not pay an employee instead of granting the employee paid annual leave except on termination of employment.

An employer must pay an employee leave pay equivalent to at least the remuneration that the employee would have received for working for a period equal to the period of annual leave, calculated on the basis of the employee's wage immediately before the beginning of the annual leave period.

An employer must pay an employee leave pay before the beginning of the period of leave or by agreement on the employee's normal payday.

6.2 Sick Leave

Sick leave cycle means the period of 36 consecutive months employment with the same employer immediately following when the employee commenced work or at the end of the employee's prior sick leave cycle.

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 have worked during a period of 6 weeks.

During the first 6 months of employment an employee is entitled to 1 day's paid sick leave for every 26 days worked.

An employer may, during the employee's first leave cycle, reduce the employee's entitlement to sick leave by the number of days sick leave taken during the first 6 months.

Where an employer, at the request of the employee, pays fees for an employee's hospital or medical treatment, the fees so paid by the employer may be set off against the employee's wage.

An employer is not required to pay an employee if the employee has been absent from work for more than 2 consecutive days or on more than 2 occasions during an 8 week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence from work on account of sickness or injury.

The medical certificate submitted in support of the employee's sick leave entitlement must be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament.

If it is not reasonably practicable for an employee who lives on the employer's premises to obtain a medical certificate, the employer may not withhold the payment of sick leave to such an employee unless the employer provides reasonable assistance to the employee to obtain the said certificate.

6.3 Family Responsibility Leave

Family responsibility leave applies to an employee who has been employed by an employer for longer than 4 consecutive months and who works for at least 4 days a week for that employer.

An employer must grant an employee, during each 12 consecutive months of employment, at the request of the employee, 3 days leave which the employee is entitled to take:

- (1) when the employee's child is born; or
- (2) when the employee's child is sick; or
- (3) in the event of the death of the employee's spouse or life partner;
or
- (4) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchildren or sibling.

An employee may take family responsibility leave in respect of the whole or part of the day.

An employer must pay an employee for a days family responsibility leave the wage the employee would normally have received for work on that day and on the employee's usual payday.

Before paying an employee for family responsibility leave an employer may require reasonable proof of an event contemplated for which the leave was required.

An employee's unused entitlement to family responsibility leave lapses at the end of the annual leave cycle in which it accrues.

6.4 Maternity Leave

An employee is entitled to at least 17 consecutive weeks' maternity leave.

An employee may commence maternity leave at any time from 4 weeks before the expected date of birth unless otherwise agreed to between the parties or 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.

An employee may not work for 6 weeks after the birth of her child unless a medical practitioner or midwife certifies that she is fit to do so.

An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for 6 weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.

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 commence maternity leave and return to work after maternity leave.

Notification to this effect must be given at least 4 weeks before the employee intends to commence maternity leave or if it is not reasonably practical to do so, as soon as it is reasonably practical to do so.

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 unborn child, including operating dangerous machinery or handling and/or using spray chemicals.

During an employee's pregnancy and for a period of 6 months after the birth of her child, the employer shall offer the employee suitable alternate employment on terms and conditions that are no less favourable than the employee's ordinary terms and conditions of employment, if the employee is required to perform night work that poses a danger to the employee's health and safety or that of her unborn child; and it is practical for the employer to do so.

7. PROHIBITION OF CHILD AND FORCED LABOUR

No person may employ a child who is under 15 years of age or who is under the minimum school leaving age in terms of any law if this is 15 or older.

No person may employ a child in employment that is inappropriate for a person of that age or that places at risk the child's well being, education, physical or mental health, or spiritual, moral or social development.

An employer must maintain for a period of at least 3 years a record of the name, date of birth and address of every employee under the age of 18 years employed by them.

Subject to the Constitution of the Republic of South Africa, all forced labour is prohibited.

No person may, for their own benefit or for the benefit of someone else cause, demand or impose forced labour in contravention of the Constitution of the Republic of South Africa.

A person who employs a child in contravention of the above or engages in any form of forced labour commits an offence in terms of the Basic Conditions of Employment Act respectively, read with together with section 94 of that Act.

8. TERMINATION OF EMPLOYMENT

8.1 Notice of Termination of Employment

A contract of employment entered into between the parties can be terminated at the instance of either party to the contract of employment on notice of not less than:

- (1) 1 week, if the employee has been employed for 6 months or less;
- (2) 2 weeks, if the employee has been employed for more than 6 months but not more than 1 year; or
- (3) 4 weeks if the employee has been employed for 1 year or more.

An employer and employee may agree to a longer period of notice, but the agreement may not require or permit an employee to give a period of notice longer than that required by the employer.

Notice of termination of a contract of employment must be given in writing except when it is given by an illiterate employee or if an employee who receives notice of termination is not able to understand it in which case the notice must be explained orally by, or on behalf of, the employer to the employee in a language that the employee reasonably understands.

Notice of termination of a contract of employment given by an employer must not be given during any period of leave to which the employee is entitled and may not run concurrently with any period of leave to which the employee is entitled to except sick leave.

Nothing above affects the right of a dismissed employee to dispute the lawfulness or fairness of a dismissal in terms of Chapter VIII of the Labour Relations Act, 66 of 1995 or any other law and of an employer or an employee

to terminate a contract of employment without notice for any cause recognised by law as sufficient.

8.2 Payment Instead of Notice

Instead of giving an employee notice an employer may pay the employee the full pay the employee would have received if the employee had worked during the notice period.

If an employee gives notice of termination of employment and the employer waives any part of the notice the employer must pay to the employee the full notice period unless the employer and the employee agree otherwise.

8.3 Payment on Termination

On termination of employment, an employer must pay an employee any and all monies due to the employee for any remuneration that has not been paid, any paid time off that the employee is entitled to that the employee has not taken and remuneration calculated for any period of annual leave due that the employee has not taken.

If the employee has been in the employer's employment for longer than 4 months, in respect of the employee's annual leave entitlement during an incomplete annual leave cycle an employer must pay an employee 1 days remuneration in respect of every 17 days on which the employee worked or was entitled to be paid remuneration calculated on any basis that is least favourable to the employee.

8.4 Severance Pay

Operational requirements means requirements based on the economic, technological, structural or similar needs of an employer.

An employer must pay an employee who is dismissed for reasons based on the employer's operational requirements severance pay equal to at least 1 week's wage for each completed year of continuous service with the employer.

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.

The payment of severance pay does not affect an employee's right to any other amount payable according to law.

If there is a dispute only about the entitlement to severance pay, the employee may refer a dispute to the CCMA for consideration.

8.5 Certificate of Service

On termination of employment, an employee is entitled to a certificate of service stating:

- (1) the employee's full name;
- (2) the name and address of the employer;
- (3) the date of commencement and date of termination of employment;
- (4) the title of the job or a brief description of the work for which the employee was employed at the date of termination;
- (5) any relevant training received by the employee;
- (6) the pay at date of termination; and
- (7) if the employee requests, the reason for termination of employment.

8.6 Keeping of Sectoral Determination

Every employer on whom the sectoral determination is binding must keep a copy of the sectoral determination or an official summary available in the workplace in a place to which the employee has access.

8.7 Temporary Employment Services

Temporary employment service means any person who, for reward, procures for or provides employees to a client if that person remunerates the employees.

A person whose services have been procured for or provided to a client by a temporary employment service is the employee of that temporary employment service and the temporary employment service is the employer of that employee.

The temporary employment service and the client are jointly and severally liable to comply with this determination in respect of its employees.

If the temporary employment service is in default of its obligation to make any payment in terms of this determination to an employee for a period of 30 days the client concerned becomes liable to make payment.

A client that makes any payment that is owing to an employee is entitled to recover such amount from the temporary employment service.

8.8 Cancellation of Wage Determinations

Wage determination 457: Hotel Trade, Certain Areas, Wage determination 461: Catering Trade, Certain Areas; and Wage determination 479: Accommodation Establishment Trade, Certain Areas, is cancelled with effect from the date that this determination becomes binding.

9. DEFINITIONS

9.1 What Words Mean In This Determination

Any expression in this determination which is defined in the Basic Conditions of Employment Act (the Act) has the same meaning as the Act and:

“agreement”	includes a collective agreement;
“Basic Conditions of Employment Act”	means the Basic Conditions of Employment Act 75 of 1997 as amended from time to time;
“child”	means a person under 15 years of age;
“day”	means, for the purposes of measuring hours of work, a period of 24 hours measured from the time when the employee normally commences work;
“dispute”	includes an alleged dispute;
“employee”	means 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 any other person who in any manner assists in carrying on or conducting the business of an employer;
“incapacity”	means inability to work owing to sickness or injury;
“Minister”	means the Minister of Labour;
“month”	means a calendar month;
“monthly wage”	means an employee’s weekly wage multiplied by 4.33;
“night work”	means work performed after 18:00 and before 06:00 the next day;
“ordinary hours of work”	means the hours of work worked by an employee;
“overtime”	means the time that the employee works during a day or in a week in excess of the ordinary hours of work;

“paid leave”	means any annual leave, paid sick leave or family responsibility leave that an employee is entitled to;
“public holiday”	means any day that is a public holiday in terms of the Public Holiday Act 36 of 1994 as amended from time to time;
“remuneration”	means any payment in money or in kind, or both in money and in kind, excluding any gratuity or gift received from a customer for service rendered, made or owing to any person in return for that person working for any other person including the State;
“trade of letting of flats, rooms or houses”	means the trade carried on by persons who carry on the business of letting flats, rooms or houses and includes the agents to whom such persons entrust the letting of flats, rooms or houses and the employees of such agents who are employed exclusively in connection with such flats, rooms or houses.
“wage”	means the amount of money paid or payable to an employee in respect of the ordinary hours of work or, if they are shorter, the hours an employee normally works in a day or week, excluding any gratuity or gift received from a customer for service rendered;
“week”	in relation to an employee, means the period of 7 days within which the working week of that employee ordinarily falls;
“workplace”	means any place where employees ordinarily work;
“worker”	has the same and corresponding meaning as “employee” .