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GOVERNMENT NOTICE

DEPARTMENT OF LABOUR

No. R. 1611

31 October 2003

BASIC CONDITIONS OF EMPLOYMENT ACT 1997 (ACT NO. 75 OF 1977)

SECTORAL DETERMINATION 8: FARM WORKER SECTOR, SOUTH AFRICA

CLARIFICATION / CORRECTION NOTICE

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of Section 56(3)(b) of the Basic Conditions of Employment Act, 1997, clarify the meaning of certain expressions and effect corrections in the Sectoral Determination published in Government Notice no R1499 dated 2 December 2002:

1. In the English version of the notice to make a Sectoral Determination on page 2, replace the words "**section 50**" with the words "**section 51(1)**"
2. In sub-clause 1(2) insert the words "**excluding the Forestry Sector**" after the word "**crops**" in line 3.
3. Substitute sub-clause 3(1), page 4 to read: "**An employer must pay a farm worker who is 15 years of age or older, but less than 18 and who works for 35 hours per week or less at least the hourly rate or remuneration, specified in Table 1**"
4. In Table 1 on page 5, insert the word "**(Mpumalanga)**" after the word "**Emalahleni**" and note that the shaded area represents "**Area A.**"
5. In Table 1 on page 5, delete the words "**Mtubatuba Local Municipality**".
6. Insert, after the word "**worker's**" in the first line of sub-clause 8(1), page 8 the following word: "**remuneration**".
7. In sub-clause 9(1)(j), page 11 substitute the word "**employer**" with the word "**employee**".
8. In sub-clause 10(1), page 12 delete the number "**(1)**" after number "**13**" in line 1.
9. In sub-clause 10(2), substitute the number **(2)** in line 1, with the number **(1)**.
10. Change the numbering of 14(3)(c) in the second paragraph of page 14 to 14(3)(b).
11. Replace the numbers "**17**" and "**18**" in the last line of 14(4) on page 14 with the numbers "**16**" and "**20**" respectively.
12. On page 19, Substitute the number "**25**" in the last line of sub-clause 21(8) with the number "**26**".
13. In the last line of sub-clause 26(1)(b), delete the words "**or more**" and insert the words "**more than**" after the word "**for**" in line 1.

14. In sub-clause 26(4)(a) on page 24 substitute the number "17(1)" with the number "21".
15. In sub-clause 27(1) substitute the word "wages" in line 2 with the word "remuneration".
16. In sub-clause 27(2) substitute the words: "wages referred to in sub-clause (6)" with the words: "remuneration referred to in sub-clause (1)".
17. In sub-clause 29(e) substitute the number "20(1)" in the third line, with the number "21(1)" and substitute the word "section" with the word "clause".
18. Substitute the sample of Written Particulars of Employment and guidelines on pages 31 to 40 with the following:

WRITTEN PARTICULARS OF EMPLOYMENT
(FARM WORKER)

Given by:

(herein after referred to as "the employer")

Address of employer:

to

(herein after referred to as "the employee")

Sample of written particulars
Provided free of charge
By the Department of Labour

1. Commencement

Employment started/will start on and continue until terminated in terms of clauses 1 and 2 of the guidelines.

2. Place of work

3. Job description

Job Title Farm Worker :
Tractor driver/truck driver/labourer etc.

Duties:

.....

.....

.....

.....

.....

.....

.....

.....

.....

4. Hours of work

4.1 Normal working hours will be hours per week, made up as follows:

Monday / Tuesday / Wednesday / Thursday / Friday: am to
..... pm

Meal intervals will be from: to
.....

Other breaks:
.....

Saturdays: am to
..... pm

Meal intervals will be from: to
.....

Other breaks:
.....

Sundays: am to
..... pm

Meal intervals will be from: to
.....

Other breaks:
.....

4.2 Hours of work will be extended with by not more than five hours per week during and reduced by the same hours during

4.3 Overtime will only be worked as agreed from time to time and will be paid at the rate of one and a half times of the total wage as set out in sub-clause 5.3 of the guidelines.

5. Wage

5.1 The employees wage shall be paid in cash on the last working day of every week/month and shall be: R.....

5.2 The employee shall be entitled to the following allowances/other cash payments/payment in kind:

5.2.2 Accommodation per week/month to the value of R.....

5.2.3 Food per week/month to the value of R.....

5.3 The following deductions are agreed upon: R.....

..... R.....

..... R.....

5.4 The total value of the above remuneration shall be
(The total of sub-clauses 5.1 to 5.3.)
(Modify or delete sub-clauses 5.2. to 5.3 as needed) R.....

5.5 The employer shall review the employee's salary/wage on or before 1 March of every year.

6. Termination of employment

Either party can terminate this agreement with one week's notice during the first six months of employment and with four week's notice there after. Notice must be given in writing except when it is given by an illiterate farm worker. In the case where the farm worker is illiterate notice must be explained orally by or on behalf of the employer.

On giving notice the employer is to provide the employee who resides in accommodation that belongs to the farmer accommodation for a period of a month. A farmer is also obliged to allow the farm worker who has standing crops on the land a reasonable time to harvest the crop or the farmer may pay the worker an agreed amount for that crop.

7. Sunday work

Any work on Sundays will be by agreement between the parties and will be paid according to clause 7 of the guidelines.

8. Public Holidays

Any work on public holidays will be by agreement and will be paid according to clause 8 of the guidelines.

9. Annual Leave

The employee is entitled to three weeks paid leave after every 12 months of continuous service. Such leave is to be taken at times convenient to the employer and the employer may require the employee to take his/her leave at such times as coincide with that of the employer.

10. Sick leave

10.1 During every sick leave cycle of 36 months the employee will be entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.

10.2 During the first six months of employment the employee will be entitled to one day's paid sick leave for every 26 days worked.

10.3 The employee is to notify the employer as soon as possible in case of his/her absence from work through illness.

10.4 A medical certificate may be required if absent for more than 2 consecutive days or has been absent on more than two occasions during an eight-week period.

11. Maternity leave

(Tick the applicable sub-clauses in the space provided).

11.1 The employee will be entitled to months maternity leave without pay; ☐
or

11.2 The employee will be entitled to months maternity leave on ☐
pay

12. Family responsibility leave

The employee will be entitled to three days family responsibility leave during each leave cycle if he or she works on at least four days a week.

13. Accommodation*(Tick the applicable boxes).*

- 13.1 The employee will be provided with accommodation for as long as the employee is in the service of the employer, which shall form part of his/her remuneration package. ☐
- 13.2 The accommodation may only be occupied by the worker and his/her immediate family, unless by prior arrangement with the employer. ☐
- 13.3 Prior permission should be obtained for visitors who wish to stay the night. However where members of the employee's direct family are visiting, such permission will not be necessary. ☐

14. Clothing *(Delete this clause if not applicable)*

..... sets of uniforms/protective clothing will be supplied to the employee free of charge by the employer and will remain the property of the employer.

..... sets of boots/gumboots will be supplied to the employee free of charge by the employer and will remain the property of the employer.

..... will be supplied to the employee free of charge by the employer and will remain the property of the employer.

15. Other conditions of employment or benefits

.....

.....

.....

.....

.....

16. General

Any changes to the written particulars will only be valid if agreed to by both parties.

.....
EMPLOYER

Acknowledgement of receipt by employee:

.....

Date:

GUIDELINES

1. Notice period and termination of employment

In terms of the Sectoral Determination, any party to an employment contract must give written notice, except when an illiterate farm worker gives it, as follows:

- One week, if employed for six months or less
- Four weeks if employed for more than six months.

Notice must be explained orally by or on behalf of the employer to a farm worker if he/she is not able to understand it.

The employer is required to provide the farm worker who resides in accommodation that is situated on the premises of the employer or that is supplied by the employer, with accommodation for a period of one month, or if it is a longer period, until the contract of employment could lawfully have been terminated.

The farm worker is entitled to keep livestock on the premises for a period of one month or until the contract of employment could lawfully have been terminated.

The farm worker who has standing crops on the land is entitled to tend to those crops, harvest and remove them within a reasonable time after they become ready for harvesting unless the employer pays the farm worker an agreed amount for the crops.

All monies due to the farm worker for any wages, allowance or other payments that have not been paid, paid time-off not taken and pro-rata leave must be paid.

2. Procedure for termination of employment

Whilst the contract of employment makes provision for termination of employment, it must be understood that the services of an employee may not be terminated unless a valid and fair reason exists and fair procedure is followed. If an employee is dismissed without a valid reason or without a fair procedure, the employee may approach the CCMA for assistance.

Pro-rata leave and severance pay might be payable.

In the event of a farm worker being unable to return to work due to disability, the employer must investigate the nature of the disability and ascertain whether or not it is permanent or temporary. The employer must try to accommodate the employee as far as possible for example, amending or adapting their duties to suit the disability. However, in the event of it not being possible for the employer to adapt the farm worker's duties and/or to find alternatives, then such employer may terminate the services of the farm worker.

The Labour Relations Act, 66 of 1995 sets out the procedures to be followed at the termination of services in the Code of Good Practice, in Schedule 8.

3. Wage/Remuneration/Payment

There is a prescribed minimum rate of remuneration. Additional payments (such as for overtime or work on Sundays or Public Holidays) are calculated from the total remuneration as indicated in sub-clause 5.3 of the contract. The total remuneration is the total of the money received by the employee and the payment in kind, which may not be more than 10% each of the wage for food and accommodation.

4. Transport allowances

Sectoral Determination 8: Farm workers Sector, South Africa does not regulate this and is therefore open to negotiation between the parties.

5. Hours of work

5.1 Normal hours (excluding overtime)

A farm worker may not be made to:

- work more than 45 hours a week;
- work more than nine hours per day for a five day work week; and
- work more than eight hours a day for a six day work week.

5.2 Extension of ordinary hours of work

By written agreement, ordinary hours of work may be extended by not more than five hours per week for a period of not more than four months and be reduced by the same number of hours during a period of the same duration in the same twelve month period.

The employer must pay the farm worker the wage he/she would have received for his/her normal hours worked.

Extended hours not reduced must be paid as overtime on termination.

5.3 Overtime

A farm worker may not work more than 15 hours overtime per week but may not work more than 12 hours on any day, including overtime.

Overtime must be paid at 1.5 times the employee's normal wage or an employee may agree to receive paid time off.

5.4 Daily and weekly rest periods

- 5.4.1 A daily rest period of 12 consecutive hours and a weekly rest period of 36 consecutive hours, which must include Sunday, unless otherwise agreed, must be allowed.
- 5.4.2 The daily rest period may by agreement be reduced to 10 hours for an employee who live on the premises whose meal interval lasts for at least three hours.

- 5.4.3 The weekly rest period may by agreement be extended to 60 consecutive hours every two weeks or be reduced to eight hours in any week if the rest period in the following week is extended equivalently.

5.5 Night work

- 5.5.1 Night work means work performed after 20:00 and before 04:00

- 5.5.1 Night work can only be worked if agreed to in writing and must be compensated by an allowance of at least 10% the ordinary daily wage and if transport is available.

6. Meal intervals

A farm worker is entitled to a one-hour break for a meal after not more than five hours work. Such interval may be reduced to 30 minutes, by agreement between the parties. When a second meal interval is required because of overtime worked, it may be reduced to not less than 15 minutes. If required or permitted to work during this period, remuneration must be paid.

7. Work on Sundays

Must be paid as follows:

Time worked on a Sunday	Payment
One hour or less	Double the wage for one hour
More than one hour but not more than two hours	Double the ordinary wage for time worked
More than two hours but not more than five hours	The ordinary daily wage.
More than five hours	The greater of double the wage payable in respect of time worked (excluding overtime) or double the ordinary daily wage.

A farm worker who does not reside on the farm who works on a Sunday must be regarded as having worked at least two hours on that day.

8. Public Holidays

The days mentioned in the Public Holidays Act must be granted but the parties can agree to further public holidays. Work on a public holiday is entirely voluntary and a farm worker may not be forced to work on such public holiday.

The official public holidays are:

New Years Day	Youth Day
Human Rights Day	National Woman's Day
Good Friday	Heritage Day

Family Day
Freedom Day
Workers Day

Day of Reconciliation
Christmas Day
Day of Goodwill

Any other day declared an official public holiday from time to time should also be granted.

These days can be exchanged for any other day by agreement.

If the employee works on a public holiday he/she shall be paid double the normal day's wage.

9. Annual Leave

Annual leave may not be less than three weeks per year for full-time workers or by agreement, one day for every 17 days worked or one hour for every 17 hours worked.

The leave must be granted not later than six months after completion of the period of 12 consecutive months of employment. The leave may not be granted concurrent with any period of sick leave, nor with a period of notice of termination of the contract of employment.

10. Sick leave

During every sick leave cycle of 36 months an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.

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

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

11. Maternity leave

The employee is entitled to at least four consecutive months' maternity leave. The employer is not obliged to pay the farm worker for the period for which she is off work due to her pregnancy. However the parties may agree that the farm worker will receive part of or her entire salary/wage for the time that she is off due to pregnancy.

12. Family responsibility leave

Employees employed for longer than four months and for at least four days a week are entitled to take three days' paid family responsibility leave during each leave cycle when the employee's child is born, or when the employee's child is sick or in the event of the death of the employee's spouse or life partner or parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

13. Deductions from the remuneration

The Sectoral Determination prohibits an employer from deducting any monies from the farm worker's wages without his/her written permission.

A deduction of not more than 10% each of the wage may be deducted for food and accommodation provided on a consistent and regular basis and provided the house has a roof that is durable and waterproof, has a glass window that can be opened, electricity and water on tap is available inside the house and a flush toilet or pit latrine is available inside or in close proximity to the house.

14. Other issues

There are certain other issues, which are not regulated by the Sectoral Determination such as probationary periods, right of entry to the employer's premises, afternoons off, weekends off and pension schemes, medical aid schemes, training/school fees, funeral benefits and savings account. However the aforementioned may be negotiated between the parties and included in the contract of employment.

15 Prohibition of Employment

The Sectoral Determination prohibits employment of any person under the age of 15 and it is therefore important for an employer to verify the age of the farm worker by requesting a copy of the identity document or birth certificate.

16. Other conditions of employment

There is no provision, which prevents any other conditions of employment being included in a contract of employment but any provision, which sets conditions, which are less favourable than those set by the Determination, would be invalid.

These guidelines are not meant to be a complete summary of the Sectoral Determination and/or legal advice. Should there be any doubt as to rights and/or obligations in terms of the Act or terms of any clause of the suggested Contract of Employment, such queries can be directed to the local offices of the Department of Labour that will gladly assist.



M M S MDLADLANA, MP
Minister of Labour

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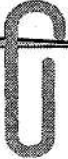
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