

South Africa

Labour Relations Act, 1995

National Bargaining Council for the Clothing Manufacturing Industry: Extension to Non-parties of the COVID -19 Lockdown II Collective Agreement (2)

Government Notice R594 of 2020

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National Bargaining Council for the Clothing Manufacturing Industry: Extension to Non-parties of the
COVID -19 Lockdown II Collective Agreement (2)

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Government Notice R594 of 2020

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Commenced on 26 May 2020

[This is the version of this document from 26 May 2020.]

I, Thembelani Waltermade Nxesi, Minister of Employment and Labour, hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the National Bargaining Council for the Clothing Manufacturing Industry, and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry with effect from the date of publication of this notice and for the period ending 10 May 2022.

MR TW Nxesi, MP

Minister of Employment and Labour

COVID-19 Lockdown II Collective Agreement: A South African clothing industry love story
Entered into between the
Apparel and Textile Association of South Africa ('ATASA')
South Africa Apparel Association ('SAAA')
and the
Southern African Clothing and Textile Workers' Union ('SACTWU' or 'the union')
(hereinafter referred to as "the parties")

1. Preamble

The parties

- 1.1 Record that the primary intention of this collective agreement is to ensure that workers are not left destitute with no income during a COVID-19 lockdown period.

- 1.2 Record their deep concern about the escalating rate of COVID-19 infections in our country, and globally, and the consequential devastating effect on our domestic economy, in particular its negative consequences for the labour market.
- 1.3 Are of the firm belief that in order to mitigate the anticipated and devastating negative implications of COVID-19, an urgent and decisive collective response is required to protect the interests of the stakeholders in our industry.
- 1.4 Wish to take pro-active steps to protect the interests of employees in our industry and country, their families and the future sustainability of all sectors in the fashion manufacturing industry and its related pipeline operations, during and in consequence of the COVID-19 lockdown period.
- 1.5 Are of the view that they cannot just rely on government to fight this battle alone, but that we have a patriotic duty to play a supportive role by first drawing on our own resources, meagre and difficult as they might be, as a constructive contributory effort to combat this threat to the well-being of employees in the fashion- and related industry pipeline, and in our country at large.
- 1.6 Wish to encourage and strengthen the role of our country's centralised bargaining regime, by using the current COVID-19 crisis as an opportunity to expand the role of the clothing industry bargaining council beyond just that of mainly being a collective bargaining- and dispute resolution institution, by demonstrating that it can deliver additional value-added services to our industry and the country at large, in moments of national crisis.
- 1.7 Wish to promote greater and mutually beneficial co-operation between the various labour market institutions in our country, by practically encouraging greater sharing of their respective resources, such as infrastructure, towards the goal of greater efficiency in the execution of their core mandates and common goals (such as greater and better compliance with our country's employment laws and regulations).
- 1.8 Are of the view that we need to do whatever we can to protect jobs in our industry and country, especially during crisis periods like which COVID-19 is imposing on us.
- 1.9 Agree that additional intentions of this agreement is to encourage better health and safety regulation at the workplace, provide a prevention and support environment for Council employees, strengthen the organisational rights of the trade union, promote gender equality and combat gender-based violence at the workplace and to improve other already existing value-added services of the Council, such as its health care clinic system, as well as the enhancement of the Council's value-added services.
- 1.10 Acknowledge that the Council's "COVID-19 Lockdown Collective Agreement" as was published in Government Gazette Number 43152 on 26 March 2020 requires adjustment in order to make it more effective.
- 1.11 This document constitutes a single agreement and shall be referred to as "the COVID-19 Lockdown II Collective Agreement" and/or "this agreement".
- 1.12 The parties agree to be bound by the provisions of this preamble to this agreement, which forms a substantive part of this agreement.

2. Scope and effective date

- 2.1 This Agreement shall bind the parties and their members. It shall become effective as from the date adopted by Council (irrespective of date of signature) and shall remain effective until the parties agree otherwise.
- 2.2 The scope of this Agreement shall cover all employers and employees in the registered scope of the National Bargaining Council for the Clothing Manufacturing Industry.
- 2.3 Despite the provision of sub-clause 2.2 of this agreement, the Council authorises that the UIF payment and transmission service provisions of this agreement shall be offered as a value added solidarity service to all employees in our industry pipeline, or any members of the trade union,

beyond the registered scope of the Council, provided that the Unemployment Insurance Fund (UIF) funds referred to later in this agreement are sufficient to cover such an expanded service.

- 2.4 The provisions contained in this agreement, once adopted by the Council, will be submitted to the Department of Employment and Labour for extension to cover all non-parties and non-signatory party employer associations within the geographic scope of the areas covered by the National Bargaining Council for the Clothing Manufacturing Industry.
- 2.5 The effective date of implementation of this Agreement is 11 May 2020 and the duration of this Agreement will be for a 24 month period, from 11 May 2020 until 10 May 2022, but further subject to sub-clause 2.6 below.
- 2.6 The Main Agreement as amended by this collective agreement shall, subject to Ministerial approval, remain gazetted and extended to non-parties for a further period of six years with effect from 11 May 2020, subject to the parties retaining the right to re-negotiate variations thereto, as and when they deem it necessary to do so.

3. Access to Unemployment Insurance Fund (UIF) finance

The following provisions shall be applicable:

- 3.1 The parties agree and appreciate that should funds be received from the UIF for the purposes of this agreement, such funds constitute worker funds and hence, workers' contributions towards funding the shortfall in their income during a lockdown period) and during which no normal wage as prescribed in the Council's Main Agreement is receivable.
- 3.2 The signatory parties authorise the Chairperson of the Council to sign a memorandum of understanding agreement with the UIF Commissioner and for the Minister of Employment and Labour or their respective nominee, which sets out the terms on which UIF funds will be released to the Council for the sole purpose of executing the provisions of this agreement.
- 3.3 The parties authorise the Secretary of the Council to open a dedicated bank account into which all UIF funds advanced to the council for the execution of the purpose of this agreement shall be deposited.
- 3.4 No funds shall be disbursed from the bank account referred to in sub- 3.3 above, other than that which is duly authorised and which is exclusively intended and ring-fenced for the purposes of this agreement.
- 3.5 The UIF funds are solely and exclusively intended to provide a COVID-19 relief for qualifying employees during a lockdown period declared by government and during which no wage payments from the execution of work is due and/or receivable.
- 3.6 The officials of the Council shall at all times ensure that proper records, including all supporting documents of all income and disbursements from the bank account referred to in sub-clause 3.3 of this agreement, are safely kept and secured.
- 3.7 The Secretary of the Council shall submit a weekly consolidated report to the UIF Commissioner of all income and disbursements pertaining to the bank account referred to in sub-clause 3.3 of this agreement.
- 3.8 The Council shall ensure that, post the lockdown period, the bank account referred to in sub-clause 3.3 of this agreement is audited by no later than a 6 month period following the official termination of the lockdown period.
- 3.9 The UIF Commissioner or the Minister of Employment and Labour shall have the sole power to authorise a variation of the time period set out in sub-clause 3.8 of this agreement, on good cause.
- 3.10 The Secretary and/or Chairperson of the Council, or any other nominee of the Council, are instructed to immediately lay criminal charges against any person and/or entity who/which is suspected of abuse or corruption relating to the operations of the bank account referred to in sub-clause 3.3 of this agreement or in relation to any income or disbursements therefrom.

- 3.11 The information and supporting records which companies would be required to submit for a drawdown of funds as envisaged in clause 4 of this agreement shall be immediately made available to the UIF, on request from the UIF.
- 3.12 Any UIF funds which remain after the completion of a post-COVID-19 lockdown period shall be fully refunded to the UIF within one week following the conclusion of the audit referred to in sub-clause 3.8 of this collective agreement.
- 3.13 The parties agree to appoint additional Council staff at its own cost to help manage the processes required to effectively and securely manage the bank account referred to in sub-clause 3.3 of this agreement.
- 3.14 All employer associations which are party to the Council shall provide a written report to the Council of all their member companies which have
 - (a) not applied for UIF benefits via the Council; and
 - (b) have themselves applied directly for UIF COVID-19 Relief Fund Benefits; and
 - (c) have not applied for UIF-COVID-19 Relief Fund Benefits at all.
- 3.15 The provisions of sub-clause 3.14 of this collective agreement shall be complied with within 2 business days with effect from the date which this collective agreement becomes binding on them.
- 3.16 All employers of companies which fail within the registered scope of the Council shall provide the Council with the required information necessary for the Council to execute the provisions of this collective agreement and shall provide such information within the time frames stipulated by the Council for such information requests.
- 3.17 All employers shall be required to register all their employees with the UIF within 1 week after commencement of employment by such employees.

4. COVID-19 relief payments to employees

- 4.1 The Council shall submit COVID-19 TERS Relief Fund applications to the UIF on behalf of all companies which fall within the registered scope of the Council, for employees covered by the Main Agreement of the Council or for such other category of employees which the Council may decide from time to time.
- 4.2 All employers shall pay each of their employees an amount of no less than 2 weeks' wages for COVID-19 relief assistance.
- 4.3 The amounts referred to in sub-clause 4.2 of this collective agreement shall be paid to each employee by no later than 1 week after the effective date of this collective agreement.
- 4.4 The provisions of sub-clauses 4.2 and 4.3 of this collective agreement shall not be applicable to employers who have already paid their employees a minimum of 2 weeks' wages as relief assistance during the COVID-19 Lockdown period, including those companies which have been exempted therefrom and on the terms as decided on by the Exemptions Committee as provided for in sub-clause 9.1 of this collective agreement.
- 4.5 The amount referred to in sub-clause 4.2 of this collective agreement shall be in addition to any UIF COVID-19 funds due to employees.
- 4.6 Normal statutory deductions and deductions prescribed by the Council's main agreement shall continue to be effected for all payment periods referred to in sub-clause 4.2 of this agreement.

Similarly, employer contributions to statutory obligations and those prescribed by the Council's Main Agreement shall continue to be executed.

- 4.7 The parties acknowledge that there is a possibility that a new lockdown period might be declared in future, and commit to constructively continue to explore income support for employees, in the event of such a new lockdown period being declared.
- 4.8 The parties acknowledge that the cost implications of the provisions of clause 4 of this agreement is unforeseen and unprecedented and shall continue to explore means by which it could be mitigated.
- 4.9 The provisions of clause 4 of this agreement apply to companies and employees within the registered scope of the Council as well as those referred to in sub-clause 2.3 but provided that the latter shall not be required to register with the Council.

5. 2020 round of substantive negotiations

- 5.1 The parties acknowledge that the spread of COVID-19 has thrown the Council's normal substantive negotiations processes into disarray, through no fault of either employers or the trade union.
- 5.2 The parties accordingly agree to postpone the commencement of the 2020 round of substantive bargaining to a future date to be agreed between the parties and confirm that any agreement reached when the 2020 round of bargaining is eventually concluded shall be backdated to 1st September 2020.

6. COVID-19 lockdown period

- 6.1 The employer parties to the Council agree to use the COVID-19 lockdown period to mainly develop and execute a program to improve the order books of companies.
- 6.2 The parties agree to establish a COVID-19 Lockdown Rapid Response Task Team, to consider and resolve any unforeseen or response matters emanating from the implementation of this collective agreement and which may arise during the COVID-19 lockdown period, with the finalisation of exemption applications receiving first priority.
- 6.3 Employers shall take such steps as may be necessary to de-commission workplaces in such a manner that assets are properly secured for the duration of the lockdown period, should such de-commissioning be required.

7. COVID-19 post-lockdown period

Employers undertake to ensure, post the COVID-19 lockdown period, that employees are provided with the necessary and appropriate support to integrate them smoothly and safely back into production.

8. Dispute resolution

- 8.1 Any disputes which may arise from the interpretation and/or application of this collective agreement shall be resolved through expedited arbitration, unless otherwise decided by the disputing parties.
- 8.2 The current panel of Conciliators and Arbitrators of the Council (unless otherwise decided by the disputing parties) shall be used to adjudicate disputes as envisaged in sub-clause 8.1 of this agreement, but subject to sub-clauses 8.3, 8.4, 8.5, 8.6, 8.7 and 8.8 of this collective agreement.
- 8.3 Any dispute as envisaged in sub-clause 8.1 of this collective agreement shall be referred to the Council, in writing, by the disputing party.
- 8.4 (a) The disputing parties shall, within 12 hours of a dispute having been referred to the bargaining council as envisaged in sub-clause 8.1 of this collective agreement, agree on an arbitrator to adjudicate the dispute, failing which the COVID-19 Rapid Response Task Team shall appoint an arbitrator, by majority decision.

- (b) Failing a majority decision as envisaged in sub-clause 8.4 (a) of this collective agreement, the arbitrator shall be appointed by the National Chairperson of the Council, and his/her decision regarding this matter shall be final and binding.
- 8.5 The dispute declaration referred to in sub-clause 8.1 of this collective agreement shall set out in writing the grounds on which the dispute has arisen, the breach that is alleged, as well as the proposed resolution of the dispute.
- 8.6 Within 24 hours of an arbitrator having been appointed in terms of the provisions of sub-clause 8.4 of this collective agreement, the answering party shall submit a written reply to the arbitrator, in response to the declaration of dispute letter as envisaged in sub-clause 8.5 of this collective agreement, and cause a copy of such written reply to be transmitted to the declarer of the dispute.
- 8.7 Within 4 hours of the declarer of the dispute having received the answering party's written document as envisaged in sub-clause 8.5 of this collective agreement, the dispute declaring party shall deliver a written reply thereto, to the arbitrator and copied to the answering party.
- 8.8 The arbitrator appointed by the provisions of sub-clause 8.4 of this collective agreement shall take into account the written submissions made in terms of sub-clauses 8.5, 8.6 and 8.7 of this collective agreement and issue a binding written arbitration award within 12 hours after receipt of the written document as envisaged in sub-clause 8.6 of this collective agreement.

9. Exemptions procedure

- 9.1 The parties agree that exemption applications shall be dealt with by the COVID-19 Rapid Response Task Team as a matter of priority.
- 9.2 Exemption appeals shall be processed through expedited arbitration as provided for in Clause 8 of this collective agreement.
- 9.3 The criteria applicable to exemptions the Main Agreement, as amended and appeals are those set out in the Main Agreement, as amended.

10. Other conditions

- 10.1 Employers confirm that the matters listed in Annexure A to this collective agreement are important and legitimate. The parties accordingly agree to set in motion a process to consider the matters listed in Annexure A to this agreement during the currency of the lockdown period and to sign off on it during the lockdown period or within one month from the adoption by the Council of this Agreement.
- 10.2 All other previously agreed terms and conditions not specifically varied by the provisions of this agreement shall remain in force and effect, unless otherwise agreed between the parties.
- 10.3 All terms shall have the same meaning as those set out in the Council's Main Agreement.
- 10.4 The parties accept that the terms agreed to are hereby formalised in this final written collective agreement concluded and signed under the auspices of the National Bargaining Council for the Clothing Manufacturing Industry of South Africa.
- 10.5 The provisions of this collective agreement are not intended to undermine the parties' ability to access any government-announced support measures for COVID-19.
- 10.6 Within 1 day from the date of gazettal of this collective agreement the General Secretary of the Council shall request the Minister of Labour to cancel the previous "COVID-19 Lockdown Collective Agreement" as was published in GG 43152 on 26 March 2020.

Annexure A

1. Strengthening industry healthcare provisions

The parties

- 1.1 Acknowledge that healthcare provisions at workplace level in our industry require improvement.
- 1.2 Further acknowledge that its current industry healthcare facilities can play a positive contributing role to help alleviate healthcare service deficiencies of all workers in our industry pipeline, not only of clothing workers.
- 1.3 The parties commit to improve and expand healthcare service delivery healthcare provisions to all workers in our industry pipeline, and in this regard:
 - 1.3.1 Agree to expand healthcare clinic facilities to our non-metro areas by commencing, as soon as practically possible and mindful of resource shortages, the building of a new industry healthcare clinic facility in a non-metro area in the Province of KwaZulu-Natal, drawing on the surplus of the KZN Health Care Fund.
 - 1.3.2 Take steps to allow access for all workers in our industry pipeline and SACTWU members in general, irrespective of sector, to the currently existing and future health care clinics of the Council.
 - 1.3.3 Initiate a process to fully position the current health care clinics of the Council as support infrastructure for the National Health Insurance (NHI).
 - 1.3.4 Agree to integrate the SACTWU Worker Health Care Project (SWHP) staff (who voluntarily agree) into the various Council Health Care Funds and to expand the current healthcare fund services to include additional value-added SWHP services not currently provided for by the healthcare clinics.
 - 1.3.5 Rebuild and strengthen workplace health and safety committees.
 - 1.3.6 For Council to contract industrial engineers who can advise on workflow issues to limit health risk transmissions at the workplace.
 - 1.3.7 Support the call for the ratification of ILO Convention 190, to help combat workplace gender-based violence.
 - 1.3.8 Require all companies in the industry to submit annual workplace health and safety plans to the Council, commencing immediately and urgently with the submission of customised anti-COVID-19 workplace plans.
 - 1.3.9 Agree that the submission of the annual workplace health and safety workplace plans referred to in sub-clause 5.3.7 of this agreement shall be a new requirement for the issuing of Council Compliance Certificates.
 - 1.3.10 Agree that the Council should re-imburse the trade union for the costs incurred for the recent COVID-19 awareness training programmes for shop stewards and human resources personnel.
 - 1.3.11 Agree to place an item called "Industry Health Care Challenges and Opportunities" as a standard item on all agenda's of Council meetings, for the consideration of Council.
 - 1.3.12 Agree that staff of the Council and its Health Care Clinics shall be provided with the necessary awareness, prevention and treatment support to help combat the spread of COVID-19, and shall be paid in full during the period of a lockdown (should a lockdown occur), or isolation and/or quarantine periods in the event that isolation and/or quarantine periods are required.

2. Strengthening trade union organisational rights

The parties agree that strong trade union organisational rights are fundamental to stable industrial relations, and accordingly resolve to improve the trade union's organisational rights as follows:

2.1.1 Office Bearers of the trade union shall be granted paid time-off to attend constitutional meetings of the union and of the federation to which the trade union is affiliated.

2.1.2 Currently, the Council's Main Agreement contains a provision which reads as follows:

"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"

The above clause shall be amended to read as follows:

"the trade union shall have the unfettered right to embark on industrial action against any company which fails to implement the terms of any Council agreement".