

REPUBLIC  
OF  
SOUTH AFRICA



REPUBLIEK  
VAN  
SUID-AFRIKA

# Government Gazette Staatskoerant

*Regulation Gazette*

**No. 6430**

*Regulasiekoerant*

Vol. 404

PRETORIA, 12 FEBRUARY  
FEBRUARIE 1999

No. 19751

## GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

### DEPARTMENT OF LABOUR DEPARTEMENT VAN ARBEID

No. R. 177

12 February 1999

LABOUR RELATIONS ACT, 1995

**BARGAINING COUNCIL FOR THE TEAROOM, RESTAURANT AND CATERING TRADE, PRETORIA**

#### **EXTENSION OF MAIN COLLECTIVE AGREEMENT TO NON-PARTIES**

I, Membathisi Mphumzi Shepherd Mdladlana, 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 Bargaining Council for the Tearoom, Restaurant and Catering Trade, Pretoria, 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 22 February 1999 and for the period ending 28 February 2001.

**M. M. S. MDLADLANA**

Minister of Labour

No. R. 177

12 Februarie 1999

WET OP ARBEIDSVERHOUDINGE, 1995

**TEEKAMER, RESTAURANT EN VERVERSINGSBEDRYF, PRETORIA**  
**UITBREIDING VAN KOLLEKTIEWE HOOFDOOREENKOMS NA NIE-PARTYE**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae verskyn en wat in die Bedingsingsraad vir die Teekamer-, Restaurant- en Verversingsbedryf, Pretoria aangegaan is en kragtens artikel 31 van de 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 22 Februarie 1999 en vir die tydperk wat op 28 Februarie 2001 eindig.

**M. M. S. MDLADLANA****Minister van Arbeid**

*Nota:* 'n Afrikaanse vertaling van die ooreenkoms by die Engelse kennisgewing is beskikbaar by die Bedingsingsraad.

**SCHEDULE****BARGAINING COUNCIL FOR THE TEAROOM, RESTAURANT AND CATERING TRADE, PRETORIA****MAIN COLLECTIVE AGREEMENT**

in accordance with the provisions of the Labour Relations Act (Act No. 66 of 1995), made and entered into by and between the:

**Pretoria and Districts Caterers Association**

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

**Retail and General Workers' Union (RE & G.W.U.),****General Industries' Workers' Union of S.A. (G.I.W.U.S.A.),****South African Commercial, Catering and Allied Workers' Union (SACCAWU)**

and

**Club, Caterers, Retail and Allied Workers' Union (CCRAWU)**

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

being the parties to the Bargaining Council for the Tearoom, Restaurant and Catering Trade, Pretoria.

**1. SCOPE OF APPLICATION OF AGREEMENT**

The terms of this Agreement shall be observed in the Tearoom, Restaurant and Catering Trade—

- (1) (a) by all employers and employees who are members of the employers' organisation and the trade union, respectively;
- (b) in the Magisterial District of Pretoria, Brits, Bronkhorstspuit, Cullinan, Rustenburg, Witbank and Wonderboom, and in the municipal area of Midrand.
- (2) Clauses 1 (1) (a), 2, 23 and 24 of this Agreement shall not apply to employers and employees who are not members of the employers' organisation and trade unions, respectively.

**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 employers' organisations on the one hand and trade unions on the other hand, shall be the Bargaining Council for the Tearoom, Restaurant and Catering Trade, Pretoria, and not at shopfloor level.

(3) No trade union or employers' 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 subclause (1) above at any level other than at the Bargaining Council for the Tearoom, Restaurant and Catering Trade, Pretoria.

(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 subclauses (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 subclauses (2) and (3) above.

#### 4. DEFINITIONS

Any expressions used in this Agreement which are defined in the Labour Relations Act, 1995 (Act No. 66 of 1995), shall have the same meanings as in that Act, any reference to the Act shall include any amendment of such Act, and unless the contrary intention appears, words importing the masculine gender shall include females; further, unless inconsistent with the context—

“**Act**” means the Labour Relations Act, 1995 (Act No. 66 of 1995);

“**assistant baker**” means an employee who assists the baker to perform his duties or perform the duties of the baker in his absence;

“**assistant manager**” means an employee who assists the manager or the employer or takes over the duties of the manager in his absence;

“**baker**” means an employee engaged in mixing flour, preparing dough and all other operations incidental to the preparation of bread, bread rolls, *et cetera* for public consumption;

“**baker, confectionery caterer**” means an employee engaged in the preparation of cakes, tarts, doughnuts, pies, *et cetera* from the mixing process until they are ready for public consumption;

“**barman**” means an employee other than a waiter or wine steward who is wholly or mainly engaged in the supply of liquor from a bar or counter to customers or to a waiter or wine steward for customers in a restaurant, refreshment room, café, sports bar or hotel;

“**blockman**” means an employee in a butchery who cuts and serves meat to customers, and such butchery must be within a supermarket or similar establishment;

“**cashier**” means an employee other than a counter-hand wholly or mainly engaged in receiving payment from customers for goods or service rendered;

“**casual employee**” means an employee employed by the same employer for not longer than three days in any week;

“**catering**” means that section of the Trade in which employers and their employees are associated for the purpose of providing meals and/or refreshments at special functions as defined;

“**chef**” means an employee who has not less than three months’ experience and who directs and supervises the work of employees in the kitchen of an establishment where more than one cook is employed;

“**chef assistant**” means an employee who assists the chef to perform his duties or performs the duties of the chef in his absence;

“**clerical employee**” means an employee wholly or mainly engaged in writing, typing or other forms of clerical work and includes a store-man, dispatch clerk and telephone operator;

“**cook**” means an employee other than a griller, engaged in the cooking and/or roasting and/or baking and/or preparation of meat and/or fish and/or vegetables for meals and such other articles of food ordinarily used in catering;

“**Council**” or “**Bargaining Council**” means the Bargaining Council for the Tearoom, Restaurant and Catering Trade, Pretoria;

“**counterhand**” means an employee, other than a barman or cashier, engaged in or in charge of a counter, whether moveable or immovable, in an establishment, and who handle cash and sells goods and/or serves and/or prepares liquid refreshments and/or food;

“**day**” in relation to an employee means a period of 24 consecutive hours, commencing from either noon or midnight;

“**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;
- (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 personal gain;

“**experience**” means in relation to any employee the total period or periods of full-time employment in the duties as specified in the definitions in the Tearoom, Restaurant and Catering Trade Agreement;

“**general worker**” means an employee engaged in general work within a small establishment where a maximum of four employees are employed and or who is not assigned or concentrated on a specific duty;

**"griller"** means an employee mainly engaged in preparing hot and/or cold dishes and/or dishing up meals and/or cooking curry and/or similar dishes and/or frying fish and/or seafood and/or chips and/or baking waffles and/or burgers and/or making popcorn and/or sandwiches and/or fat cookies cooking vegetables and/or sausages and/or boerewors and/or making toast and/or grills and/or dishing up curry and rice and/or boiling eggs and/or milk and/or making tea and/or similar beverages and who may in addition make salads and/or operate an ice-cream dispenser, or cleans vegetables, fish, seafood, poultry, or other items, including utensils, equipment, furniture, the premises, et cetera, and also carries out the functions of a staff cook;

**"kitchen-hand"** means an employee who under supervision mainly attends to vegetables in the process of cooking, bastes meat or poultry, boils milk, makes toast, burgers, tea, coffee or similar beverages, fries fish and chips, attends to urns, water boilers and washing-up machines, and mixes non-alcoholic drinks, and cleans vegetables, fish, poultry and other articles, utensils, equipment, furniture, the premises, et cetera;

**"labourer' scullery"** means an employee mainly engaged in one or more of the following operations;

- (a) Replenishing butter and jam dishes and cruets;
- (b) attending to a washing machine;
- (c) cleaning utensils, furniture, premises, vehicles, vegetables, fish, poultry or other articles;
- (d) carrying, moving or stacking goods, foodstuffs or other articles, packing shelves of filling coolers, et cetera, but not including the carrying of meals or refreshments to customers in an establishment;
- (e) firing a boiler and maintaining the water level and steam pressure;
- (f) delivering letters, messages, trays of meals, tea or sandwiches or other articles on foot or by means of a bicycle, motorbike or vehicle;
- (g) plucking poultry, peeling or paring vegetables or fruit or boiling water;
- (h) making or maintaining fires other than in connection with a boiler; removing refuse or ashes;
- (i) guarding property by day;

**"liquor"** means intoxicating liquor as defined in section 2 of the Liquor Act, 1989 (Act No. 27 of 1989);

**"manager"** means an employee who is in charge of an establishment;

**"monthly employee"** means an employee who gets paid monthly;

**"motor vehicle"** means any vehicle designed or intended for propulsion by power other than human or animal power and used for the conveyance of goods;

**"motor vehicle driver"** means an employee wholly or mainly engaged in driving a motor vehicle or in other work connected with the vehicle or the load;

**"nightwatchman"** means an employee engaged in guarding premises, buildings, gates or other property by night;

**"part-time waiter"** or **"part-time counterhand"** means a waiter or counterhand employed by the week for not more than four hours within a spreadover of eight hours in any period of 24 hours;

**"pie maker"** means an employee who is wholly or mainly engaged in mixing and preparing all kinds of pies for public consumption within the establishment;

**"pizza maker"** means an employee who is mainly engaged in preparing dough and toppings for pizzas and who bakes pizzas ready for consumption within an establishment;

**"probation period"** means a period of three months within which an employee must prove himself capable of performing the duties of a specific job to the satisfaction of the employer;

**"qualified"** means an employee that has completed his three-month probation period; or at the discretion of the employer; or having been approved by the employer that the employee has qualified for that specific job;

**"salad dresser"** means an employee who is engaged in the preparation of salads and all kinds of salad dressings, ready for consumption;

**"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-chip shops, cafés, tearooms, roadhouses and take-away food outlets, except where the preparation and/or supply of ready-to-consume food and/or refreshments take(s) 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 further includes the supply of liquor in any establishment or on any such premises in terms a liquor license held or deemed to be held by such employers or issued under the Liquor Act, 1989, but does not include hotelkeepers, boarding house-keepers or lodging house-keepers, and further includes all operations incidental to or consequent on any of the aforesaid activities;

“**shelf packer**” means an employee who is able to calculate percentage mark-ups from invoices, prices goods and is used wholly or mainly for the purpose of packing shelves and filling coolers et cetera;

“**special function**” means an entertainment such as dinner, dance or reception for the purpose of marking a social or sporting event or celebrating an occasion;

“**special function employee**” means an employee employed by the hour to work in connection with a special function;

“**soda fountain worker**” means an employee who is used wholly or mainly in working the soda fountain in preparing refreshments;

“**spreadover**” means the period in any day from the time a employee first commences work until he finishes work for that day;

“**staff cook**” means an employee engaged in the preparation and/or cooking of food exclusively for the staff of an establishment;

“**storeman**” means an employee who receives and/or dispatches goods from within a storeroom and controls the storeroom;

“**supervisor/coordinator**” means an employee wholly or mainly engaged in supervising the service to customers in an establishment, and may be in charge of the establishment when the manager or owner is absent, and who also shows customers to their seats, and takes their orders;

“**theatre part-time counterhand**” or “**theatre part-time waiter**” means an employee employed during the periods of a performance in a theatre or bioscope as a counterhand or waiter;

“**theatre part-time vendor**” means an employee other than a theatre part-time counterhand or a theatre part-time waiter who sells refreshments during the period of a performance at a theatre;

“**trade**” means sector;

“**unqualified**” means an employee who has not yet completed his three-month probation period;

“**vendor**” means an employee selling goods or any other items from a bicycle, trolley or wagon or by any other means to the public on behalf of an establishment, and includes a person who touts for orders;

“**wages**” means that portion of the remuneration payable in money to an employee in respect of ordinary hours of work referred to in clause 7 (2);

“**waiter**” means an employee other than a wine steward or a counterhand who is wholly or mainly engaged in setting or clearing tables, serving meals or refreshments to customers, checking cutlery and/or crockery and mending linen, and may receive payment for any order taken or executed by him, make salads, sandwiches, toast, tea or similar beverage, and includes a pantryhand and a sandwich maker;

“**weekly employee**” means an employee who is paid by the week;

“**wine steward**” means an employee who serves liquor to customers in an establishment a restaurant, refreshment room, and café.

In classifying an employee for the purpose of determining his main occupation in terms of this Agreement he shall be deemed to be in that class in which he is wholly or mainly engaged.

## 5. REMUNERATION: WAGES

### (A) 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.

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 specified in clause 7. Should statutory legislation reduce these ordinary hours of work the wages will automatically be reduced proportionately, bearing in mind the overtime aspect.

### (B) MINIMUM WAGES:

(1) The minimum wage which shall be paid by an employer to each member of the undermentioned classes of employees shall be as follows:

(INSERT THE MINIMUM WAGE TABLE HERE)

**MINIMUM WAGE TABLE**

With effect from the date of coming into operation of this Agreement				1 March 1999			1 March 2000		
Monthly wages	Monthly	Weekly	Overtime per hour	Monthly	Weekly	Overtime per hour	Monthly	Weekly	Overtime per hour
<b>Barman:</b>									
Qualified	1 120,00	261,33	8,17	1 176,00	274,40	8,58	1 234,80	287,71	8,99
Unqualified	950,00	221,66	6,93	997,50	232,42	7,26	1 047,38	244,04	7,63
<b>Blockman</b>	1 200,00	280,00	8,75	1 260,00	293,58	9,17	1 323,00	308,26	9,63
Blockman's assistant	850,00	198,33	6,20	892,50	207,95	6,50	937,13	218,35	6,82
<b>Cashier:</b>									
Qualified	900,00	210,00	6,56	945,00	220,19	6,88	992,25	231,19	7,22
Unqualified	750,00	175,00	5,47	787,50	183,49	5,73	826,88	192,66	6,02
<b>Baker:</b>									
Qualified	1 200,00	280,00	8,75	1 260,00	293,58	9,17	1 323,00	308,26	9,63
Unqualified	1 000,00	233,33	7,29	1 050,00	244,65	7,65	1 102,50	256,88	8,03
<b>Confectionary caterer</b>	1 100,00	256,66	8,02	1 155,00	269,12	8,41	1 212,75	282,57	8,83
<b>Clerical employee:</b>									
Qualified	1 000,00	233,33	7,29	1 050,00	244,65	7,65	1 102,50	256,88	8,03
Unqualified	880,00	205,33	6,42	924,00	215,29	6,73	970,20	226,06	7,06
<b>Counterhand:</b>									
Qualified	900,00	210,00	6,56	945,00	220,19	6,88	992,25	231,19	7,22
Unqualified	750,00	175,00	5,47	787,50	183,49	5,73	826,88	192,66	6,02
<b>Counterhand/waiter:</b>									
Qualified	850,00	198,33	6,20	892,50	207,95	6,50	937,13	218,35	6,82
Unqualified	700,00	163,33	5,10	735,00	171,26	5,35	771,75	226,42	7,08
<b>Chef</b>	1 560,00	364,00	11,38	1 638,00	381,65	5,06	1 719,90	400,74	12,52
<b>Assistant chef:</b>									
Qualified	1 200,00	280,00	8,75	1 260,00	293,58	9,17	1 323,00	308,26	9,63
Unqualified	1 000,00	233,33	7,29	1 050,00	244,65	7,65	1 102,50	256,88	8,03

With effect from the date of coming into operation of this Agreement				1 March 1999			1 March 2000		
Monthly wages	Monthly	Weekly	Overtime per hour	Monthly	Weekly	Overtime per hour	Monthly	Weekly	Overtime per hour
<b>Cook:</b>									
Qualified	950,00	221,66	6,93	997,50	232,42	7,26	1 047,38	244,04	7,63
Unqualified	800,00	186,66	5,83	840,00	195,72	6,12	882,00	205,51	6,42
<b>General worker:</b>									
Qualified	730,00	170,33	5,32	766,50	178,60	5,58	804,83	187,53	5,86
Unqualified	650,00	151,66	4,74	682,50	159,02	4,97	716,63	166,97	5,22
<b>Griller:</b>									
Qualified	920,00	214,66	6,71	966,00	225,08	7,03	1 014,30	236,33	7,39
Unqualified	800,00	186,66	5,83	840,00	195,72	6,12	882,00	205,51	6,42
<b>Kitchen-hand</b>									
Qualified	700,00	163,33	5,10	735,00	171,26	5,35	771,75	226,42	7,08
Unqualified	650,00	151,66	4,74	682,50	159,02	4,97	716,63	166,97	5,22
<b>Night-watchman:</b>									
Qualified	870,00	203,00	6,34	913,50	212,85	6,65	959,18	223,49	6,98
Unqualified	770,00	179,66	5,61	807,50	188,15	5,88	847,88	197,56	6,17
<b>Labour (scullery):</b>									
Qualified	700,00	163,33	5,10	735,00	171,26	5,35	771,75	226,42	7,08
During first 3 months' service with employer	600,00	140,00	4,38	630,00	146,79	4,59	661,50	154,13	4,82
<b>Manager:</b>									
Qualified	1 960,00	457,33	14,29	2 058,00	479,51	14,98	2 160,00	503,49	15,73
Unqualified	1 500,00	350,00	10,94	1 575,00	366,98	11,47	1 653,75	385,32	12,04
<b>Pie maker:</b>									
Qualified	900,00	210,00	6,56	945,00	220,19	6,88	992,25	231,19	7,22
Unqualified	750,00	175,00	5,47	787,50	183,49	5,73	826,88	192,66	6,02
<b>Pizza maker:</b>									
Qualified	850,00	198,33	6,20	892,50	207,95	6,50	937,13	218,35	6,82
Unqualified	700,00	163,33	5,10	735,00	171,26	5,35	771,75	226,42	7,08
<b>Salad dresser:</b>									
Qualified	730,00	170,33	5,32	766,50	178,60	5,58	804,83	187,53	5,86
Unqualified	650,00	151,66	4,74	682,50	159,02	4,97	716,63	166,97	5,22

With effect from the date of coming into operation of this Agreement				1 March 1999			1 March 2000		
Monthly wages	Monthly	Weekly	Overtime per hour	Monthly	Weekly	Overtime per hour	Monthly	Weekly	Overtime per hour
<b>Shelf packer:</b>									
Qualified	920,00	214,66	6,71	966,00	225,08	7,03	1 014,30	236,33	7,39
Unqualified	800,00	186,66	5,83	840,00	195,72	6,12	882,00	205,81	6,42
<b>Soda fountain worker:</b>									
Qualified	730,00	170,33	5,32	766,50	178,60	5,58	804,83	187,53	5,86
Unqualified	650,00	151,66	4,74	682,50	159,02	4,97	716,63	166,97	5,22
<b>Storeman:</b>									
Qualified	920,00	214,66	6,71	966,00	225,08	7,03	1 014,30	236,33	7,39
Unqualified	800,00	186,66	5,83	840,00	195,72	6,12	882,00	205,51	6,42
<b>Motor vehicle driver:</b>									
Qualified	900,00	210,00	6,56	945,00	220,19	6,88	992,25	231,19	7,22
Unqualified	770,00	179,66	5,61	807,50	188,15	5,88	847,88	197,56	6,17
<b>Supervisor</b>	1 400,00	326,66	10,21	1 470,00	342,51	10,70	1 543,50	359,64	11,24
<b>Vendor:</b>									
Qualified	900,00	210,00	6,56	945,00	220,19	6,88	992,25	231,19	7,22
Unqualified	770,00	179,66	5,61	807,50	188,15	5,88	847,88	197,56	6,17
<b>Waiter:</b>									
Qualified	800,00	186,66	5,83	840,00	195,72	6,12	882,00	205,51	6,42
Unqualified	650,00	151,66	4,74	682,50	159,02	4,97	716,63	166,97	5,22
<b>Wine steward:</b>									
Qualified	900,00	210,00	6,56	945,00	220,19	6,88	992,25	231,19	7,22
Unqualified	750,00	175,00	5,47	787,50	183,49	5,73	826,88	192,66	6,02

(2) *Basis of contract:* For the purposes of this clause, an employee shall be deemed to be a weekly employee unless he falls within the definition of "casual employee" or "special function employee," and save as provided in subclause (4) of this clause and in clause 6 (5) shall be paid in respect of any week not less than the full weekly wage prescribed in subclause (1) for an employee of his class, whether he works in that week for the maximum number of ordinary hours specified for a week in clause 7 (2) or less.

(3) *Differential wages:* An employer who requires or permits a member of one class of his employees to perform for longer than one hour, either in addition to his work or in substitution thereof, work of another class for which a higher wage is prescribed in subclause (1) shall pay such employee at the higher wage in respect of the whole day on which he performs such work: Provided that where the difference between classes is, in terms of subclause (1), based on experience or age, the provisions of this subclause shall not apply.

(4) *Calculation of daily wage:* For the purposes of subclause (3), the wage payable in respect of any day shall be not less than one twenty-sixth of the monthly wage as prescribed in subclause (1) for the higher work performed.

(5) Nothing in this Agreement shall operate to reduce the wage which is being paid to an employee at the date on which this Agreement comes into operation.

## 6. PAYMENT OF REMUNERATION

(1) Save as provided in clause 16, remuneration shall become due and paid either weekly or monthly during the hours of work on the last working day of the month/week or on termination of employment if this takes place before the last working day of the month/week.

(2) *Premiums:* No payments shall be made or accepted by an employer, either directly or indirectly, in respect of the employment or training 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.

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

(4) *Meals:* Every employee, other than a nightwatchman, shall be entitled to receive free of charge those meals that fall within his working hours in addition to the wages prescribed for such employee. Where such meals are not provided, an employer shall pay him not less than the amounts specified as follows:

Full time employees: R40,00 per week.

Casual, special function and part-time employees in lieu of meals not provided: R6,00 per meal.

(5) *Fines and deductions:* An employer shall not levy any fines against his employee nor shall he make any deductions from his remuneration other than the following:

- (a) With the written consent of his employee, a deduction for holiday, sick leave, insurance, provident or pension funds;
- (b) save as provided in clause 11 (1), when his employee absents himself from work other than on the instruction or at the request of his employer or is absent owing to accident or ill health, a deduction proportionate to the period of such absence;
- (c) contributions towards the Council fund in terms of clause 19;
- (d) a deduction of any amount that an employer by any statutory law or any order of any competent court is required or permitted to make;
- (e) subject to the provisions of subclause (3), with the written consent of the employee, a deduction of any amount due to an employer for goods purchased from him by his employee: Provided that such a deduction shall not exceed one-third of the total remuneration due to such employee;
- (f) a deduction for any money lent to an employee by his employer: Provided that such deduction shall not exceed one-third of the total remuneration due to such employee;
- (g) subscriptions to the trade union in terms of clause 23.

(6) *Transport:* An employer shall pay for the transport of his employees working later than 22:30 on any day of the week.

## 7. NUMBER OF DAYS AND HOURS OF WORK, ORDINARY AND OVERTIME, AND PAYMENT FOR OVERTIME

(1) *Number of working days:* An employee shall not work more than six days in a week.

(2) *Ordinary hours of work:* The ordinary hours of work shall not exceed—

- (a) in the case of an employee other than a casual or part-time employee, kitchen-hand, labourer and motor vehicle driver—
  - (i) 45 hours in any week;
  - (ii) eight hours per day on six days in any week;
- (b) in the case of a kitchen hand, a labourer and a motor vehicle driver—
  - (i) 45 hours in any week;
  - (ii) eight hours per day on six days in any week;
- (c) in the case of a casual employee, eight hours in any week;
- (d) in the case of a part-time employee, other than theatre part-time counterhand or theatre part-time waiter, four hours in any day.

(3) *Meal breaks:* For each mealtime which occurs during the hours of work of an employee, the employer shall allow his employee a break of not less than one hour after five hours' continuous work, during which no work shall be performed, and such break shall not be deemed to be part of the ordinary hours of work or overtime.

(4) *Overtime:* All time worked in excess of the maximum number of ordinary hours specified in subclause (2), shall be deemed to be overtime. Three days' notice of overtime shall be given to employees where reasonably possible.

(5) *Limitation of overtime:* An employer shall not require or permit his employee to work overtime for more than—

- (a) ten hours in any week;
- (b) three hours in any day:

Provided that, where an employer caters for a special function, he may, on notification to the Secretary of the Council, require or permit his employees to work, in excess of the ordinary overtime allowed under (a) or (b) above, not more than six additional hours in any day and not more than nine additional hours in any week.

(6) *Payment of overtime:* An employer shall pay to each of his employees who works overtime not less than—

- (a) one and a half times the weekly or monthly wage for all classes of employees other than casual and special function employees;
- (b) in the case of casual and special function employees, the wages laid down in clause 5 (B)(1).

(7) *Spreadover:* No employer shall require or permit an employee to work for a spreadover of more than 12 hours: Provided that if overtime is worked and the said spreadover may be exceeded to the extent by which the ordinary working hours plus the overtime and any meal interval specified by paragraph exceed 12 hours on any day.

(8) *Regulation of working time:* The provisions of subclauses (1), (3), (4), (5), (6) and (7) shall not apply to an employee engaged in emergency work or to casual employees, or manager or assistant manager earning more than R30 000 per annum.

#### 8. TIME AND WAGE REGISTERS AND ATTENDANCE REGISTERS

(1) It shall be the duty of every employer to keep a time and wage register and therein shall be inscribed—

- the full name of the employee;
- whether male or female;
- occupation;
- daily hours worked;
- overtime worked;
- gross wage;
- authorized deductions;
- net total paid;
- signature of employee as receipt.

(2) It shall be the duty of every employer to provide in his establishment one or more attendance registers as specified in Annexure B to this Agreement in which provisions is made for the entries which employees, other than managers and unskilled employees, are required to make: Provided that in lieu of such attendance registers an employer may provide a semi-automatic time recorder with the necessary cards, giving the following information:

- (i) name of employee;
- (ii) time of commencing work;
- (iii) time of finishing work;
- (iv) time of commencing and termination of each meal interval off work;
- (v) time of starting and finishing overtime worked;
- (vi) total number of hours worked each day;
- (vii) total number of hours worked each week.

(3) Every employer shall keep a daily record in the time and wage register of the hours worked by all unskilled employees.

(4) Every employer shall retain the completed time and wage registers and attendance registers or semi-automatic time record cards for a period of three years subsequent to the date of completion thereof.

#### 9. 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) during the first four years of employment, 21 consecutive days' leave; and thereafter 28 consecutive days' leave of absence for each subsequent year of employment with the same employer on full pay, and the remuneration in respect of such leave shall be paid not later than the last working day before the commencement of the said leave or, at the written request of an employee, not later than the first pay day for such employee after expiration of this period of leave.

- (2) The leave referred to in subclause (1) shall be granted at a time fixed by the employer: Provided that—
- (i) if such leave has not been granted earlier it shall be granted so as to commence within three months of the completion of the year of employment to which it relates;
  - (ii) the period of such leave shall not be concurrent with any period during which the employee is absent on sick leave in terms of clause 11 or is serving a period of notice of termination of employment;
  - (iii) if any public holiday falls within the period of such leave, such day shall be added to the said period as a further period of leave on full pay;
  - (iv) an employer may set off against such period of leave any days of occasional leave granted on full pay to his employee at the employee's written request during the year of employment to which the period of annual leave relates.

(3) (a) An employee whose contract of employment terminates in the first year of employment with an employer before the period of leave referred to in subclause (1) has accrued shall, save as provided in the fourth proviso to subclause (2), upon such termination to be paid in respect of each completed month of employment remuneration of not less than one twenty-sixth of the monthly wage that the employee was receiving immediately before his employment was terminated.

(b) An employee whose contract of employment terminates in the second or any subsequent year of employment with the same employer before the period of leave referred to in subclause (1) has been granted, shall upon termination of his employment be paid his full pay in respect of such leave and, in addition, be paid three fifty-seconds of the monthly wage that the employee was receiving immediately before such termination in respect of each completed month of service, calculated from the date upon which he became entitled to leave.

(3) An employee who has become entitled to a period of leave in terms of subclause (1) and whose employment terminates before such leave has been granted shall upon such termination be paid amounts referred to in subclause (1) and (3).

(5) For the purposes of this clause, the expression "employment" shall be deemed to include any period or periods during which an employee is—

- (a) absent on leave in terms of subclause (1);
- (b) absent from work on the instructions or at the request of the employer;
- (c) absent on sick leave in terms of clause 11;

amounting in the aggregate to not more than 10 weeks in any year in respect of (a), (b) and (c) above.

(6) For the purpose of this clause, employment shall be deemed to commence from—

- (a) the date on which the employee entered the employer's service; or
- (b) the date on which the employee last became entitled to leave on full pay, whichever is the later.

(7) Any part-time employee who is in full employment in any trade, business, service or anywhere else, where the employer is responsible for granting him annual leave pay, shall not be entitled to the privileges described in this clause.

#### 10. PUBLIC HOLIDAYS

(1) An employee other than a casual employee, theatre part-time vendor, special function employee and night-watchman, shall be entitled to and shall be granted leave on all public holidays and shall be paid by his employer an amount of not less than his daily wage in respect of each such holiday as if he had on such day worked his ordinary hours for the day of the week, but such employee may, subject to the provisions of subclause (2), be required or permitted by his employer to work on any such holiday.

(2) When an employee works on a paid holiday which 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;

(3) 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 holiday falling within his period of leave in terms of the provisions of clause 9 (1).

#### 11. SICK AND MATERNITY LEAVE

(1) An employer shall grant to an employee, other than a special function employee or a casual employee, employed by him who is absent from work through incapacity—

- (a) in the case of an employee who works a five-day week, not less than 30 working days; and
- (b) in the case of every other employee, not less than 36 working days'

sick leave in the aggregate during any period of 36 consecutive months of employment with him and shall pay to such employee in respect of the period of absence in terms of this subclause an amount of not less than the wage he would have received had he worked during such period: Provided that—

- (a) "employment" shall have the same meaning as in clause 9 (5);
- (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 (Act No. 130 of 1993), shall only be regarded as incapacity during any period in respect of which no disablement payment is payable in terms of that Act.

(3) Annual leave and sick leave shall not run concurrently;

(4) A part-time employee who is in full employment in any trade, business, service or anywhere else, where the employer is responsible for granting him sick leave and sick leave pay, shall not be entitled to the privileges described in this clause.

(5) *Maternity leave:* An employee shall be entitled to four month's unpaid maternity leave. This employee shall further be entitled to one month's maternity pay after she has return to worked, which she is to be paid after she has worked one full month.

## 12. PROPORTION OR RATIO AND PROMOTIONS

(1) *Waiter and counterhand:* An employer shall not employ an unqualified waiter or counterhand unless he has in his employ a qualified waiter or counterhand, and for each qualified waiter or counterhand employed, not more than two unqualified waiters or counterhands may be employed.

(2) *Cook:* An employer shall not employ an unqualified cook unless he has in his employ a qualified cook.

(3) *Barman:* An employer shall not employ an unqualified barman unless he has in his employ a qualified barman, and for each qualified barman employed not more than one unqualified barman may be employed.

(4) *Griller:* In an establishment where no cook is employed, an employer shall not employ an unqualified griller unless he has in his employ a qualified griller, and for each griller employed no more than one unqualified griller may be employed.

(5) For the purposes of this clause, an unqualified waiter, counterhand, cook, barman or griller receiving not less than the wage prescribed in clause 5 (B) (1) for a qualified waiter, counterhand, cook, barman or griller, as the case may be, may be deemed to be a qualified waiter, counterhand, cook, barman or griller.

(6) An employee who is wholly or mainly engaged in performing the work of a waiter, counterhand, cook, barman or griller, as the case may be, may in respect of the establishment in which he is so engaged be deemed to be a qualified waiter, counterhand, cook, barman or griller: Provided that such employee may not be deemed to be a qualified employee in more than one of the classes enumerated: Provided further that where in an establishment two or more employees are so engaged only one such employee may be deemed to be a qualified employee.

(7) *Promotions:* All employees shall receive a rate for job performance with no discrimination on grounds of race, colour, sex or religion.

## 13. UNIFORMS

An employer who requires his employees to wear a uniform, overall, washing coat, cap or apron, shall supply it and it shall remain the property of the employer. The employee shall be responsible for the laundering and mending of such uniform, overall, washing coat, cap or apron: Provided that such uniform cost shall be deducted from the first month's salary and shall be refunded after one year of employment or on termination of employment.

## 14. CERTIFICATE OF SERVICE

An employer shall upon termination of the contract of employment of any of his employees, other than a casual employee, furnish such employee with a certificate of service showing the full name of the employer of the employee, the nature of the employment, the date of commencement of the contract of employment, the date of termination thereof and the rate of remuneration at the date of such termination. (See Annexure E).

## 15. PROHIBITION ON EMPLOYMENT

An employer shall not employ any person under the age of 16 years.

## 16. TERMINATION OF CONTRACT OF EMPLOYMENT

(1) The following shall apply to an employee other than a casual employee, theatre part-time vendor or special function employee:

(a) 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 who works a five-day week, one working day in respect of each completed period of five weeks of employment and, in the case of every other employee, one working day in respect of each completed month of employment;

(b) an employer may, as a condition precedent to the payment by him of any amount claimed in terms of this subclause by an employee in respect of any absence from work for a period covering more than two consecutive days, require the employee to produce a certificate (see Annexure A) signed by a medical practitioner and stating the nature and duration of the employee's incapacity: Provided that when an employee has during any period of up to eight weeks received payment in terms of this subclause on two or more occasions without producing such a certificate his employer may during the period of eight weeks immediately succeeding the last such occasion require him to produce such a certificate in respect of any absence from work;

(c) this subclause shall not apply in respect of an employee at whose written request an employer makes contributions, at least equal to those made by the employee, to any fund or organisation nominated by the employee, which fund or organisation guarantees to the employee in the event of his incapacity in the circumstances set out in this subclause the payment to him of not less than in the aggregate the equivalent of his wage for 30 or 36 working days, as the case may be, in each period of 36 months of employment;

- (d) where an employer is 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 terms of this subclause in respect of any absence on sick leave because of such incapacity;
- (e) when an employee returns to work after an absence due to illness or incapacity, proof of his absence shall be in the form of a medical certificate or letter by an approved medical practitioner with the correct date and doctor's stamp.
- (2) For the purposes of this clause an employee shall be deemed to be—
  - (a) a weekly employee, if his wages are paid weekly; and
  - (b) a monthly employee, if his wages are paid otherwise than weekly.
- (2) Subject to the provisions of this clause, an employer or his employee, other than a casual employee, theatre part-time vendor or special function employee, who desires to terminate the contract shall—
  - (a) during the first four weeks of employment give not less than one working day's notice; and
  - (b) after the first four weeks of employment, in the case of a weekly employee, give one week's notice, and in the case of a monthly employee, two weeks' notice, and after the first completed year of service, four weeks' notice of termination of the contract, and upon such termination of the contract the employer shall pay to the employee not less than—
    - (i) in the case of one working day's notice, the daily wage that the employee is receiving at the time of such termination;
    - (ii) in the case of a week's notice, the weekly wage that the employee is receiving at the time of such termination;
    - (iii) in the case of two weeks' notice, double the weekly wage that the employee is receiving at the time of such termination:

Provided that an employer or employee may at any time terminate the contract of employment without notice by paying to the employee or paying or forfeiting to the employer, as the case may be, in lieu of such notice an amount of not less than the appropriate wage referred to in subparagraph (i), (ii) or (iii).

- (3) The provisions of subclause (2) shall not affect—
  - (a) the right of an employer or an employee to terminate the contract without notice for any cause recognised by law as sufficient;
  - (b) 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 specified in subclause (2); or
  - (c) the operation of any forfeitures or penalties that by law may be applicable in respect of an employee who deserts.
- (4) Where an agreement referred to in subclause (3) (b) exists, the payment or forfeiture referred to in subclause (2) shall be commensurate with the period of notice agreed upon between the employer and employee.
- (5) The notice specified in subclause (2) shall—
  - (a) in the case of a weekly employee, be given on or before the usual pay day of the establishment concerned and shall run from the day after such pay day; and
  - (b) in the case of monthly employee, be given on or before the first or the 15th day of a month and shall run from such first or 15th day.

Provided that—

- (i) a period of notice shall not run concurrently with, and notice shall not be given during, an employee's absence on leave granted in terms of clause 9;
  - (ii) notice shall not be given during an employee's absence on sick leave in terms of clause 11; and
  - (iii) where only one working day's notice is required to be given, such notice may be given on any working day.
- (6) An employer or his employee, except an illiterate employee, shall give the notice referred to in this clause in writing.
  - (7) *Dismissals*: No dismissal shall take place without a fair hearing or the proper procedures having been followed.
  - (8) *Severance pay*: An employee shall be entitled to one week's severance pay for each completed year of continuous service (12 months) with the same 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.
  - (9) An employee who is absent without permission for longer than three consecutive days without informing his employer thereof shall be liable to termination of his employment contract at the discretion of the employer, subject to the correct termination of employment contract procedure having been followed.

## 17. 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 of the provisions of Chapter II of the Act.
- (ii) Issues that form the subject matter of a proposed strike or a lockout.
- (iii) Unfair dismissals.
- (iv) Severance pay.
- (v) Unfair labour practices.
- (vi) The interpretation, application or enforcement of any part of this Collective Agreement.

#### 18. EXEMPTIONS

(1) In terms of section 32 of the Act, the Bargaining Council for the Tearoom, Restaurant and Catering Trade, Pretoria, 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 exemption 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 of 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 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 Trade;
- (h) any existing special economic or other circumstances that warrant the granting of the exemption;
- (i) the recommendation contained in *the Report of the Presidential Commission to investigate Labour Market Policy*.

#### 19. EXPENSES OF THE COUNCIL

For the purposes of meeting the expenses of the Council, every employer shall deduct from the earnings of each of his employees the sum of R3,00 per month. To the amounts so deducted the employer shall, in respect of each employee, add the sum of R3,00 per month. As from 28 February 1999 these amounts will be increased to R4,00.

The employer shall then forward the whole amount, month by month, and not later than the 7th day of each month, or annually in advance, to the Secretary of the Council, P.O. Box 1256, Pretoria, 0001, in the form specified in Annexure C.

For the purposes of this clause, and employee who has worked on six days in any one calendar month shall be held to be liable for the specified deductions.

## 20. ADMINISTRATION OF AGREEMENT

The Bargaining Council for the Tearoom, Restaurant and Catering Trade, Pretoria, shall be the body responsible for the administration of this Agreement and may issue expressions of opinion not inconsistent with its provisions for the guidance of employers and employees.

## 21. EFFECT OF OTHER LAWS

Nothing in this Agreement shall be deemed to authorize the employment of any person whose employment is prohibited by any law, or the employment of any person at any time or times prohibited by any law.

## 22. PROBATION PERIOD

New employees shall be employed for the first three months on a probation period (trial basis) subject to 24 hours' notice, without any reasons and/or warnings having to be given prior to the resignation or dismissal by either parties.

## 23. TRADE UNION SUBSCRIPTIONS

Every employer may deduct from the wages of members of the trade union in his employ current subscription fees due to the trade union: Provided that the employee signs a stop-order form authorizing his employer to do so. Such fees shall be kept by the employer until such time as they are collected by an official of the trade union.

## 24. EMPLOYERS' ORGANISATION SUBSCRIPTIONS

Every employer who is a member of the Pretoria and Districts Caterers' Association shall at the beginning of each new year or when an official of the association calls on them, pay the current subscription fees due by him to the said organisation, together with any arrears.

## 25. 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.

## 26. CODE OF CONDUCT

Schedule 8 of the Act shall be adhered to. (See Annexure F).

## 27. HOURS OF BUSINESS

Subject to the provisions of clause 7 of the Agreement, the employer shall have the right to allocate staff whatever business hours may be necessary to accommodate the business, as long as the total number of hours worked do not exceed 48 hours in any week, excluding lunch breaks of a minimum of one hour per day.

## 28. SHOP STEWARD'S LEAVE

Where an employer has in his service 12 or more employees, a shop steward may be elected to attend trade union meetings four times a year: Provided that a letter from the trade union requesting such a shop steward to attend meetings shall be submitted by the shop steward.

## 29. COMPASSIONATE LEAVE

An employee shall be entitled to three days' paid leave per year, given at the discretion of the employer. This leave may not be accumulated and must affect the employee's immediate family only, i.e. husband, wife or children.

## 30. REGISTRATION OF EMPLOYERS

(1) Every employer shall—

- (a) within 30 days of the date upon which this Agreement comes into operation, 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 D to this Agreement;
- (b) whenever a 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,

withing 30 days furnish the Secretary of the Bargaining Council with a completed statement in the form of Annexure D to this Agreement; and receipt thereof shall be acknowledged by the Secretary of the Council, P.O. Box 1256, Pretoria, 0001.

(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 monthly forward to the trade union a list of all registrations and change of those employees who are eligible for membership of the trade union.

Signed at Pretoria, on behalf of the parties, this 8th day of May 1998.

EMPLOYERS' ORGANISATION

J. IOANNOU  
P.C.A.

TRADE UNIONS

J. MUDZANANI  
CCRAWU

C. MOTSEPE  
SACCAWU

A. RADEBE  
GIWUSA

A. NKOANA  
RE & GWU

BARGAINING COUNCIL FOR THE TEAROOM, RESTAURANT AND CATERING TRADE, PRETORIA

T. N. HONDROU  
Chairman

J. MUDZANANI  
Vice Chairman

D. KYRIACOU  
Secretary

ANNEXURE A TO AGREEMENT

(See clause 11—Sick Leave)

MEDICAL CERTIFICATE REQUIRED IN TERMS OF THE BARGAINING COUNCIL AGREEMENT FOR THE TEAROOM, RESTAURANT AND CATERING TRADE, PRETORIA

\*I, .....  
residing at ..... hereby certify that †..... has been under  
my medical treatment from ‡..... to ..... and that he  
is suffering from §.....

I further certify that he is in consequence unable to perform his official duties, and I consider it essential for the recovery of  
his health that he should have leave from ..... to .....  
for the purpose of .....

Date.....

.....

Signed: Medical practitioner

\* Name and qualification of medical practioner.

† Name and occupation of patient.

‡ Period.

§ The nature of the illness, disease or injury to be stated as far as possible in non-technical terms with concise particulars as to history, symp-  
toms and severity, and ascertainable cause.





**ANNEXURE D**

(See clause 30 Registration of Employers)

**REGISTRATION OF ALL EMPLOYERS AND SUBSEQUENT NOTIFICATION OF CHANGES**

(This form must be remitted within one month of commencement of business)

**The Secretary  
Bargaining Council for the Tearoom, Restaurant and Catering Trade  
PO Box 1256  
Pretoria  
0001**

TEL/FAX: (012) 321 6691

Dear Sir

In accordance with clause 30 of the Bargaining Council Agreement, I hereby furnish the following particulars in connection with the business or the changes of particulars:

- 1. Name of business in full.....
- 2. Street address.....
- 3. PO Box..... Telephone No. ....
- 4. Name of owner/s..... Telephone No. ....

Home address .....

Name of partner/s ..... Telephone No. ....

Home address/es .....

State whether: Sole owner..... Partnership..... Company.....

If a company:

(a) Registered name .....

(b) Address of head office.....

Type of business: (Please mark with an X where applicable)

Restaurant	} —	With/without liquor licence.....
Steakhouse		State type of liquor licence held.....

Roadhouse..... Café ..... Fish and chips.....

Snack bar/Take-away foods..... Function caterer..... Other.....

No. of employees.....

Date of commencement of business.....

Date .....

.....  
*Signature of employer or authorised person*

**PARTICULARS OF FORMER OWNER**

Previous name of business..... Telephone No. ....

Home address .....

Bookkeeper ..... Telephone No. ....

Address of bookkeeper ..... Box No. ....

**ANNEXURE E****(See clause 14 —Certificate of Service)  
CERTIFICATE OF SERVICE**

\*I/We.....  
 carrying on business as.....  
 at.....  
 hereby certify that \*Mr/Mrs/Miss/Ms.....  
 was employed by \*me/us from the ..... day of ..... 19.....  
 to the ..... day of ..... 19.....  
 in the occupation of .....

On termination of employment \*his ordinary rate of pay was R ..... per \*week/month.

Date .....

.....  
*Signature of employer or authorised person*

(\* Delete whichever is not applicable)

**ANNEXURE F****SCHEDULE 8****CODE OF GOOD PRACTICE: DISMISSAL****1. Introduction:**

- (1) This code of good practice deals with some of the key aspects of dismissals for reasons related to conduct or 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) The Act emphasis the primacy 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) The Act recognizes three grounds on which 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) The 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' behavior 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 Commissioner 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 type 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 case 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 is 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—
- (a) the employer has given the employee appropriate evaluation, instruction, training 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 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 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 subclause (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 investigated 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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