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GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

DEPARTMENT OF LABOUR DEPARTEMENT VAN ARBEID

No. R. 707

22 May 1998

LABOUR RELATIONS ACT, 1995

RESTAURANT, CATERING AND ALLIED TRADES: EXTENSION OF MAIN COLLECTIVE AGREEMENT TO NON-PARTIES

I, Tito Titus Mboweni, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the Restaurant, Catering and Allied Trades, 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 Trade, with effect from 1 June 1998 and for the period ending 28 February 2001.

T. T. MBOWENI
Minister of Labour

No. R. 707

22 Mei 1998

WET OP ARBEIDSVARHOUDINGE, 1995

RESTOURANT-, SPYSENIERS- EN VERWANTE BEDRYWE: UITBREIDING VAN HOOF KOLLEKTIEWE OOREENKOMS NA NIE-PARTYE

Ek, Tito Titus Mboweni, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hierby verskyn en wat in die Bedingsraad vir die Restourant-, Spyseniërs- en Verwante Bedrywe aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie bedryf, met ingang van 1 Junie 1998 en vir die tydperk wat op 28 Februarie 2001 eindig.

T. T. MBOWENI
Minister van Arbeid

NOTA: 'n Afrikaanse vertaling van die ooreenkoms by die Engelse kennisgewing sal so gou doenlik in die *Staatskoerant* gepubliseer word.

SCHEDULE
BARGAINING COUNCIL FOR THE RESTAURANT, CATERING AND ALLIED TRADES
AGREEMENT

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

CATRA, The Restaurant and Food Services Association of South Africa

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

Catering Employees' Union

Hotel and Allied Restaurant Workers' Union of South Africa

Distributive, Catering, Hotels and Allied Workers' Union of South Africa

South African Commercial, Catering and Allied Workers' Union

and

Hotel, Liquor, Catering, Commercial and Allied Workers' Union of South Africa (HOTELICCA)

(hereinafter referred to as the "employees" or the "trade unions" of the other part,

being the parties to the Bargaining Council for the Restaurant Catering and Allied Trades.

1. SCOPE OF APPLICATION

- (2) The terms of this Agreement shall be observed in the Tearoom, Restaurant and Catering Trades—
 - (a) by all employers who are members of the employers' organisation and by all employees who are members of the trade unions;
 - (b) in the Magisterial Districts of Alberton, Benoni, Boksburg, Brakpan, Delmas, Germiston, Johannesburg, Kempton Park, Krugersdorp, Randburg, Randfontein, Roodepoort, Springs and Westonaria.
- (2) The terms of this Agreement shall not apply to non-parties in respect of clauses 1.1 (a), 2, 22.2 (a) and 22.3 of this Agreement.

2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation on the date fixed by the Minister of Labour to be the effective date from which the Agreement shall be extended to become binding on non-parties, or the date on which the Minister of Labour declines to extend the Agreement to non-parties, and the Agreement shall remain in force for the period ending 28 February 2001.

3. INDUSTRIAL ACTION

- (1) No person bound by the provisions of this Agreement entered into by the parties shall engage in or participate in a strike or lock-out or any conduct in furtherance of a strike or a lock-out in respect of any matter regulated by this Agreement for its duration.
- (2) The forum for negotiation and conclusion of substantive agreements on wages, benefits and other conditions of employment between employers and employer's organisations on the one hand and trade unions on the other hand, shall be the Bargaining Council and not at shopfloor level.
- (3) No trade union or employer's organisation may attempt to induce or compel or be induced or compelled by any natural or juristic person or other organisation, by any form of strike or lock-out, to negotiate the issues referred to in paragraph 1 above, at any level other than this Bargaining Council.
- (4) Any inconsistent provisions of collective procedural agreements between employers and trade unions and their members shall be regarded by such parties as amended to accommodate the provisions of paragraphs 2 and 3 above and shall not be binding on the parties to the extent that the provisions of such agreements conflict with those of paragraphs 2 and 3 above.

4. DEFINITIONS

Unless the context otherwise indicates, any expression which is used in this agreement and which is defined in the Act shall have the same meaning as in that Act and for the purpose of this Agreement an employee shall be deemed to be in that class in which he is wholly or mainly engaged; furthermore, unless inconsistent with the context—

"Act" means the Labour Relations Act, 1995 (Act No. 66 of 1995);

"assistant bartender" means an employee who, under the supervision of a bartender, does the work of a bartender, but who is not responsible for stock in a bar;

"assistant clerk/cashier" means an employee who, under the supervision of a clerk/cashier, does the work of a clerk/cashier, and has less than one year's experience;

"assistant manager" means an employee who is specifically charged by his employer to assist the manager in his duties in an establishment and who may act for such manager in the employ of the firm in his absence;

"baker" means an employee who prepares, makes and bakes wheaten products;

"bartender" means an employee who is engaged in supplying liquor to customers over a counter and receiving payment therefor, and who is responsible for the balancing of the stock and cash receipts;

"bread", without limiting the ordinary meaning of the term, includes buns, rolls, fancy bread or any other similar wheaten, rye or maize products;

"café", without limiting the ordinary meaning of the term, means a business licensed or required to be licensed, under item 20 "café keeper", of the Transvaal Licence Ordinance, 1974 (Ordinance No. 19 of 1974);

"cashier" see "clerk";

"casual employee" means an employee, other than a special function casual employee, who is employed by the same employer on not more than three days in any week:

Provided that such casual employee may be employed on not more than four days in any week in which a paid public holiday falls, and may also be so employed during any one or more of the following periods:

(a) 6 December to 15 January;

(b) shows and exhibitions;

(c) the Easter weekend;

"catering" means the provision of meals and/or refreshments;

"catering assistant" means an employee who—

(a) prepares any one or more of the following: Plain or toasted sandwiches, fresh fruit, fruit salads, salads from fresh or prepared vegetables, hamburgers, hot dogs, waffles, pancakes, pizzas, pies, curry and rice, common pan foods, grills, popcorn, fish and chips, vetkoek and grilled chicken, and/or assists with the preparation of the menu of the establishment;

(b) transmits orders and places such items of food mentioned in paragraph (a), and cold prepared foods, prepared salad dressings, stews, boiled meats and/or vegetables, either on plates or in containers ready for conveyance to the customer;

(c) operates an ice-cream dispenser and/or soda fountain and/or semi-automatic machine;

(d) receives verbal or written orders from a waiter/wine steward for the supply/handling over to him of bottles of alcoholic or non-alcoholic drinks;

"chef" means an employee in a managerial position who is in possession of a chef's certificate recognised by the Council and is in charge of the preparation of the food in an establishment;

"clerk/cashier" means an employee engaged in any one or more of the following duties:

(a) Clerical work, i.e. writing, typing and filing;

(b) operating office equipment;

(c) operation a cash register, and being responsible for balancing receipts and disbursements;

(d) being in charge of stores and responsible for receiving, storing, assembling, packing and/or unpacking goods in a store or warehouse, and for the delivery of such goods;

(e) operating a telephone switchboard,

but does not include any other class of employee elsewhere defined in this clause, notwithstanding the fact that clerical work as herein defined may form part of such employee's work;

"contract waiter" means an employee who performs the duties of a waiter in a restaurant and who agrees in writing with the employer to work odd shifts according to a previously drawn up timetable, but who may not be employed in a supervisory capacity;

"cook" means an employee who is engaged in preparing, cooking and the presentation of food in an establishment and who may be responsible for kitchen organisation and control of stock, and includes a baker;

"Council" means the Bargaining Council for the Restaurant, Catering and Allied Trades, deemed to be registered in terms of the Act;

"counter assistant" means an employee who serves customers at a counter and who may receive payment for the goods sold, but excludes a bartender and assistant bartender;

"day" means a period of 24 consecutive hours calculated from the time an employee commences work;

"delivery employee" means an employee who is engaged in collecting or delivering messages, letters, documents or goods by means of a two or three-wheeled, motorised vehicle with an engine capacity not exceeding 200 cm³ and who may collect cash for COD sales;

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

"emergency work" means—

- (a) any work which, owing to unforeseen circumstances such as fire, storm, accident, epidemic, act of violence, civil unrest, theft or a breakdown of plant, motor vehicles or machinery, must be done without delay;
- (b) any work in connection with the loading or unloading of—
 - (i) trucks or vehicles of the South African Transport Services; or
 - (ii) a vehicle used by a cartage contractor in the fulfilment of his contract as such with the South African Transport Services; or
- (c) any work in connection with the provisioning of aircraft;
- (d) any work in connection with the guarding of premises or property for security reasons during building operations or structural alterations;

"establishment" means any place in or in connection with which one or more persons are employed in the Tearoom, Restaurant and Catering Trade, and includes clubs and/or canteens operated for gain;

"exemptions committee" means a committee established to consider applications for exemption from the provisions of this Agreement;

"extra-heavy motor vehicle" means a motor vehicle, the gross vehicle mass or the gross combination mass of which exceeds 16 000 kg;

"function supervisor" means an employee who is personally in charge of and responsible for all the activities at a particular special function;

"general assistant" means an employee engaged in any one or more of the following duties:

- (a) Making porridge and preparing meals for the exclusive consumption of the employees of the establishment;
- (b) packing or wrapping edibles for sale or delivery;
- (c) assisting with the checking of stores under supervision;
- (d) checking crockery, glassware, napery and other pantry requirements and checking dining equipment;
- (e) cleaning premises, the work place or any article;
- (f) cleaning, plucking or cutting raw poultry, raw fish or raw meat as part of the cleaning process, cleaning or peeling of fruit and vegetables, cutting fruit and vegetables other than for salads and cutting bread;
- (g) carrying, stacking or moving goods;
- (h) making or maintaining fire and removing ashes and refuse;
- (i) vending, collecting and/or delivering orders off the premises and accepting payment therefor;
- (j) making tea, coffee, cocoa or similar beverages;
- (k) loading and offloading;
- (l) repetitive mass-measuring to a set mass-meter;
- (m) opening or closing packets, containers or parcels;
- (n) heat closing of polythene or similar prefilled containers;
- (o) gardening;
- (p) sharpening knives;
- (q) decanting into other containers, except for table use;
- (r) guarding premises or other movable or immovable property by day, but excluding a watchman;

"griller" see "catering assistant";

"gross vehicle mass", in relation to a motor vehicle, means the maximum mass of such vehicle and its load as specified by the manufacturer or, in the absence of such specification, as determined by the registering authority;

"head cook" means an employee who does the work of a cook and is in charge of a kitchen where three or more cooks are employed;

"head waiter/head wine steward" see "receptionist";

"heavy motor vehicle" means a motor vehicle, the gross vehicle mass or gross combination mass of which exceeds 9 000 kg but does not exceed 16 000 kg;

"independent exemptions board" means a body as referred to in section 32 (3) (e) of the Act;

"kitchen supervisor" means an employee who is charged by his employer with the overall supervision over, responsibility for and direction of the activities carried on in or in connection with the kitchen of an establishment and the employees engaged therein, excluding the head cook and chef, and who may perform the duties of a cook;

"law" includes the common law;

"light motor vehicle" means a motor vehicle, the gross vehicle mass or gross combination mass of which does not exceed 3 500 kg;

"manager" means an employee who is charged by his employer with the overall supervision over, responsibility for and direction of the activities carried on, in or in connection with that section of the establishment that has been placed under his authority, and who is directly responsible to the employer, and further includes the provision of attendance registers to all employees and the daily completion thereof as well as of the wage register when so instructed by his employer: Provided that where fewer than six employees are employed, this employee shall be deemed to be a supervisor;

"management trainee" means an employee who for a period of 18 months is employed in various departments of an establishment for the purpose of training as a manager, and whose employment in a particular establishment for this purpose has the approval of the Council;

"medium motor vehicle" means a motor vehicle, the gross vehicle mass or the gross combination mass of which exceeds 3 500 kg but does not exceed 9 000 kg;

"military service" means any service done in pursuance of the Defence Act, 1957;

"minister" means the Minister of Labour;

"motor vehicle" means any self-propelled vehicle with an engine capacity exceeding 200 cm³ used for conveying goods and includes a mechanical horse, a motor cycle or a motor tricycle and a tractor;

"new employer" means the owner of a business newly established in the trade, during the first 12 months of its existence in the trade, who at no time employs more than five employees in the aggregate: Provided that if the existing business undergoes a change of name or ownership (including a change of directors, members or partners) while largely retaining the same employees and/or clients, it shall not be regarded as a new employer;

"overtime" means that part of any period during which an employee works for his employer during any one week or any one day, as the case may be, and which is in excess of the respective ordinary hours of work prescribed for such employee in clause 9 (1);

"part-time driver" means an employee who is ordinarily engaged in work other than driving a motor vehicle, but who on more than two days in any week is engaged in driving a motor vehicle for not more than three hours in the aggregate on any such day, and for the purpose of this definition the expression "driving a motor vehicle" includes all periods of driving and any time spent while in charge of the vehicle, on work connected with the vehicle or the load;

"part-time employee" means an employee (other than a part-time driver or contract waiter) employed permanently by the establishment for not more than 24 ordinary hours of work in any week;

"premises" includes any land, structure, vehicle or vessel;

"paid holiday" means a paid public holiday as defined in the Public Holidays Act, 1994;

"receptionist/head waiter/head wine steward" means an employee who is engaged in making reservations in respect of tables, allocating seats and showing customers to their seats, and is specifically charged by the employer or manager with supervisory responsibility over general assistants;

"registered scope" see "sector";

"sandwich" means one or more slices of fresh or toasted bread, rolls, scones or buns with filling on or between such slice or slices, but excludes snacks or savouries;

"security guard" means an employee who is engaged in any one of the following duties:

- (a) Authorised searching of goods, vehicles and persons;
- (b) supervising or controlling one or more watchmen; and
- (c) controlling or reporting on the movement of persons or vehicles through check-points or gates,

and who may be required to perform any or all of the duties prescribed for a watchman;

"sector" means the Tearoom, Restaurant and Catering Trade in which employers and their employees are associated wholly or mainly for the purpose of preparing, serving or providing meals or refreshments (whether liquid or otherwise) or both such meals and refreshments in or from any establishment or part thereof, whether permanent, temporary, indoors or in the open air, and includes such activities when carried on in or from one or more classes of premises or parts thereof—

- (a) used as public restaurants, fish-and-chips shops, cafés, tearooms, roadhouses and take-away food outlets, except where the preparation and/or supply of ready-to-consume food and/or refreshments takes place on or from the premises of an accommodation establishment;
- (b) where meals or non-alcoholic drinks are served for consumption on the premises or are provided for consumption away from the premises;
- (c) where aerated or mineral waters are supplied in glasses or other containers for consumption on the premises; and

- (d) wherein or wherefrom the activities referred to herein are carried on in respect of or in connection with any entertainment and/or function, but does not include the sale and/or provision of edibles and/or liquid refreshments to persons attending cinema performances or theatre productions on the premises of and by the establishment providing such performances or productions, and also includes the supply of liquor in any such establishments or on any such premises in terms of a liquor licence held or deemed to be held by such employers or issued under the Liquor Act, 1989, but does not include hotelkeepers, boarding-housekeepers or lodging-housekeepers and further includes all operations incidental to or consequent on any of the aforesaid activities;

“small employer” means an employer who does not employ more than five employees at any time;

“special function” means any event or occasion, including a dance, dinner, reception, sports gathering, or agricultural, animal, horticultural or industrial show where meals and/or refreshments are provided;

“special-function casual employee” means an employee who is employed by the day or the hour to work at a special function for not more than three days in any week: Provided that such special function casual employee may be employed on not more than four days in any week in which a public holiday falls, and may also be so employed during any one or more of the following periods:

- (a) 6 December to 15 January;
- (b) shows and exhibitions;
- (c) the Easter weekend;

“staff supervisor” means an employee who supervises staff at a special function under the direction of the employer, function supervisor or manager;

“supervisor” means an employee who under the direction of the employer, manager or assistant manager supervises the work of the employees in an establishment;

“waiter/wine steward” means an employee, other than a contract waiter, bartender, clerk/cashier or counter assistant, who performs any one or more of the following duties:

- (a) Serving meals and/or refreshments (whether alcoholic or non-alcoholic) to customers at tables or counters;
- (b) receiving payment for any order taken or executed and being responsible for payment;
- (c) setting and/or clearing tables;
- (d) checking and/or controlling dining-room and/or other pantry equipment;
- (e) filling butter and/or jam dishes and/or cruets, and may make salads;

“wage” means the amount of money payable to an employee in terms of clause 5 in respect of his ordinary hours of work as prescribed in clause 9: Provided that if any employer regularly pays an employee in respect of such hours of work an amount higher than that prescribed in clause 5, it means such higher amount;

“watchman” means an employee who is engaged, mostly at night, in any one or more of the following duties:

- (a) Guarding, protecting or patrolling premises, buildings, structures or fixed or movable property;
- (b) handling dogs in the performance of any or all of the duties referred to in (a); and

“week”, in relation to an employee, means the period of seven days within which the working week of that employee falls.

5. WAGES

Exemptions

Where a small employer or his employee can satisfy the council that any provisions of the agreement are restricting entrepreneurial initiative and/or employment opportunities, such an employer or employee may apply to the Council for exemption from the specific provisions and the Council may grant such an exemption. Please see clauses 29 and 4.1.24.

Prescribed wages for an employee on probation may be reduced by not more than 10% for a period not exceeding three months.

The wages prescribed pertain to the payment for ordinary hours of work as prescribed in clause 9. Should statutory legislation reduce these ordinary hours of work the wages will automatically be reduced proportionately, bearing in mind the overtime aspect.

(1) Subject to the provisions of the subclause (3) and clause 6 (9), the minimum wage which shall be paid in respect of the ordinary hours of work prescribed in clause 9 by an employer to each member of the undermentioned classes of employees shall be as set out hereunder, and no employer shall pay, and no employee shall accept wages lower than the following for the undermentioned groups: Provided that the wages so prescribed may be reduced by not more than 10 per cent by a new employer as defined in clause 4:

(a) *Employees, other than part-time, casual, special-function casual and contract waiter.*

For the years ending on the last day of February of:

	1999 R/h	2000 R/h	2001 R/h
Chef.....	10,50	11,05	11,60
Manager.....	10,50	11,05	11,60
Assistant Manager.....	7,32	7,70	8,10
Bartender.....			
Cashier.....			
Clerk.....	6,10	6,45	6,80
Security Guard.....			
Supervisor.....			
Assistant Bartender.....	5,28	5,55	5,85
Assistant Cashier.....			
Head Cook.....			
Head Waiter.....			
Head Wine-Steward.....	5,10	5,35	5,65
Management Trainee.....			
Receptionist.....			
Kitchen Supervisor.....	4,65	4,90	5,15
Counter Assistant.....			
Part-time Driver.....	4,34	4,65	4,90
Waiter/Wine Steward.....			
Employee not elsewhere specified.....	3,90	4,30	4,55
Motor Vehicle Driver:			
(a) Extra Heavy.....	5,85	6,15	6,50
(b) Heavy.....	5,06	5,35	5,65
(c) Medium.....	4,88	5,15	5,45
(d) Light.....	4,16	4,45	4,70
Baker.....			
Cook.....	4,16	4,45	4,70
Catering Assistant.....			
Delivery Employee.....	4,01	4,35	4,60
General Assistant.....	3,77	4,10	4,35
Watchman.....	3,00	3,30	3,50

Note: (i) The equivalent monthly or weekly total due, amounts to multiplying the hourly rate by the employee's ordinary hours of work as prescribed in clause 5 (1), read with 5 (2) and 5 (3).

(ii) Deductions for food—clause 17 (1) (a)—amount to R70,00 per month and R16,15 per week for some employees only. See clause 17 (1) (b).

- (b) *Part-time employees:* A part-time employee shall be paid in respect of the ordinary hours of work prescribed in clause 9 for such part-time employee not less than $66\frac{2}{3}\%$ of the wage prescribed in paragraph (a) hereof.
- (c) *Contract waiters:* The employer shall pay a contract waiter not less than R0,50 per hour and the employer shall have no claim on any moneys received by the contract waiter in the form of tips and/or percentage of the value of orders executed (excluding VAT) as previously agreed to in writing and which shall not be less than one per cent. All moneys shall be paid at the end of each shift unless the employee requests otherwise in writing. The employer and employee shall keep and maintain a record of such moneys received.
- (d) *Casual employee other than a special-function casual employee:* A casual employee shall be paid not less than one and a half times the hourly wage prescribed in paragraph (a) hereof for an employee of the same class as the one in which he is employed: Provided that—
- where a casual employee performs the work of a class of employee for whom wages on a higher scale are prescribed, the expression "hourly wage" shall mean the highest wage prescribed for an employee of that class; and
 - where a casual employee is required to work for less than three hours on any day he shall be deemed to have worked for three hours.

(e) *Special-function casual employees*

Minimum hourly rates for the years ending on the last day of February of:

	1999 R/h	2000 R/h	2001 R/h
General Assistant	14,00	14,00	15,00
Catering Assistant			
Cook/Baker	14,00	15,00	16,00
Counter Assistant			
Waiter/Wine Steward			
Assistant Bartender	15,00	16,00	17,00
Driver	16,00	17,00	18,00
Bartender			
Clerk/Cashier	18,00	19,00	20,00
Head Cook			
Staff Supervisor	20,00	21,00	22,00

Where a special-function casual employee is required to work for less than five hours on any day he shall be deemed to have worked for five hours.

(2) **Calculation of wages:** (a) The daily wage of an employee shall be calculated by dividing his weekly wage as follows:

- By six in the case of an employee who works on six days per week;
- by five in the case of an employee who works on five days per week.

(b) The weekly wage of a monthly paid employee shall be calculated by dividing the monthly wage by four and one-third.

(c) The hourly wage of an employee shall be calculated by dividing the weekly wage by the number of the weekly ordinary hours of work prescribed for such employee in clause 9.

(3) **Basis of contract:** For the purposes of this clause the contract of employment of an employee, other than a casual employee, a contract waiter and a special-function casual employee, shall be on a weekly basis and, save as provided in clause 6 (9), an employee shall be paid in respect of a week not less than the full weekly wage prescribed in subclause (1) read with subclause (6) of this clause, for the ordinary hours of work as prescribed in clause 9 (1), for an employee of his class, whether he has in that week worked the maximum number of ordinary hours of work applicable to him in terms of clause 9 (1) or less.

(4) **Differential wage:** Any employer who requires or permits a member of one class of his employees to perform work of another grade for longer than one hour in the aggregate on any day, either in addition to his own work or in substitution therefor, for which a wage higher than for his own grade is prescribed in subclause (1), shall pay such employee in respect of such day not less than the daily wage calculated at the higher rate.

(5) Unless expressly otherwise provided in a written contract between an employer and his employee, nothing in this Agreement shall be so construed as to preclude an employer from requiring his employee to perform work of another grade, for which grade the same or a lower wage is prescribed for such employee.

(6) **Reduction of wages:** An employer shall not reduce the wages of an employee who at the time this Agreement comes into operation or at any time thereafter, is paid a wage at a rate higher than the minimum rate prescribed for his grade in this Agreement, as long as he continues to work for the same employer: Provided that where a weekly-paid employee has been given one week's notice, or a monthly-paid employee two weeks' notice, of a change of conditions of employment, and such employee agrees in writing to accept a transfer to a grade of work for which a lower minimum wage is prescribed, this provision shall not apply.

6. PAYMENT OF REMUNERATION

(1) Employees, other than casual employees and special-function casual employees and contract waiters: Save as provided in clauses 16 and 17, any amount due to an employee, other than casual employees, special-function casual employees and contract waiters, shall be paid weekly or monthly in cash or, with the consent of the employee, by uncrossed cheque, during the ordinary hours of work of the establishment, and—

- (a) in the case of weekly-paid employees pay day shall not be later than Saturday for employees who work on six days per week and Fridays for all other employees, and shall include all overtime due to the employee up to the Wednesday preceding such pay day;
- (b) in the case of monthly-paid employees pay day shall be not later than the last working day of the month: Provided that payment for any overtime worked after the 27th day of the month may be made not later than the pay day following the month to which it relates.

(2) **Casual and special-function casual employees:** Save as provided in clauses 16 and 17, an amount due to a casual employee, a contract waiter or to a special-function employee shall be paid in cash or, with the consent of the employee, by uncrossed cheque, and—

- (a) in the case of a casual employee, shall be paid at least once per week or on termination of his employment;
- (b) in the case of a special-function casual employee, shall be paid not later than Wednesday of each week and shall include all amounts due to the employee up to 06:00 on the Tuesday of that week;
- (c) in the case of a contract waiter, shall be paid as prescribed in clause 5 (1) (c).

(3) Notwithstanding anything to the contrary contained in this clause, all amounts due to an employee shall become payable upon termination of employment if this takes place before the usual pay day, and in the case of summary dismissal owing to misdemeanour, all amounts due to an employee shall become payable within 72 hours of such dismissal.

(4) **Pay envelopes:** The amount due to an employee shall be contained in a sealed envelope or container on which shall be recorded or which shall be accompanied by a statement showing—

- (a) the employer's name, the employee's name or his number on the pay-roll, and his occupation;
- (b) payment for ordinary time worked;
- (c) payment for overtime worked;
- (d) the details of any other remuneration arising out of the employee's employment;
- (e) the details of any deductions made;
- (f) the actual amount paid to the employee;
- (g) the period in respect of which payment is made; and
- (h) the number of ordinary and overtime hours worked by the employee:

Provided that such envelope, container or statement shall reflect the particulars set out in Annexure A: Provided further that information in respect of time worked need not be furnished in the case of employees who are excluded from the hours of work provisions by virtue of clause 9 (8) (a), and such envelope or container on which these particulars are recorded, or such statement, shall become the property of the employee.

(5) **Premiums:** No payment shall be made to or accepted by an employer, either directly or indirectly, in respect to the employment or training by the employer of an employee: Provided that this subclause shall not apply in respect of a training scheme to which the employer is legally required to contribute.

(6) **Purchase of goods:** An employer shall not require his employee to purchase any goods from him or from any shop, place or person nominated by him.

(7) **Commission:** No employee shall be permitted to work on a commission basis only: Provided that an employer may pay commission over and above the minimum scale of wages prescribed.

(8) **Board and lodging:** An employer shall not require his employee to board or lodge, or board and lodge with him or with any person or at any place nominated by him.

(9) **Deductions:** An employer shall not levy any fines against his employee, nor shall he make any deductions from his employee's remuneration other than in the following cases:

- (a) With the written consent of his employee, a deduction for a welfare organisation registered in terms of the Welfare Organisations Act, 1947, or a registered medical aid, pension or provident fund or funeral benefit.

- (b) Except where otherwise provided in this Agreement, whenever an employee is absent from work other than on the instructions or at the request of his employer, a deduction proportionate to the period of his absence and calculated on the basis of the wage which such employee was receiving in respect of his ordinary hours of work at the time of such absence.
 - (c) If an employee is absent on the working day before or the working day following a public holiday for which he would be entitled to be paid without working, he shall forfeit pay for such paid holiday unless he can produce a medical certificate from a registered medical practitioner or any other medical certificate acceptable to the Council or unless he can satisfy the Council that his absence was due to circumstances beyond his control.
 - (d) A deduction of any amount which an employer is legally or by order of any competent Court required or permitted to make, and with the written consent of the employee, any amount advanced from remuneration or lent to such employee.
 - (e) Where an employee caused malicious damage to his employer's property or failed to return at the time of termination of employment any uniform supplied to him in terms of clause 8 hereof, a deduction in accordance with a decision taken by the Council or by a subcommittee appointed by the Council.
 - (f) A deduction of the amount of any deficiency in cash handled solely by the employee who, in the case of a clerk/cashier, shall be responsible for balancing receipts and disbursements at the end of each shift: Provided that the employee accepts responsibility for such deficiency in writing and specifies therein the amount and conditions of repayment: Provided further that where the employee does not accept responsibility for such deficiency, the Council may at the request of the employer or employee conduct an enquiry into the matter and make such recommendation as it deems fit.
 - (g) With the written consent of an employee, a deduction of any amount which an employer has paid in respect of the rent of any house or accommodation.
 - (h) A deduction for Bargaining Council expenses as provided in clause 21.
 - (i) A deduction in respect of meals as prescribed in terms of clause 17.
 - (j) A deduction for trade union subscriptions in terms of clause 22 (2).
 - (k) A deduction authorised by the Bargaining Council in terms of clause 13 (5).
- (10) Notwithstanding the provisions of subclause (9) (d) and (e) of this clause, the amount of such deductions shall, except where employment is terminated, not exceed a third of the total remuneration due to the employee.

7. PAID HOLIDAYS

(1) (a) Paid holiday means a public holiday as proclaimed in terms of the Public Holidays Act, 1994. Whenever a paid holiday falls on a Sunday, the following Monday shall be a paid holiday. Any paid holiday shall be exchangeable for any other day that is fixed by agreement or agreed to between an employer and employee.

(b) Whenever an employee works for a period that falls partly on a public holiday and partly on an ordinary working day, such an employee shall, for the purposes of this clause, be deemed to have worked the whole period on the day on which the major portion of such working period falls.

(2) When an employee is not required or permitted to work on a paid holiday that falls on a working day, his employer shall pay him his normal wage for that day.

(3) When an employee works on a paid holiday that is a working day, his employer shall pay him double his hourly rate for all hours worked, with a minimum of double a day's pay.

(4) When an employee works on a paid holiday that falls on a day that is not his normal working day, his employer shall pay him either—

- (a) double his hourly rate of pay for all hours worked, with a minimum of double a day's pay; or
- (b) one and a half times his hourly rate of pay, for all hours up to eight hours worked, with a minimum of eight hours' pay, and double time thereafter and grant him within seven days one day's leave on full pay: Provided that, with the written request of the employee, an extra day of leave may be granted in lieu of this day off.

(5) If a paid holiday falls within an employee's period of annual leave, the period of such leave shall be extended by one working day for each paid holiday falling within his period of leave in terms of the provisions of clause 16 (1).

8. UNIFORMS, OVERALLS AND PROTECTIVE CLOTHING

(1) An employer shall supply and maintain free of charge any uniform, overall, washable coat, cap or apron that by any law he is compelled to provide for his employee and any such uniform, overall, washable coat, cap or apron shall remain the property of the employer.

(2) An employer may require an employee to pay a deposit towards wearing apparel. This deposit shall be refunded on the apparel being returned in reasonable condition, less fair wear and tear.

(3) An employer may agree with an employee that the employee shall clean his wearing apparel in his own time, for which the employer shall pay the employee R5,00 per week. This amount shall not be payable when the employee is off work.

9. HOURS OF WORK, OVERTIME AND PAYMENT FOR OVERTIME

(1) **Ordinary hours of work:** An employer shall not require or permit an employee to work more ordinary hours than, in the case of—

- (a) a watchman—
 - (i) 60 hours in any week; and
 - (ii) subject to subparagraph (i) hereof, 12 hours on any day;
- (b) a driver, a cook, a delivery employee, a general assistant, a catering assistant and a kitchen supervisor—
 - (i) 48 hours in any week; and
 - (ii) subject to subparagraph (i) hereof, 10 hours on any day;
- (c) a part-time employee—
 - (i) 24 hours in any week; and
 - (ii) five hours on any day;
- (d) a casual employee, eight hours on any day;
- (e) a special-function casual employee, 15 hours on any day;
- (f) all other employees—
 - (i) 46 hours in any week; and
 - (ii) nine hours on any day.

(2) **Number of working days:** An employer shall not require or permit an employee to work on more than six days per week, which includes Sunday, unless it is his day off. Please see clause 9 (6) (b).

(3) **Meal intervals:** An employer shall not require or permit an employee to work more than—

- (a) five hours continuously in the case of a six-day week worker;
- (b) six hours continuously in the case of a five-day week worker;
- (c) six hours continuously where the employee is requested to work a four-day week,

without a meal interval of not less than one hour, during which interval such an 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) an employer and his employee may agree to reduce the period of such interval to not less than 30 minutes;
- (ii) any other interval of less than 30 minutes shall be deemed to be time worked;
- (iii) any interval longer than three hours during the employee's ordinary hours of work, and longer than 30 minutes during or immediately before overtime is worked, shall be deemed to be overtime worked;
- (iv) only one such interval during the employee's ordinary hours shall be deemed to be an interval, and not part of the ordinary hours of work.

(4) **Limitation of overtime:** An employer shall not require or permit an employee to work overtime for more than, in the case of—

- (a) a casual employee, two hours on any day;
- (b) a special-function casual employee, four hours on any day;
- (c) all other employees, four hours on any day and 16 hours in any week:

Provided that the weekly limitation of overtime prescribed in this clause may be exceeded by not more than 20 hours—

- (i) during unforeseen circumstances; and
- (ii) during—
 - (aa) the period 6 December to 15 January;
 - (ab) shows and exhibitions;
 - (ac) the Easter weekend.

(5) An employer shall be entitled to require an employee, other than a part-time employee, to work overtime on any day except on that employee's day off, and such overtime shall not exceed four hours per day and six hours per week.

(6) **Payment of overtime:** (a) An employer shall pay an employee who works overtime at a rate of not less than one and a half times his ordinary wage in respect of the total period so worked on any day or during any week: Provided that where the daily limitation of overtime is exceeded, or the weekly overtime exceeds 10 hours, all such overtime shall be paid for at not less than double the rate of the employee's ordinary wage: Provided further that a contract waiter shall be remunerated at not less than the prescribed rate for a waiter.

(b) Where an employee agrees to work on his day of rest owing to unforeseen circumstances, he shall be granted two full working days off in four consecutive weeks on full pay, or he shall be paid not less than double his hourly rate of pay, with a minimum of double a day's wage for all hours worked on the first day of rest in such four-week period, and three times a day's wage for the second or subsequent day of rest within such four-week period.

(7) Save as provided for in subclause (3), all hours of work of an employee on any day shall be consecutive.

(8) **Savings:** (a) The provisions of this clause shall not apply to an employee if and for so long as such employee is in receipt of a regular wage at a rate of not less than the amounts specified in regulation 2 (1) of the regulations to the Basic Conditions of Employment Act, 1983.

(b) Subclauses (2), (3), (4) and (7) shall not apply to an employee while he is engaged in doing emergency work.

10. PROHIBITION OF EMPLOYMENT

An employer shall not employ—

- (a) any person under the age of 15 years;
- (b) any female during the period commencing four weeks prior to the expected date of her confinement and ending eight weeks after the date of her confinement (the employer may require the employee to provide a doctor's certificate); and
- (c) an alien without a valid work permit.

11. SPECIAL-FUNCTION CASUAL EMPLOYEES

(1) **Travelling to place of work:** A special function casual employee shall be deemed to have commenced work from the time he is required to present himself for work, and does so at a place designated by the employer, and shall be deemed to have ceased work on being returned to the designated place by his employer.

(2) **Payment for cancelled shifts:** An employer who fails to give a special-function casual employee not less than 48 hours' notice of the cancellation of any arrangement to work at a function shall pay such employee an amount as though such employee had worked not less than five hours at the function concerned: Provided that where a function is cancelled owing to an act of God, the employer shall be entitled to cancel his arrangement with the special-function casual employee by giving not less than 24 hours' notice, failing which the employee shall be entitled to five hours' pay as aforesaid.

(3) **Disciplining of special-function casual employees:** (a) A special-function casual employee shall give his employer not less than 48 hours' notice of the cancellation of any arrangement to work at a function: Provided that such employee shall be entitled to give his employer 24 hours' notice of such cancellation in the event of being prevented by an act of God from fulfilling such arrangement or producing a medical certificate stating that he was prevented from working at the particular function as a result of his being incapacitated.

(b) An employee who has not given the notice or produced the medical certificate referred to in paragraph (a) shall pay the employer in lieu of such notice an amount equal to five hours' pay, or an employer may appropriate to himself from any moneys which he owes to such employee by virtue of any provisions of this Agreement an amount of not more than that which such employee would have had to pay him in lieu of notice.

12. CONTRACT OF EMPLOYMENT

(1) Every employer shall in accordance with section 29 (1) (a) of the Basic Conditions of Employment Act, 1983, provide each new employee with a letter of employment or enter into an agreement showing at least the following:

- (a) The employee's full name and identity number;
- (b) the full name of the employer and the physical address of the establishment;
- (c) the date of commencement of service;
- (d) the type of work and the basic wage offered;
- (e) that the conditions of employment as prescribed in this agreement apply; and
- (f) the Bargaining Council's address and office hours (08:00 to 15:00).

(2) The original of this letter of employment shall be signed by both the employer and employee and the employer shall keep a copy for himself.

(3) For the purpose of assessing the capabilities of a prospective employee, he may be employed as a temporary employee for a period not exceeding three months: Provided that the employer has clearly defined, in writing, to the employee his temporary status at the time of engagement. Should his services be retained beyond the expiration of the three-months period, he shall immediately be classified as a permanent employee, with a credit for service from the date when first employed.

13. TERMINATION OF CONTRACT OF EMPLOYMENT

(1) An employer or his employee, other than a casual employee or a special-function casual employee, who desires to terminate the contract of employment, shall give—

- (a) during the first four weeks of employment, not less than one working day's notice;
- (b) after the first four weeks of employment, one week's notice,

of termination of contract, or an employer or employee may terminate the contract without notice by paying the employee or the employer, as the case may be, in lieu of such notice, in the case of—

- (i) working day's notice, the daily wage the employee is receiving at the time of such termination;

(ii) a week's notice, the weekly wage the employee is receiving at the time of such termination:

Provided that this shall not affect—

- (aa) the right of an employer or an employee to terminate the contract without notice for any cause recognised by law as sufficient;
- (ab) any written agreement between an employer and his employee that provides for a period of notice of equal duration on both sides and for longer than that prescribed in this clause;
- (ac) the operation of any forfeitures or penalties that by law may be applicable in respect of any employee who deserts or who is absent without permission from work for more than five consecutive working days or six working days during the preceding six months (such an employee shall be deemed to have terminated his contract of service: Provided that this shall not apply when absence is due to incapacity as defined in clause 14 (3) (b);
- (ad) an employee's failure or refusal to complete an attendance register provided to him in accordance with clause 18 (4).

(2) Where there is an agreement in terms of the second proviso to subclause (1), the payment in lieu of notice shall be commensurate with the period of notice agreed upon.

(3) The notice prescribed in subclause (1) may be given on any working day: Provided that—

- (i) the period of notice shall not run concurrently with and notice shall not be given during, an employee's absence—
 - (aa) on leave granted in terms of clause 16;
 - (ab) on military service;
- (ii) notice shall not be given during an employee's absence on sick leave granted in terms of clause 14 or owing to incapacity in the circumstances set out in clause 14,

amounting in the aggregate, in respect of absences referred to in provisos (i) (aa) and (ii), to not more than 10 weeks in any period of 12 months.

(4) Notwithstanding anything to the contrary in their agreement, where an employee terminates his contract of employment by leaving his employment without having given and served the required period of notice or without paying his employer in lieu of notice, his employer may, from any moneys he owes such employee by virtue of any provision of this Agreement, appropriate to himself an amount of not more than that which such employee would have had to pay him in lieu of notice: Provided that where an employer has so appropriated an amount in lieu of notice, it shall be deemed for the purpose of this clause that the employee paid the employer in lieu of notice.

(5) When an employer feels he has sufficient reason to dismiss an employee summarily, he may suspend the employee, in writing, for not more than three working days without payment of wages, pending an enquiry by the Council, which shall take place within seven days. Should the Council find that the employee's dismissal was in order, the employee shall not be entitled to payment for the three days, otherwise the employee shall be entitled to be paid.

(6) **Guidelines for dismissal procedure:** An employee shall have the following rights in respect of an enquiry:

- (a) To be informed of the nature of the offence a misconduct, PLUS particulars of the charge;
- (b) to a hearing to take place timeously;
- (c) to be given adequate prior notice of the enquiry;
- (d) to representation to be allowed to assist him;
- (e) to call witnesses;
- (f) to challenge accusations, i.e. cross-examination;
- (g) to have an interpreter;
- (h) to a finding, i.e. found guilty, to be given the reasons why and the penalty;
- (i) to have his period of service and record to be taken into consideration;
- (j) to appeal to "higher authority" when available.

FOR FULL DETAILS, see Annexure H. Also refer to Schedule 8 of the Act—"Code of Good Practice".

14. SICK LEAVE

(1) Subject to the provisions of subclause (2), an employer shall grant to each employee, other than a casual employee and a special-function casual employee or a contract waiter, who is absent from work through incapacity—

- (a) in the case of an employee who works a four-day week, not less than 24 working days';
- (b) in the case of an employee who works a five-day week, not less than 30 working days'; and

(c) in the case of every other employee, not less than 36 working days', sick leave in the aggregate during each cycle of 36 consecutive months of employment with him, and shall pay such employee in respect of any period of absence in terms of this subclause not less than the wage he would have received had he worked during such period: Provided that—

- (i) in the first 12 consecutive months of employment an employee shall not be entitled to sick leave on full pay at a rate of more than, in the case of an employee referred to in paragraph (a) above, one working day in respect of each completed period of six weeks of employment, in the case of an employee referred to in paragraph (b) above, one working day in respect of each completed period of five weeks of employment, and in the case of an employee referred to in paragraph (c) above, one working day in respect of each completed month of employment;
- (ii) this clause shall not apply to an employee at whose written request an employer agrees to make 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 his incapacity in the circumstances set out in this clause the payment to him of not less than, in the aggregate, the equivalent of his wages for 24, 30 or 36 working days, as the case may be, in each cycle of 36 months of employment;
- (iii) 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 in respect of any incapacity, the amount so paid may be set off against the payment due in respect of absence owing to incapacity in terms of this clause;
- (iv) if in respect of any period of incapacity covered by this clause an employer is required by any other law to pay an employee his full wages, the provisions of this clause shall not apply.

(2) An employer may, as a condition precedent to the payment by him of any amount claimed in terms of this clause by an employee in respect of any absence from work for a period covering more than two consecutive working days, 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—

- (i) 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 certificate, his employer may during the period of eight weeks immediately succeeding the last such occasion require him to produce such certificate in respect of any absence from work;
- (ii) where an employee in an establishment that normally closes on a public holiday absents himself on the working day before and the working day after a public holiday, the employer may require him to produce a medical certificate in respect of such absence from work;
- (iii) where an employee in an establishment that is normally open on a public holiday absents himself from work on the day preceding such public holiday and on that public holiday, or on such public holiday and the day succeeding such holiday, the employer may require the employee to produce a medical certificate in respect of such absence from work.

(3) For the purposes of this clause, the expression—

(a) "employment" shall be deemed to include—

(i) any period during which an employee is absent—

- (aa) on leave in terms of clause 16;
- (ab) on the instructions or at the request of his employer;
- (ac) on sick leave in terms of subclause (1);
- (ad) with the consent or condonation of his employer;
- (ae) for any reason not being in breach of the contract of employment;

amounting in the aggregate, in any year, to not more than 10 weeks; and

(ii) any period during which an employee is absent doing military service:

Provided that an employee shall not be entitled to claim as employment more than four months of any one period of such service or absence or unpaid leave:

Provided further that any period of employment an employee has had with the same employer immediately before the date of coming into operation of this Agreement shall, for the purposes of this clause, be deemed to be employment under this Agreement, and any sick leave on full pay granted to such an employee during such period shall be deemed to have been granted under this Agreement;

(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 for which compensation is payable under the Compensation for Occupational Injuries and Diseases Act, 1993, shall be regarded as incapacity only during any period in respect of which no disablement payment is payable in terms of that Act.

(4) (a) For the purposes of this clause, "employer" includes—

- (i) in the case of the death of an employer, the executor of his estate, or his heir or legatee; and
- (ii) in the case of the insolvency of an employer or the liquidation of his estate or sale or transfer of his business, the trustee or liquidator or the new owner of the business, if such executor, heir, legatee, trustee, liquidator or new owner continues to employ that employee:

Provided that where the previous employer gave his employee appropriate notice of termination of employment in writing, the new employer shall not be liable to pay any arrear remuneration.

(b) Notwithstanding anything to the contrary in this subclause, when an employer sells his business and he and the purchaser make provision in written contract that the purchaser "takes over" the business with all assets and liabilities, or words to that effect, then the purchaser shall be liable to pay all arrear remuneration in terms of this clause.

15. MATERNITY LEAVE

(1) An employer shall grant unpaid maternity leave to every employee who has been in his continuous employment for more than 10 months, during the period commencing four weeks prior to the expected date of her confinement and ending eight weeks after the date of confinement.

(2) An employee applying for maternity leave shall do so at least two months prior to the expected date of confinement.

(3) While an employee is on maternity leave the employer shall be entitled to employ in her stead a temporary employee in terms of clause 12, which temporary employee shall not be entitled to the status of a permanent employee (unless expressly agreed to in writing by both parties), nor will such employment be construed as to create the expectation of employment beyond such period.

16. ANNUAL LEAVE

(1) Subject to the provisions of subclause (2) of this clause, an employer shall grant to each of his employees, other than a casual employee, contract waiter or a special-function casual employee, in respect of each completed period of 12 months of employment with him—

- (a) (i) during the first three years of employment, 21 consecutive days' leave; and
- (ii) thereafter 28 consecutive days' leave;

(b) in the case of a night watchman, 28 consecutive days' leave; and

shall pay such employee in respect of such leave—

- (i) in the case of an employee referred to in paragraph (a) (i), an amount of not less than three times the weekly wage that the employee was receiving immediately prior to the date on which the leave commenced;
- (ii) in the case of all other employees, an amount of not less than four times the weekly wage that the employee was receiving immediately prior to the date on which the leave commenced.

(2) The leave prescribed in subclause (1) hereof shall be granted on a date to be fixed by the employer: Provided that—

- (i) such leave shall be granted so as not to commence on a day concurrent with an employee's day off duty;
- (ii) if such leave has not been granted earlier, it shall, save as provided in subclause (3), be granted 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 the 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 as from a date not later than two months after the expiration of the said period of four months;
- (iii) the period of leave shall not be concurrent with sick leave granted in terms of clause 14, nor, unless the employee so requests in writing and the employer agrees thereto, with any period of military service;
- (iv) an employer may set off against such period of leave any days of occasional leave granted on full pay to his employee at his employee's written request during the period of 12 months of employment to which the period of leave relates;
- (v) when an employer requires his employee to take or consents to his employee taking his annual leave before the expiration of the 12 months of employment to which it relates, the employer, shall grant such employee the full period of leave accruable for 12 months of employment and shall pay such employee in respect of such leave an amount of not less than that which the employee would be entitled to at the date on which the leave would normally accrue: Provided further that where an employee's employment terminates before the expiration of the 12 months in respect of which the leave was granted in terms of this proviso, the employer may set off against any remuneration due to the employee at the termination of employment, the difference between the amount paid to the employee in terms hereof and the amount to which he would have been entitled at termination in terms of subclause (5) of this clause, if the leave had not been granted to him as aforesaid.

(3) (a) At the written request of an employee, an employer may permit the leave, or a portion thereof, to accumulate over a period of not more than 24 months of employment:

Provided that—

- (i) such 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
 - (ii) the date of the receipt of such request is endorsed on the request over his signature by the employer, who shall retain such request at least until after the expiration of the period of leave so taken.
- (b) The provisions of subclause (2) shall *mutatis mutandis* apply to the leave referred to in paragraph (a) of this subclause.
- (c) An employee shall have the right to exercise an option to waive not more than a third of the annual leave referred to in subclause (1) (a) (i) and not more than one-half of the annual leave referred to in subclause (1) (a) (ii) or (b) and his employer shall, in respect of such period of leave not taken, pay him wages in lieu thereof: Provided that—

- (i) the employee's request to waive such leave is retained by the employer for at least 12 months from the date of receipt thereof by him; and
- (ii) save as provided in subclause (4), the payment in lieu of leave shall be made to the employee on a date to be agreed upon between the employer and the employee, but not later than the last working day before the commencement of the remaining period of the annual leave.

(4) The remuneration in respect of the leave prescribed in subclause (1), read with subclause (3), shall be paid not later than the last working day before the date of commencement of the leave: Provided that at the written request of an employee, payment in respect of the annual leave taken by an employee, or a part thereof, together with payment in respect of leave converted as provided for in subclause (3) (c), may be made on the pay day immediately succeeding the employee's return from leave: Provided further that such written request of an employee shall be retained by the employer for at least 12 months from date of receipt thereof by him.

(5) An employee whose contract of employment terminates during any period of 12 months of employment before the period of leave prescribed in subclause (1) in respect of that period has accrued, shall upon termination, and in addition to any other remuneration that may be due to him, be paid in respect of each completed month of such period of employment an amount of not less than—

- (a) in the case of an employee referred to in subclause (1) (a) (i), a quarter; and
- (b) in the case of an employee referred to in subclause (1) (a) (ii), a third,

of the weekly wage he was receiving immediately before the date of such termination: Provided that an employer may make a proportionate deduction in respect of any period of leave granted to an employee in terms of subclause (2) (iv) and (v): Provided further that an employee who leaves his employment without having given and served the period of notice prescribed in clause 13, unless the employer has waived such notice, or without the employee having paid the employer in lieu of notice, unless in failing to give such notice or to work during such period of notice the employee was acting within his legal rights, and, and subject to the provisions of clause 13 (4), shall not be entitled to any payment in terms of this subclause.

(6) An employee who has become entitled to a period of annual leave prescribed in subclause (1), read with subclause (3), and whose employment terminates before such leave has been granted, shall upon such termination be paid the amount he would have received in respect of the leave had the leave been granted to him as at the date of the termination.

(7) For the purposes of this clause—

(a) the expression, "employment" shall be deemed to include—

- (i) any period in respect of which an employer, in terms of clause 13, pays an employee in lieu of notice;
- (ii) any period during which an employee is absent—

- (aa) on leave in terms of this clause;
- (ab) on sick leave in terms of clause 14;
- (ac) on the instructions or at the request of his employer;
- (ad) with the consent or condonation of his employer;
- (ae) for any other reason not being in breach of the contract of employment,

amounting in the aggregate in any year to not more than 10 weeks; and

- (iii) any period during which an employee is absent doing military service: Provided that an employee shall not be entitled to claim as employment more than four months of any one period of such service; and

(b) employment shall be deemed to commence—

- (i) in the case of an employee who before the coming into operation of this Agreement has become entitled to a period of annual leave in terms of any law, on the date on which such employee last became entitled to such leave under such law;
- (ii) in the case of an employee who was in employment before the coming into operation of this Agreement and to whom any law providing for annual leave applied in terms thereof, on the date on which such employment commenced;

- (iii) in the case of any other employee, on the date on which such employee entered his employer's service.

(8) (a) For the purposes of this clause, "employer" includes—

- (i) in the case of the death of an employer, the executor of his estate, or his heir or legatee; and
- (ii) in the case of the insolvency of an employer or the liquidation of his estate or sale or transfer of his business, the trustee or liquidator or the new owner of the business, if such executor, heir, legatee, trustee, liquidator or new owner continues to employ that employee:

Provided that where the previous employer gave his employee appropriate notice of termination of employment in writing, the new employer shall not be liable to pay any arrear remuneration.

(b) Notwithstanding anything to the contrary in this subclause, when an employer sells his business and he and the purchaser make provision in a written contract that the purchaser "takes over" the business with all assets and liabilities, or words to that effect, then the purchaser shall be liable to pay all arrear remuneration in terms of this clause.

(9) **Annual closing:** (a) 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 his establishment for 14 consecutive days and in that case shall remunerate his employee in terms of subclause (1) or in terms of paragraph (b) or (c) hereof, as the case may be.

(b) Whenever a public holiday as defined, is observed on a day that otherwise would be a working day for an employee and falls within the closed period referred to in paragraph (a), another working day shall be added to the said closed period as a further period of leave and the employee shall be paid an amount of not less than his daily wage in respect of each such day added.

(c) An employee who, at the date of the closing of an establishment in which he is employed, is not entitled to the full period of annual leave prescribed in subclause (1) shall, in respect of any leave due to him, be paid by his employer on the basis set out in subclause (5), and for the purposes of annual leave thereafter this employment shall be deemed to commence on the date of such closing of the establishment.

(d) An employer and his employee may agree that any leave in excess of 21 days, plus days in lieu of public holidays accrued to the employee, may be paid out.

(e) An employer and his employee may agree in writing to observe an annual closed period of not less than 14 consecutive days, in which case all excess leave shall be paid to the employee.

17. MEALS AND TRANSPORT

(1) **Provision of meals:** (a) Where an employee, other than a contract waiter, a casual employee or a special-function casual employee, agrees to accept meals from his employer, a deduction not exceeding R40,00 per month or R9,23 per week in respect of part-time employees, and R70,00 per month or R16,15 per week in respect of full-time employees, may be deducted from the employee's wage in respect of such meals: Provided that—

- (i) the employee is provided with such meals as fall within his working hours but not less than two meals per working day, or one meal for a part-time employee;
- (ii) no deduction shall be made in respect of meals not taken by the employee while absent from work with pay, such as pay in lieu of notice, annual leave or sick leave;
- (iii) no further deductions shall be made by the employer when an employee receives additional food while on duty;
- (iv) it shall not be construed that a deduction may not be made when an employee agrees to accept meals and does not avail himself thereof, unless notice has been given to cancel the arrangement and such notice has expired;
- (v) the meals shall be adequate as regards the quantities of food supplied, and reasonable in respect of their content.

(b) Every employer shall provide each casual employee, contract waiter and special-function casual employee with a free meal in respect of the first five consecutive hours of work or part thereof worked by such employee and thereafter in respect of each completed period of four consecutive hours worked.

(2) **Provision of transport for night workers:** (a) In the event of any special-function employee or special-function casual employee, casual employee or contract waiter working later than 22:30, the employer shall make reasonable arrangements for the transport home of such employee: Provided that, in lieu of providing such transport home, an employer may order a taxi to take one or more of the employees home, and pay the taxi in advance or pay each employee R10,00 cash.

(b) In the event of an employee, other than a special-function casual employee, a casual employee or a contract waiter, working after 22:30 and his being authorised to work, the employer shall pay such employee R50,00 per month "late-night allowance": Provided that if an employer daily provides free transport home for late-night workers, he shall not be required to pay such an allowance to those employees.

18. RECORDS TO BE MAINTAINED

(1) **Wages register:** Every employer shall keep or cause to be kept a wages register as per Annexure D in respect of all employees in his employ, showing all the particulars provided for. This wages register shall be kept on the premises where the employees work, except as may be otherwise authorised in writing by the Council.

(2) **Casual employees, special-function casual employees and contract waiters:** Every employer shall provide or cause to be kept a register in the form specified in Annexure B to this Agreement, which shall be signed by every casual employee, contract waiter and special-function casual employee at the time of commencement and finishing work or each day on which he is employed.

(3) **Timetable:** A legibly typed or written schedule, conforming as near as practicable to Annexure G to this Agreement, shall be posted at least seven days in advance in a place frequented by the employees, setting forth the particulars of the daily shifts required to be worked by the employees, other than casual employees, special-function casual employees and contract waiters whose names are stated in the said schedule.

(4) **Attendance register:** Every employer shall provide each of his employees, other than a casual employee, contract waiter and a special-function casual employee, with an attendance register as required in terms of section 20 of the Basic Conditions of Employment Act, 1983, and in the form prescribed under the regulations to the Act, which shall be filled in by the employee showing the actual time worked on each day of the week, the time of commencement and finishing work during the spread-over of hours daily and the occupation of each such employee: Provided that in lieu of such attendance register an employer may provide a semi-automatic time recorder with the necessary cards:

Provided further that, if any employee is unable to read and write, his employer shall on his behalf make and sign the necessary entries in respect of the time he commenced work, the time of commencement and termination of each meal or other interval, which is not reckonable as ordinary hours of work, and the time of finishing work for the day, inclusive.

(5) All registers shall remain the property of the employer and shall be retained for three clear years subsequent to the date of the last entry therein. No employee shall remove an attendance register from the employer's premises.

(6) **Savings:** The provisions of subclause (4) shall not apply to an employee if and so long as such employee is in receipt of a regular wage at a rate of not less than the amounts specified in regulation 2 (1) of the regulations to the Basic Conditions of Employment Act, 1983, or the Basic Conditions of Employment Act, 1997, once it comes into operation.

19. REGISTRATION OF EMPLOYERS AND EMPLOYEES

(1) Every employer shall—

(a) within one month of the date on which this Agreement becomes binding upon him, or in the event of an employer commencing operations after that date, within one month of such commencement, register with the Council by completing and submitting to the Council a statement in the form of Annexure C to this Agreement;

(b) whenever change in the particulars furnished in terms of subclause (1) occurs, or in the event of the—

(i) sequestration of the employer's estate;

(ii) winding up the affairs of the company;

(iii) transfer or abandonment of the business carried on; or

(iv) acquisition or commencement of any other business upon which this Agreement is binding,

within 30 days furnish the Secretary of the Bargaining Council with a completed statement in the form of Annexure C to this Agreement; and receipt thereof shall be acknowledged by the Secretary of the Council.

(2) The Secretary of the Council shall monthly furnish the secretary of the employers' organisation with particulars of establishments registered with the Council during the preceding month.

(3) The Secretary of the Council shall forward to the trade union monthly, a list of all registrations and changes of those employees who are eligible for membership of the trade union.

20. CERTIFICATE OF SERVICE

Except where a contract of employment of an employee is terminated on the grounds of desertion or where the employee is a casual employee or special-function casual employee, the employer shall, upon termination of any contract of employment, furnish the employee with a certificate of service in the form specified in Annexure E.

21. EXPENSES OF THE COUNCIL

(1) (a) For the purpose of meeting the expenses of the Council, every employer shall deduct from the wages of each employee R2,00 per month in the case of all employees who have worked in that month: Provided that, for the purposes of this paragraph, an employee shall be deemed to have worked during any period in which he is absent from work on paid leave or sick leave as provided in this Agreement.

(b) For the purpose of meeting the expenses of the Council in the administration of a fund to be used for the resolving of disputes, every employer shall deduct from the wages of each employee R1,00 per month in the case of all employees who have worked in that month: Provided that, for the purposes of this paragraph, an employee shall be deemed to have worked during any period in which he is absent from work on paid leave or sick leave as provided in this Agreement. A separate account shall be kept by the Council for this fund.

(2) Every employer shall contribute to the funds of the Council—

- (a) an amount equal to that deducted from the employees as prescribed in subclause (1);
- (b) an amount of R12,00 in respect of each establishment each month, or part thereof, during which deductions were made or were required to be made in terms of subclause (1), which shall be contributed by the employer himself.

(3) The total amounts deducted, or required to be deducted, in terms of subclause (1), from the wages of employees, together with the amounts required to be contributed by the employer in terms of subclause (2), shall be forwarded by the latter to the Secretary of the Council monthly not later than the 15th day of the month succeeding that during which the deductions and contributions were made or were required to be made, together with a completed statement in the form of Annexure F showing the number of employees from whom the deductions were made or were required to be made.

22. MEMBERSHIP OF EMPLOYERS' ORGANISATION AND TRADE UNIONS AS DEFINED IN THE PREAMBLE TO THIS AGREEMENT, AND INCIDENTAL MATTERS

(1) Every employer, after prior arrangement with him, shall give reasonable facilities to the duly authorised trade union officials to enter his establishment at off-peak periods for the purpose of—

- (a) interviewing on trade union matters;
- (b) enrolling new members;
- (c) distributing documents issued by the trade union.

(2) (a) Every employer shall, for the benefit of the employers' organisation, as defined in this Agreement, forward to the Secretary of the Council the subscription and/or levy payable by him to the said organisation in terms of that organisation's constitution, by not later than the 15th day of the month following that in which such subscription and/or levy fell due.

(b) Where an employee requests his employer in writing to deduct trade union subscriptions, the employer shall forward such amounts to the Secretary of the Council within one month of the date upon which any amount is so deducted: Provided that the employer may retain as a collection fee an amount not exceeding five per cent of the amount so deducted.

(3) **Trade union representatives on the Council:** Every employer shall give to an employee who is a representative on the Council every reasonable facility to attend to his duties in connection with the work of the Council.

(4) The subscriptions and fees payable in terms of subclause (2) of this clause shall be included with the other amounts to be remitted together with Annexure F to this Agreement.

23. DESIGNATED AGENTS AND AGENTS

(1) The Bargaining Council may request the Minister in terms of section 33 (1) of the Act to appoint a person as a designated agent.

(2) The Council shall appoint one or more specified persons as agents to assist in giving effect to the terms of this Agreement. A designated agent may enter any establishment and question any employer or employee during the course of such inspection and inspect the record of wages paid, time worked and payments made for overtime, and it shall be the duty of every employer and employee to permit such agents to institute such enquiries and to examine such books and/or documents and to interrogate such persons as may be necessary for the purpose of ascertaining whether the terms of this Agreement are being observed.

(3) An agent or designated agent shall carry out all instructions given him by the Council.

24. EXHIBITION OF AGREEMENT

(1) The parties agree that the English version of this Agreement shall determine the meaning and intention of the parties and be made available by the Council for inspection by any person at the Council's office between 08:15 and 15:00 on any working day.

(2) A legible copy of the Agreement shall at all times be exhibited in a prominent place in every establishment and made available to any employee for perusal and discussion with the employer.

25. RIGHTS AND OBLIGATIONS OF THE TRADE UNIONS

Subject to any arrangement which the individual trade unions and members of employers' organisations may agree to at plant level, the following provisions shall be applicable:

(1) **Access:** (a) Union officials may hold meetings with employer representatives for the purposes of discussing this Agreement, issues that arise herefrom or any other matter of mutual interest: Provided that such meetings shall be held at a time and place that is mutually convenient to the employer representative and the trade union officials.

(b) The employer and the trade union shall inform the other party in writing of the names and status of their respective representatives. No other person shall act on behalf of the employer or the trade union. The employer and the trade union agree to inform the other party of any changes to their representatives in writing.

(c) In addition to the access specifically granted to the trade union officials in terms of this Agreement, a maximum of two union officials shall be entitled to have access to trade union representatives and union members during their lunch break, not more than once per calendar month. The date of such access shall be agreed upon between a union official and a representative of the employer.

(d) Trade union officials shall not have access to trade union representatives and union members during their working hours unless they have obtained the written consent of a representative of the employer beforehand.

(e) The employer shall specify the area at the premises that shall be used by trade union officials for the purposes of any meeting with trade union representatives and union members.

(f) No meeting consisting of more than four trade union members shall be arranged either by trade union officials or trade union representatives at the premises during normal working hours, excluding lunch breaks, without the permission of a representative of the employer.

(2) **Restriction on access:** (a) The activities of the trade unions and in particular that of trade union representatives referred to in this clause shall not interfere with the employer's operation and productivity and shall not exceed the limits and purposes of this Agreement.

(b) Should such interference persist, the employer may, by written notice to the union, immediately vary or withdraw the access granted.

(c) The trade unions shall comply with the security and safety regulations of the employer.

(3) **Stop order facilities:** (a) The employer shall deduct union subscriptions from the wages of union members and shall account and pay to the trade union on or before the 15th of each following month the aggregate amount deducted.

(b) No subscription shall be deducted from the wages of a trade union member unless he has signed a stop order authorising a specific deduction from his wages, and the stop order shall be lodged with the employer by the trade union until the employee has furnished proof of being a member of that union and employed in the sector.

(c) A trade union member may authorise deductions to cease, subject to one month's notice, by addressing a written request to the employer and the trade union.

(d) The employer shall not be responsible for the collection of any subscription which, for any reason, may be in arrears.

(e) The employer shall submit a monthly remittance to the trade union reflecting the names of members in respect of whom deductions have been made, a copy of requests to revoke membership and the amounts/period for which deductions were made.

(f) Where there has been a change in trade union subscriptions in accordance with the constitution of the trade union, one calendar month's written notice of such change shall be given by the trade union to the employer. Such notice shall be accompanied by a stop order signed by each trade union member authorising such increased deduction. The employer shall raise the deduction accordingly.

(4) **Recognition and duties of trade union representatives:** (a) A trade union representative shall represent the trade union at the premises of the employer in accordance with the rights and obligations applicable to them as set out in this Agreement and any other agreements entered into between the employer and the trade union.

(b) Any trade union representative shall be entitled to assist and represent union members in recording any grievance that the union members may have or at disciplinary hearings.

(c) A trade union representative shall consult with the employer for the purpose of promoting cooperation and understanding and preventing the occurrence of grievances and disputes.

(d) A trade union representative shall consult with trade union members only during work breaks such as lunch intervals and without delaying the working process.

(e) The trade union representatives shall at all times observe their terms and conditions of employment and shall be subject to the same disciplinary and performance standards as other employees.

(5) **Election of trade union representatives:** (a) Trade union representatives and their alternates shall be elected during normal working hours by union members in terms of this Agreement by secret ballot for a period of two years to represent them in terms of this Agreement, subject to the following:

(i) The election of trade union representatives and their alternates during working hours shall not disrupt the normal working processes and smooth running of the employer's business.

(ii) The election date and procedural detail for the election shall be agreed with the employer at least seven working days prior to the election date.

- (iii) The number of trade union representatives in respect of each place where the employer conducts its operations shall be as follows:

Number of trade union members	Number of shop stewards
10	One
10 to 50	Two
50 to 299	Two for the first 50 plus one for each additional 50 up to a maximum of seven
300 to 600	Seven for the first 300 plus one for every 100 additional members up to a maximum of 10

- (iv) Only trade union members in good standing may nominate trade union representatives and only union members in good standing in the interest group may be nominated and elected as trade union representatives or alternates. Candidates must, nevertheless, have at least one year's continuous service with the employer.

- (b) A recognised trade union representative or alternate shall resign from office—

- (i) on being promoted or appointed to a managerial position: Provided that he shall resign not later than the effective date of his appointment or promotion: Provided further that he shall be free to decline or accept the promotion and shall not be victimised as a result of declining the promotion;
- (ii) on ceasing to be employed by the employer;
- (iii) on ceasing to be a member of the trade union;
- (iv) on resigning as a trade union representative or alternate; and/or
- (v) on receiving a written request for his resignation supported by the majority of trade union members in his constituency.

- (6) **Leave for trade union activities:** (a) Trade union representatives of a party to the Council may be granted two days' paid training leave per annum by the employer to undergo training in any subject relevant to the performance of the functions of a trade union representative.

(b) A request for such leave shall be accompanied by written application from the trade union, setting out the nature of such training and name of the institution that will conduct such training.

- (7) **Peace obligations:** Neither an employer or a trade union or its members shall cause, sanction or participate in any strike or lock-out directed against the other party:

- (i) Concerning any issue which is the subject matter of a substantive agreement during the period of such agreement and, in particular, where the issue has been negotiated at the Council and the collective agreement has been concluded in this regard; or
- (ii) concerning issues which are not the subject matter of a substantive agreement unless such industrial action forms part of the dispute resolving procedures; or
- (iii) during an arbitration or arising out of an arbitral award whether such arbitration is conducted by a private agency, The Commission for Conciliation, Mediation and Arbitration, the Labour Court or the Council.

- (8) **Internal dispute resolution procedures:** (a) Where a dispute has been declared, the party declaring the dispute shall furnish written particulars of the dispute to the other party, this notice setting out the nature of the dispute and the proposed terms of settlement.

(b) The party receiving the notice of dispute shall, within five working days of receipt thereof, notify the aggrieved party in writing of its response and shall further set out its proposed terms of settlement.

(c) A meeting of the parties shall be convened within five working days of receipt by the aggrieved party of the other party's statement.

(d) If agreement is not reached regarding the dispute or part thereof at the meeting held in terms of (c) above, then the parties may consider alternative methods of resolving the dispute, such as referral to conciliation or arbitration.

(e) If the dispute remains unresolved after the exhaustion of these procedures either party may refer the dispute to the Bargaining Council for resolution in terms of the relevant method provided for in terms of the Act or, where the Act provides solely for the nature of the dispute to be resolved by the Commission for Conciliation, Mediation and Arbitration, to such Commission.

- (9) **Industrial action:** (a) Industrial action means strikes and lock-outs as defined in the Act, and includes go-slows, pickets, overtime bans, work to rule and product boycotts.
- (b) No industrial action shall be taken by either party pending the exhaustion of relevant procedures of this Agreement and the Act.
- (c) If industrial action occurs contrary to the provisions hereof, then the guilty party shall immediately take reasonable steps to end the industrial action and the parties may agree to vary any of the stipulated time limits in this Agreement.
- (10) **Industrial action rules:** (a) Any industrial action engaged in by the union members shall be conducted in a peaceful and orderly manner.
- (b) Strikers shall not interfere with the conduct of the employer's business or with the employer's supplies or customers, and shall remain only on that part of the employer's premises where they cannot interfere with the normal activities of the firm and not within less than 25 m of any entrance or exit of the premises during the normal hours of work, observing, at all times, the employer's normal rules and regulations.
- (11) **Picketing:** (a) A trade union may authorise a picket by its members and supporters for the purpose of peacefully demonstrating in support of any protected strike or in opposition to any lock-out.
- (b) Such a picket may be held in any place to which the public has access outside of the premises of an employer or, with the permission of the employer, inside its premises. The employer undertakes not to unreasonably withhold consent to its employees peacefully picketing within its premises.
- (12) **Replacement labour:** The employer has the right to utilise replacement labour, save and except in circumstances where such employer has implemented a lock-out or except in circumstances where the lock-out is in response to a strike.
- (13) **Severance pay:** The employee shall be entitled to one week's severance pay for each completed year of continuous service with that employer in instances where that employee was dismissed for reasons based on the employer's operational requirements, subject to section 196 (3) of the Act.

26. CODE OF GOOD PRACTICE

Schedule 8 of the Act shall be adhered to. Please see Annexure H.

27. FREEDOM OF ASSOCIATION

Section 4 of the Act shall apply to all employers and employees. Employees may join a trade union (subject to its constitution) and to partake in its lawful activities. Employers may join an employer organisation and participate in its lawful activities.

28. DISPUTE RESOLUTION FUNCTIONS OF THE COUNCIL

The Council shall attempt to resolve a dispute referred to it through conciliation and in accordance with its constitution and the Act. In circumstances where the dispute remains unresolved after conciliation, the Council shall arbitrate the dispute: Provided that the Council shall conciliate and arbitrate disputes that concern or relate to the following:

- (i) The interpretation, application or enforcement provisions of the Act in so far as they refer to Chapter II of the Act.
- (ii) Issues that form the subject matter of a proposed strike or a lock-out.
- (iii) Unfair dismissals.
- (iv) Severance pay.
- (v) Unfair labour practices.
- (vi) The interpretation, application or enforcement of any part of this Collective Agreement.

29. EXEMPTIONS

(1) In terms of section 32 of the Act, the Council hereby establishes an Independent Exemptions Board to consider applications for exemption from non-parties in relation to any of the provisions of this Agreement for any good and sufficient reason.

(2) All applications for exemption shall be in writing (on an application form as provided by the Council) and shall be addressed to the Secretary of the Council for consideration by the Exemptions Board appointed by the Council.

(3) All applications for exemption shall be substantiated, and such substantiation shall include the following details:

- (a) The period for which the exemption is required;
- (b) the Agreement or clause or subclause(s) of the Agreement from which exemption is required;
- (c) proof that the exemption applied for has been discussed with the employer, his employee(s) and their respective representatives. The responses resulting from such consultation, either in support of or against the application, shall be included with the application.

(4) The Secretary of the Council shall in the first instance place the applications for exemption on the agenda of the Executive Committee meeting for comment.

(5) The Secretary of the Council shall provide the Exemptions Board with details of all the applications for exemption.

(6) The Exemptions Board shall consider and decide on all written applications and, when requested by the applicant(s) or objector(s) to do so, may interview applicant(s) or objector(s) at its following meeting: Provided that the Exemptions Board may defer a decision to a following meeting if additional substantiation, information or verbal representations are considered necessary to decide on the application for exemption.

(7) Once the Exemptions Board has decided to grant an exemption, it shall issue a certificate and advise the applicant(s) within 14 days of the date of its decision.

(8) When the Exemptions Board has decided against granting an exemption or part of an exemption requested, it shall advise the applicant(s) within 14 days of the date of such decision and shall provide the reason(s) for not granting an exemption.

(9) **Exemptions criteria:** The Exemptions Board shall consider all applications for exemption with reference to the following criteria:

- (a) The written and verbal substantiation provided by the applicant;
- (b) the extent of consultation with and the petition for or against granting the exemption as provided by the employer or employee who is to be affected by the exemption if granted;
- (c) the scope of the exemption required;
- (d) the infringement of basic conditions of employment rights;
- (e) the fact that a competitive advantage is not created by the exemption;
- (f) the viewing of the exemption from any employee benefit fund or training provision in relation to the alternative comparable bona fide benefit or provision, including the cost to the employee, transferability, administration management and cost, growth and stability;
- (g) the extent to which the proposed exemption undermines collective bargaining and labour peace in the Tearoom, Restaurant and Catering Trades;
- (h) any existing special economic or other circumstances that warrant the granting of the exemption;
- (i) cognisance of the recommendations contained in the *Report of the Presidential Commission to investigate Labour Market Policy*.

Signed at Johannesburg this 24th day of April 1997.

J. MICHAELIDES

Chairman

E. SIEW

Vice-Chairman

S. B. VAN DYK

Secretary

ANNEXURE A
PAY ENVELOPES

Hours/Rate

[Re clause 6 (4)]

Employer's name No.
.....

Occupation Period
ending.....

Ordinary time.....				
Overtime.....				
Total				
Holiday Pay				
Total				
Pension Fund: Deduction				
Taxable total				
Deductions:				
P.A.Y.E.....				
U.I.F.....				
Meals.....				
Advances/Loans.....				
Council fees.....				
Trade union subscriptions				
Absenteeism.....				
Shortages				
Provident Fund.....				
Medical Aid				
Pension Fund				
Funeral Benefits				
Other (specify).....				
Total deductions				
Net amount paid				

ANNEXURE B

CASUAL EMPLOYEES AND SPECIAL-FUNCTION CASUAL EMPLOYEES REGISTER

Employer's name..... Week/Month ended.....

Employee's full name	Occupation	Race	Sex	Hours worked				Amount due		Transport	Gross total due	Deductions						Net amount paid	Signature
				On	Off	On	Off	Ordinary hourly rate	Overtime rate			P.A.Y.E.	U.I.F.	Bargaining Council fees	Union subs	Other	Total		
.....
.....
.....

ANNEXURE C**REGISTRATION OF BUSINESS AND CHANGES**

This form must be submitted within one month after commencing trading.

The Secretary
Bargaining Council for the Restaurant
Catering and Allied Trades

Dear Sir

In accordance with clause 19 (1) of the Bargaining Council Agreement, I hereby furnish the following particulars in connection with the business or changes thereof:

1. Registration name of business..... CC No.
2. Trading name..... Date of trading
3. Previous name.....
4. Street address.....
5. P.O. Box Code Tel.....
6. Full names and addresses and I.D. Nos of Owners/Partners/Directors/Members:
.....
.....
.....
.....
7. Type of business:

Restaurant.....	Steak house	Roadhouse
Cafe.....	Take-Away.....	Fish and Chips.....
Club.....	Function Caterer	Other (Specify).....
Liquor Licence: Yes	No.	

Signed: Owners/Directors, Ext.

ANNEXURE D

RECORDS TO BE KEPT BY EMPLOYER

Week ending..... 19.....

Identity number of worker														
Name in full														
Occupation														
Ordinary time worked (in hours or fractions thereof)														
Sunday														
Monday														
Tuesday														
Wednesday														
Thursday														
Friday														
Saturday														
Total of ordinary time for week i.e. excluding overtime														
State whether on time work, peaceworker or incentive bonus work														
If time worker state ordinary rate of wages per hour, per day, per week or per month														
If pieceworker or incentive bonus worker, state legal minimum amount payable per week														
Amount due for ordinary time worked	R													
Overtime worked (in hours or fractions thereof)														
Sunday														
Monday														
Tuesday														
Wednesday														
Thursday														
Friday														
Saturday														
Amount due for overtime worked	R													
Amount due in respect of any allowances (specify kind of allowance)	R													
Authorised deductions	R													
Total amount paid for ordinary time and overtime	R													
Total of overtime for week (hours)	R													
Remarks														

ANNEXURE E

CERTIFICATE OF SERVICE

*I/We,
 carrying on business as
 at
 hereby certify that *Mr/Mrs/Ms
 was employed by *me/us/from the day of 19..... to the day of 19..... in the occupation of
 At the termination of employment *his/her ordinary rate of pay was R..... per *week/month.

Date:

.....
Signature of employer or authorised person

ANNEXURE F

STATEMENT

Trading name Account No.
 Street address
 Postal code Tel.
 Postal address Postal code
 Bookkeeper P.O. Box Postal code Tel.

BARGAINING COUNCIL FEES (clause 21) A flat rate of R12,00 per establishment per month [clause 21 (2) (b)] Branches at R12,00 p.m. Contributions due at R4,00 per employee per month (half this payable by the employee) [clause 21 (1)] Employees at R4,00 p.m. New clause 21 (1A) (dispute resolution) (half of this payable by the employee) Employees at R2,00 p.m. <div style="text-align: right;"><i>Total per month due to Bargaining Council</i></div>		
EMPLOYER'S CONTRIBUTION TO CATRA [clause 22 (2) (a)] Monthly fee R35,00 Entrance fee for new members R25,00 <div style="text-align: right;"><i>Total per month due to CATRA</i></div>		
SUBSCRIPTIONS BY MEMBERS OF TRADE UNIONS [clause 22 (2) (b)] Union Members at R..... per month Union Members at R..... per month <div style="text-align: right;"><i>Total per month due to unions</i></div>		
<div style="text-align: right;"><i>Total due per month</i></div> FOR PERIOD Multiply by number of months		
<div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> Note 1: Monthly fees payable by the 15th of the following month Note 2: This is not a receipt </div>		
AMOUNT PAID		

FOR OFFICE USE ONLY

Date received Receipt No.
 Period paid

ANNEXURE G**TIME-TABLE**

Date first displayed..... For period.....

Employee's name	Occupation	Monday		Tuesday		Wednesday		Thursday		Friday		Saturday		Sunday	
		On duty	Off duty	On duty	Off duty	On duty	Off duty	On duty	Off duty	On duty	Off duty	On duty	Off duty	On duty	Off duty

ANNEXURE H**SCHEDULE 8****CODE OF GOOD PRACTICE DISMISSAL**

1. Introduction: (1) This code of good practice deals with some of the key aspects of dismissal for reasons related to conduct and capacity. It is intentionally general. Each case is unique, and departures from the norms established by this Code may be justified in proper circumstances. For example, the number of employees employed in an establishment may warrant a different approach.

(2) This Act emphasises the primary of collective agreements. This Code is not intended as a substitute for disciplinary codes and procedures where these are the subject of collective agreements, or the outcome of joint decision-making by an employer and a workplace forum.

(3) The key principle in this Code is that employers and employees should treat one another with mutual respect. A premium is placed on both employment justice and the efficient operation of business. While employees should be protected from arbitrary action, employers are entitled to satisfactory conduct and work performance from their employees.

2. Fair reasons for dismissal: (1) A dismissal is unfair if it is not effected for a fair reason and in accordance with a fair procedure, even if it complies with any notice period in a contract of employment or in legislation governing employment. Whether or not a dismissal is for a fair reason is determined by the facts of the case, and the appropriateness of dismissal as a penalty. Whether or not the procedure is fair is determined by referring to the guidelines set out below.

(2) This Act recognises three grounds on which a termination of employment might be legitimate. These are: The conduct of the employee, the capacity of the employee, and the operational requirements of the employer's business.

(3) This Act provides that a dismissal is automatically unfair if the reason for the dismissal is one that amounts to an infringement of the fundamental rights of employees and trade unions, or if the reason is one of those listed in section 187. The reasons include participation in a lawful strike, intended or actual pregnancy and acts of discrimination.

(4) In cases where the dismissal is not automatically unfair, the employer must show that the reason for dismissal is a reason related to the employee's conduct or capacity, or is based on the operational requirements of the business. If the employer fails to do that, or fails to prove that the dismissal was effected in accordance with a fair procedure, the dismissal is unfair.

3. Disciplinary measures short of dismissal

Disciplinary procedures prior to dismissal

(1) All employers should adopt disciplinary rules that establish the standard of conduct required of their employees. The form and content of disciplinary rules will obviously vary according to the size and nature of the employer's business. In general, a larger business will require a more formal approach to discipline. An employer's rules must create certainty and consistency in the application of discipline. This requires that the standards of conduct are clear and made available to employees in a manner that is easily understood. Some rules or standards may be so well established and known that it is not necessary to communicate them.

(2) The courts have endorsed the concept of corrective or progressive discipline. This approach regards the purpose of discipline as a means for employees to know and understand what standards are required of them. Efforts should be made to correct employees' behaviour through a system of graduated disciplinary measures such as counselling and warnings.

(3) Formal procedures do not have to be invoked every time a rule is broken or a standard is not met. Informal advice and correction is the best and most effective way for an employer to deal with minor violations of work discipline. Repeated misconduct will warrant warnings, which themselves may be graded according to degrees of severity. More serious infringements or repeated misconduct may call for a final warning, or other action short of dismissal. Dismissal should be reserved for cases of serious misconduct or repeated offences.

Dismissals for misconduct

(4) Generally, it is not appropriate to dismiss an employee for a first offence, except if the misconduct is serious and of such gravity that it makes a continued employment relationship intolerable. Examples of serious misconduct, subject to the rule that each case should be judged on its merits, are gross dishonesty or wilful damage to the property of the employer, wilful endangering of the safety of others, physical assault on the employer, a fellow employee, client or customer and gross insubordination. Whatever the merits of the case for dismissal might be, a dismissal will not be fair if it does not meet the requirements of section 188.

(5) When deciding whether or not to impose the penalty of dismissal, the employer should in addition to the gravity of the misconduct consider factors such as the employee's circumstances (including length of service, previous disciplinary record and personal circumstances), the nature of the job and the circumstances of the infringement itself.

(6) The employer should apply the penalty of dismissal consistently with the way in which it has been applied to the same and other employees in the past, and consistently as between two or more employees who participate in the misconduct under consideration.

4. **Fair procedure:** (1) Normally, the employer should conduct an investigation to determine whether there are grounds for dismissal. This does not need to be a formal enquiry. The employer should notify the employee of the allegations using a form and language that the employee can reasonably understand. The employee should be allowed the opportunity to state a case in response to the allegations. The employee should be entitled to a reasonable time to prepare the response and to the assistance of a trade union representative or fellow employee. After the enquiry, the employer should communicate the decision taken, and preferably furnish the employee with written notification of that decision.

(2) Discipline against a trade union representative or an employee who is an office-bearer or official of a trade union should not be instituted without first informing and consulting the trade union.

(3) If the employee is dismissed, the employee should be given the reason for dismissal and reminded of any rights to refer the matter to a council with jurisdiction or to the Commission or to any dispute resolution procedures established in terms of a collective agreement.

(4) In exceptional circumstances, if the employer cannot reasonably be expected to comply with these guidelines, the employer may dispense with pre-dismissal procedures.

5. **Disciplinary records:** Employers should keep records for each employee specifying the nature of any disciplinary transgressions, the actions taken by the employer and the reasons for the actions.
6. **Dismissals and industrial action:** (1) Participation in a strike that does not comply with the provisions of Chapter IV is misconduct. However, like any other act of misconduct, it does not always deserve dismissal. The substantive fairness of dismissal in these circumstances must be determined in the light of the facts of the case, including—

- (a) the seriousness of the contravention of this Act;
- (b) attempts made to comply with this Act; and
- (c) whether or not the strike was in response to unjustified conduct by the employer.

(2) Prior to dismissal the employer should, at the earliest opportunity, contact a trade union official to discuss the course of action it intends to adopt. The employer should issue an ultimatum in clear and unambiguous terms that should state what is required of the employees and what sanction will be imposed if they do not comply with the ultimatum. The employees should be allowed sufficient time to reflect on the ultimatum and respond to it, either by complying with it or rejecting it. If the employer cannot reasonably be expected to extend these steps to the employees in question, the employer may dispense with them.

7. **Guidelines in cases of dismissal for misconduct:** Any person who is determining whether a dismissal for misconduct is unfair should consider—

- (a) whether or not the employee contravened a rule or standard regulating conduct in, or of relevance to, the workplace; and
- (b) if a rule or standard was contravened, whether or not—
 - (i) the rule was a valid or reasonable rule or standard;
 - (ii) the employee was aware, or could reasonably be expected to have been aware, of the rule or standard;
 - (iii) the rule or standard has been consistently applied by the employer; and
 - (iv) dismissal with an appropriate sanction for the contravention of the rule or standard.

8. **Incapacity: Poor work performance:** (1) A newly hired employee may be placed on probation for a period that is reasonable given the circumstances of the job. The period should be determined by the nature of the job, and the time it takes to determine the employee's suitability for continued employment. When appropriate, an employer should give an employee whatever evaluation, instruction, training, guidance or counselling the employee requires to render satisfactory service. Dismissal during the probationary period should be preceded by an opportunity for the employee to state a case in response and to be assisted by a trade union representative or fellow employee.

(2) After probation, an employee should not be dismissed for unsatisfactory performance unless the employer has—

(a) given the employee appropriate evaluation, instruction, training, guidance or counselling; and

(b) after a reasonable period of time for improvement, the employee continues to perform unsatisfactorily.

(3) The procedure leading to dismissal should include an investigation to establish the reasons for the unsatisfactory performance and the employer should consider other ways, short of dismissal, to remedy the matter.

(4) In the process, the employee should have the right to be heard and to be assisted by a trade union representative or a fellow employee.

9. Guidelines in cases of dismissal for poor work performance: Any person determining whether a dismissal for poor work performance is unfair should consider—

(a) whether or not the employee failed to meet a performance standard; and

(b) if the employee did not meet a required performance standard whether or not—

(i) the employee was aware, or could reasonably be expected to have been aware, of the required performance standard;

(ii) the employee was given a fair opportunity to meet the required performance standard; and

(iii) dismissal was an appropriate sanction for not meeting the required performance standard.

10. Incapacity: Ill health and injury: (1) Incapacity on the grounds of ill health or injury may be temporary or permanent. If an employee is temporarily unable to work in these circumstances, the employer should investigate the extent of the incapacity or the injury. If the employee is likely to be absent for a time that is unreasonably long in the circumstances, the employer should investigate all the possible alternatives short of dismissal. When alternatives are considered, relevant factors might include the nature of the job, the period of absence, the seriousness of the illness or injury and the possibility of securing a temporary replacement for the ill or injured employee. In cases of permanent incapacity, the employer should ascertain the possibility of securing alternative employment, or adapting the duties or work circumstances of the employee to accommodate the employee's disability.

(2) In the process of the investigation referred to in subsection (1) the employee should be allowed the opportunity to state a case in response and to be assisted by a trade union representative or fellow employee.

(3) The degree of incapacity is relevant to the fairness of any dismissal. The cause of the incapacity may also be relevant. In the case of certain kinds of incapacity, for example alcoholism or drug abuse, counselling and rehabilitation may be appropriate steps for an employer to consider.

(4) Particular consideration should be given to employees who are injured at work or who are incapacitated by work-related illness. The courts have indicated that the duty on the employer to accommodate the incapacity of the employee is more onerous in these circumstances.

11. Guidelines in cases of dismissal arising from ill health or injury: Any person determining whether a dismissal arising from ill health or injury is unfair should consider—

(a) whether or not the employee is capable of performing the work; and

(b) if the employee is not capable—

(i) the extent to which the employee is able to perform the work;

(ii) the extent to which the employee's work circumstances might be adapted to accommodate disability, or, where this is not possible, the extent to which the employee's duties might be adapted; and

(iii) the availability of any suitable alternative work.

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