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PUBLISHED BY AUTHORITY

PART C

S1

LEGAL NOTICE NO. 49 OF 2004

THE WAGES ACT, 1964 (Act No. 16 of 1964)

THE REGULATION OF WAGES (BUILDING AND CONSTRUCTION INDUSTRY) ORDER, 2004 (Under Section 11)

In exercise of the powers conferred on him by section 11 of the Wages Act, 1964, the Minister for Enterprise and Employment hereby makes the following Order-

Citation and Commencement

1. This Order may be cited as the Regulation of Wages (Building and Construction Industry) Order 2004 and shall be deemed to have come into effect on the 1st April, 2004.

Interpretation.

2. In this Order, unless the context otherwise requires:

"clerk (without certificate)" means an employee who does not hold the Senior Certificate of Education or its equivalent and who is engaged in general clerical duties;

"clerk (with certificate)" means an employee who holds the Senior Certificate of Education and who is engaged in general clerical duties;

"cook" means an employee engaged in cooking and issuing of food to other employees;

"typist" means an employee mainly engaged in typing, checking figures and filing, and who is capable of typing a minimum of 30 words per minute;

"crane driver" (mobile) means an employee who operates a self propelled crane;

"crane driver (tower)" means an employee who operates a tower crane;

"continuous service" means service in the employment of the employer interrupted only by the death, retirement, completion on discharge of the employee concerned and an employee who is re-engaged within two months of his discharge shall be deemed to be in the continuous service of that employer.

"driver (light vehicle)" means an employee whose duties, in addition to being in charge of a motor vehicle of under 5 tons laden weight, include handling of cargo to and from the tailboard and the daily maintenance and cleaning of such vehicle;

"driver (heavy duty)" means an employee in possession of a heavy duty driver's licence and whose duties, in addition of being in charge of a vehicle of between 5 tons and 10 tons laden, weight include the handling of cargo to and from the tailboard and the daily maintenance and cleaning of such vehicle;

"driver (extra heavy)" means an employee in possession of a heavy duty driver's licence and who

is in charge of a vehicle in excess of 10 tons laden weight including articulated vehicles and is responsible for the safety of the load;

“family” means in relation to an employee, the wife and unmarried children under the age of eighteen.

“general labourer” means an employee who performs general unskilled work;

“general tradesman” means an employee who does not hold a trade test certificate but has recognized ability in one of the following trades -

- (a) block layer or plasterer;
- (b) brick layer or tiler;
- (c) joiner or cabinet maker;
- (d) shutter hand or carpenter;
- (e) painter or glazier;
- (f) plumber or drain layer;
- (g) welder
- (h) reinforcement steel fixer
- (i) electrician;
- (j) wire-man;
- (k) mechanic;
- (l) plant fitter;
- (m) structural steel erector;
- (n) boiler maker;
- (o) pipe fitter; and
- (p) scaffolding erector

“induna” means an employee in charge of other employees;

“plant operator” means an employee who is placed in charge of operating either a concrete mixer, concrete dumper, tractor, walk-behind roller, plate compactor, power float machine and compressor.

“earthmover operator” means an employee who operates an earthmoving machine;

“reinforcement fixer” means an employee who cuts, bands and fixes reinforcement;

"scaffolding erector" means an employee who is in charge of erecting scaffolding;

"storeman" means an employee who, apart from carrying out the duties of stores clerk, is responsible for ordering certain items on behalf of his employer;

"structure steel erector" means an employee who erects a steel structure;

"survey and soil technician assistant" means an employee who surveys the earth's surfaces, natural topography and man-made structures, underground areas, and prepare maps and charts;

"tea maker" means an employee who is engaged to routinely clean offices and to prepare refreshments;

"normal working hours" means the hours of work specified in regulation 5;

"trade tested person or tradesman" means a person who holds a craft certificate indicating the degree of proficiency attained by the person as indicated by a trade test conducted by a trade testing officer duly appointed as such in the public service;

"watchman or security guard" means an employee who is engaged during the day or night to guard the premises or other property of his employer.

Application.

3. (1) Subject to sub-regulation (2), this Order shall apply to employees specified in the First Schedule who are employed in any undertaking or part of an undertaking which carries on for gain in one or more of the following activities -

- (a) the construction, structural alteration, maintenance, of any railway line, siding, public or private road, thoroughfare, airfield, tunnel, bridge, viaduct, water works, lattice work, or other structure designed solely for the support of electric lines; or
- (b) the construction, structural alteration, maintenance repair or demolition of any building, fencing and preparing or laying the foundation of a building or an intended building.
- (c) the construction, structural alteration, maintenance, repair or demotion of any electrical work, plumbing, fire protection, sewerage reticulation and purification, or other services related to structures.

(2) This Order shall not apply to persons employed in any undertaking or part thereof operated by-

- (a) the Government;
- (b) a local authority; or
- (c) such charitable or religious organization, educational or medical institution as may be specified in writing by the Minister.

(3) This Order is subject to the Employment Act, 1980 and Part V of that Act is, for purposes of easy reference, found in the Third Schedule of this Order.

Basic minimum wage (First Schedule).

4. The employees specified in the First Schedule shall be paid a basic minimum wage calculated at a rate not less than that specified in that Schedule.

Normal working hours.

5. (1) The normal working week (other than for a watchman or security guard) shall be from Monday to Friday and shall consist of forty-five hours.

(2) The normal working week for a watchman or security guard shall be seventy-two hours spread over six shifts, each of twelve hours, inclusive of meal breaks.

(3) No employee, other than a watchman or security guard shall be required to work for more than five hours without a break of not less than thirty minutes.

Public holidays.

6. (1) The following shall be public holidays with full pay -

- (a) Independence (Somhlolo) Day;
- (b) Good Friday;
- (c) Christmas Day;
- (d) Umhlanga (Reed Dance) Day;
- (e) King's Mswati III Birthday;
- (f) Incwala Day;
- (g) Easter Monday; and
- (h) Workers Day (1st May)

(2) Where a public holiday, specified in sub-regulation (1) falls on a Sunday, the following day shall be deemed to be a public holiday.

(3) An employee who is absent without leave on the working day before or the working day after a public holiday, shall not be entitled to any payment in respect of that public holiday in terms of this regulation

Payment of Overtime.

7. (1) An employee, other than a watchman or security guard, shall be paid for overtime worked at the following rates -

- (a) during the normal working week for overtime worked, before midnight in excess of the normal working hours, at one and one third times the normal hourly rate of wages;

- (b) during the normal working week for overtime worked after midnight in continuation of normal working hours or other overtime worked, at twice his employee's normal hourly rate of wages;
- (c) for any time worked on Saturday before 1.00 p.m. at one and half times his normal hourly rate of wages;
- (d) for any time worked on a public holiday specified in regulation 6(1), Sunday or after 1.00 p.m. on Saturday at twice his normal hourly rate of wages.

(2) Overtime in respect of a watchman or security guard shall be calculated at twice the normal hourly rate for all time worked on a public holiday specified in regulation 6 or any time worked in excess of twelve hours on any working day, and that any watchman or security guard who has been absent from work during any week without reasonable cause shall not be entitled to overtime in that week until the watchman or security guard has completed seventy-two hours of work.

Annual Leave.

8. (1) After three months of continuous service, an employee shall be entitled to one days leave on full pay in respect of each months' continuous service and such leave which is in addition to the Public Holidays specified in regulation 6 and any other days which are not normal working days shall be taken during the industry's annual three weeks shut down in December and January of each year.

(2) Any employee with eleven months of continuous service will be granted two days leave on full pay during the twelfth month of employment, which leave together with the Public holiday of Christmas Day will provide full leave pay for the industry shut down (that is 14 working days)

(3) Where the employment of an employee is terminated after a period exceeding three months but not amounting to one year from the date of its commencement the employer shall pay to the employee a sum not less than one day's wages for each completed month of such period.

Sick Leave.

9. (1) After twelve consecutive months of continuous service with an employer and subject to the production of a medical certificate signed by a Medical Practitioner, registered under the Medical and Dental Practitioners Act, 1970, an employee shall be entitled to sick leave up to a maximum of fourteen days on full wages and thereafter to a maximum of fourteen days on half wages in that period of twelve months continuous service.

(2) Notwithstanding sub-regulation (1);

- (a) An employee shall not be entitled to the benefits specified in sub-regulation (1) if the sickness or accident causing his absence was caused by his own negligence or misconduct;
- (b) A certificate issued by registered nurse shall be accepted in place of a medical certificate if a Medical Practitioner is not available.

Written particulars to be provided.

10. An employer shall within six weeks of engagement of an employee, give such employee a

completed copy of the form found in the Second Schedule of this Order.

Continuous service.

11. Where, following upon a change of ownership of an establishment or undertaking an employee enters the service of the new owner without interruption, his service shall be deemed to be continuous service in the employment of the new owner unless otherwise agreed in writing by all the parties.

Travelling and Subsistence Allowances.

12. (1) Where an employee is temporarily employed at a place which is separated from his normal place of work by a distance of more than five kilometres by road his employer shall provide him with free transport to and from his normal place of work and the place of temporary employment.

(2) An employee required to travel on duty, other than in the circumstances set out in sub regulation (1), shall be provided either with free transport or be paid by his employer the cost of travel by public transport.

(3) An employee who is absent on duty away from his normal place of employment for a longer period than twelve hours, and who returns to his normal place of residence without staying overnight shall be paid a subsistence allowance of E12.50 for each period of twelve hours or part thereof of such absence.

(4) An employee who is absent on duty overnight away from his normal place of employment, shall, in respect of each night's absence, be provided by his employer with;

(a) free food and accommodation or a nightly allowance of E30.00 in lieu thereof, or

(b) free accommodation and an allowance of E15.00 in lieu of food; or

(c) free food and an allowance of E15.00 in lieu of accommodation;

(5) An entitlement to free food, accommodation or allowances under sub-regulation shall not cease until the employee is back to his normal place of employment.

(6) An employee entitled to subsistence allowance under sub-regulation (4), shall not be entitled to subsistence allowance under sub-regulation (3) in respect of the same period of absence.

(7) Where an employee is transferred to another project site and such transfer prevents him from returning to his normal place of employment, the employer shall provide him with free accommodation and a transfer allowance of E75.00

(8) An employee, who is provided by his employer with accommodation at his place of permanent employment in which his family is residing with the consent of the employer, shall if so required by his employer to transfer to another place of employment other than for the purpose of seasonal employment, be moved at the expense of that employer.

Lay-off.

13. (1) Where an employer is unable to provide work for any employee due to-

(a) unavailability of working materials; or

(b) temporary cessation of work;

the employer may, subject to that employer giving the employee not less than twenty four hours notice, lay-off the employee without pay for a maximum period of thirty calendar days, not more than two times within a period of twelve months, in the circumstances mentioned in sub-regulations (a) and (b).

(2) At the expiry of thirty calendar days the employer shall either provide work for the employee, or terminate his employment under the provisions of the Employment Act;

(3) An employee who is engaged for the duration of a specific project or in connection with a specific project shall, upon commencement of work be notified of the date upon which it estimated the project shall terminate and the notification of such date of termination, shall constitute an adequate notice by the employer to the employee of the date of notice of termination of such contract of service.

Lay-off due to weather.

14. (1) An employee who reports for work at his place of employment at the normal time but who is unable to start work due to inclement weather the employee shall be entitled to a minimum of one and one half hours pay for that day.

(2) Where the employer, on consideration of inclement weather, orders an employee not to report for duty for a specific number of days shall reduce such order into writing and the employee shall be entitled to pay as specified under subsection (1)

(3) An employee who on any day commences work and who, in the opinion of his employer is unable to continue work due to inclement weather, shall be paid for the hours he has worked plus an additional one-and half hours wages.

(4) The employer shall determine whether to start or stop work within the one-and half hours.

Clothing, equipment and protective clothing.

15. (1) If it is necessary to protect an employee from physical or chemical injury which may arise from the work he is required to do, the employer shall supply that employee with adequate protective clothing and such employee shall use the protective clothing as instructed.

(2) The employer of a watchman or security guard shall provide him, free of charge, with boots or shoes, a police whistle, a club and a torch, and where the watchman or security guard is required to work in inclement weather, the employer shall, in addition, provide him with a hat, overcoat or rain coat.

(3) An employee either than a watchman or security guard, who is required to work in direct contact with mass concrete or similar matter which is likely to cause injury to his feet, shall be provided by his employer, without charge, with a pair of gumboots.

(4) An employee either than a watchman who is required to work outdoors in inclement weather shall be provided by his employer, free of charge with a waterproof coat and cap or similar garment.

(5) The clothing and equipment supplied to an employee under this regulation shall be of high

quality and shall remain the property of the employer.

(6) Where protective clothing, supplied to an employee under this regulation, is damaged or lost through the negligence of the employee, the employer may deduct the cost thereof, after due consideration of wear and tear, from wages due to the employee.

(7) Each employee who works on a section of a project which is a double storey or more shall be issued with a hard-hat when the work proceeds into the section of the double storey.

(8) An employer shall, after the completion of a probationary period by the employee, issue such employee a pair of overalls and a pair of safety boots at half the cost price at least twice in a twelve month period.

Retirement Age

16. An employee may retire at age 60.

Severance Allowance

17. Payment of Severance Allowance.

(i) Severance allowance calculated as outlined in Section 34 of the Employment Act, 1980, shall be payable to an employee who leaves service under the following circumstances-

(a) On grounds of age or ill-health, subject to the production of a medical certificate signed by a medical practitioner registered under the Medical and dental Practitioners act, 1970.

(b) resignation after 10 years of continuous service with the same employer;

(c) to the employee's beneficiaries, in the case of such employee's death in service.

(ii) Notwithstanding sub-regulation (i) the payment of severance allowance under any other circumstances not mentioned in sub-regulation (i) shall be governed by Section 34 of the Employment Act 1980.

Revocation of Legal Notice No. 150 of 2002.

18. The Regulation of Wages (Building and Construction Industry) Order, 2002 is revoked.

FIRST SCHEDULE

(REGULATION 3 AND 4)

Clerk (without a certificate)	E4.47p/h
Clerk (with certificate)	E4.62p/h
Cook	E4.47p/h
Crane driver (mobile)	E8.60p/h
Crane driver (tower)	E7.95p/h
Driver (light vehicle)	E4.86p/h
Driver (heavy duty)	E6.00p/h
Driver (extra heavy)	E6.57p/h

Earthmover operator	E8.61p/h
Reinforcement Fixer	E4.61p/h
General Labourer	E4.47p/h
General Tradesman	E4.61p/h
Grade III Trade Tested	E4.61p/h
Grade II Trade Tested	E6.54p/h
Grade I Trade Tested	E9.75p/h
Induna	E4.95p/h
Plant Operator	E4.95p/h
Storeman	E4.65p/h
Tea Maker	E2.80p/h
Typist	E4.61p/h
Watchman/Security Guard	E39.30 per shift
Survey and Soil Assistant	E4.61p/h
Structure Steel erector	E7.13p/h
Scaffolding erector	E4.61p/h

SECOND SCHEDULE

WRITTEN PARTICULARS OF EMPLOYMENT FORM

1. Name of Employer
2. Name of Employee
3. Date of Employment began
4. Wage and method of calculation
5. Interval at which wages are paid
6. Normal hours of work
7. Short description of employee's work
8. Probation Period
9. Annual Holiday Entitlement
10. Paid Public Holiday
11. Payment during sickness
12. Maternity Leave (if employee female)
13. Notice employee entitled to receive
14. Notice employee required to give
15. Pension Scheme (if any, other than N.P.F Scheme)

employer other than under the provisions of section 36 of the Employment Act, 1980, or regulation 13 the employee shall be paid, as part of the benefits accruing under his contract of service, a severance allowance amounting to ten working days' wages for each completed year in excess of the one year that he has been continuously employed by that employer.

(2) In calculating the amount of the severance allowance to which the employee is entitled under subsection (1) any employment by an employee with the employer concerned prior to the 1st January 1968 shall be discharged.

(3) If an employer operates or participates in, and makes any contribution to any gratuity pension or provident fund (other than the Swaziland National Provident Fund established by the Swaziland National Provident Fund Order, 1974) which is operated for the benefit of his employees, the employer on termination of employment of an employee, shall be entitled to repayment from the gratuity, pension or provident fund equal to the employers total contribution to that gratuity, pension or provident fund in respect of the employee to whom a severance allowance is to be paid under this section.

(4) The amount of the repayment under subsection (3) shall not exceed the total amount of the severance allowance paid by the employer under section subsection (1).

(5) For the purpose of this section, the term "wage" shall mean the wages payable to the employee at the time his services were terminated.

Employees services not to be unfairly terminated .

5. (1) This section shall not apply to -

- (a) an employee who has not completed the period of probationary employment provided for in section 32 of the Employment Act, 1980;
- (b) an employee whose contract of employment requires him to work less than twenty-one hours each week;
- (c) an employee who is a member of the immediate family of the employer;
- (d) an employee engaged for a fixed term and whose term of engagement has expired.

(2) No employer shall terminate the services of an employee unfairly,

(3) The termination of an employees services shall be deemed to be unfair if it takes place for any one or more of the following reasons -

- (a) the employees membership of an organisation or participation in an organisations activities outside working hours or with the consent of the employer, within hours;
- (b) because the employee is seeking office as , or is acting or has acted in the capacity of an employees representative;
- (c) the filling in good faith of a complaint or the participation in a proceeding against an employer involving alleged violation of any law or the breach of the terms and conditions of employment under which the employee is employed;
- (d) the race, colour, religious, marital status, sex, national origin, tribal, or clan extraction,

political affiliation or social status of the employee;

- (e) where the employee is certified by a medical practitioner as being incapable of carrying to normal duties because of medical condition brought about by work carried out by the employee for his present employer except where the employer proves that he has no suitable alternative employment to offer that employee;
- (f) because of the employee's absence from duty due to sickness certified by a medical practitioner for a period not exceeding six months, or to accident or injury arising out of his employment, except where the employer proves that, in all the circumstances of the case, it was necessary for the employer permanently to replace the employee at the time his service are terminated.

Fair reasons for the termination of an employee's service.

6. It shall be fair for an employer to terminate the services of an employee for any of the following reasons-

- (a) because the conduct or work performance of the employee has, after written, been such that the employer cannot reasonably be expected to continue to employ the employee;
- (b) because the employee is guilty of a dishonest act, violence, threats or ill treatment towards his employer, or towards any member of the employer's family or any other employee of the undertaking in which the employee is employed;
- (c) because the employee willfully causes damage to the buildings, machinery, tools, raw materials or other objects connected with the undertaking in which the employee is employed;
- (d) because of the employee, either by imprudence or carelessness, endangers the safety of the undertaking or any person employed or resident therein;
- (e) because of the employee has willfully revealed manufacturing secrets or matters of a confidential nature to another person which is, or is likely to be detrimental to the employer,
- (f) because the employee has absented himself from work for more than a total of three working days in any period of thirty days without either the permission of the employer or a certificate signed by a medical practitioner certifying that the employee was unfit for work on those occasions;
- (g) because the employee refuses either to adopt safety measures or follow instructions of his employer in regard to the prevention of accidents or disease;
- (h) because the employer has been committed to prison and thus prevented fulfilling his obligations under his contract of employment;
- (I) because the employee is unable to continue in employment without contravening this regulation or any other law;
- (j) for any other reason which entails for the employer or the undertaking similar and detrimental consequences to those set out in this section. (Amended Act 11/1981, Act 4/1985).

Certificate of employment.

7. Any employee whose services are terminated shall be entitled to receive on request, at the time of such termination, a certificate from his employer specifying the dates of his engagement and termination and the nature of the work on which he has been employed.

Suspension from employment.

8. (1) An employer may suspend an employee from employment without pay where the employee is remanded in custody.

(2) Where an employee is subsequently acquitted of the charge for which he was placed in custody, the suspension shall be lifted, and subject to sub section 3, the employer shall not be obliged to pay any wages to the employee for the period he was in custody.

(3) Where the employee is remanded in custody as a result of a charge laid by employer and is subsequently acquitted of that charge, the employer shall pay to the employee an amount equal to the remuneration he would have been paid for the period spent in custody had he not been in custody.

Employee to give notice of redundancies.

9. (1) For the purpose of this regulation the term Aemployee A shall be not to include any employee-

(a) engaged on a seasonal contract;

(b) who is a casual employee

(2) Where an employer contemplates terminating the contracts of employment of five or more employees for reason of redundancy, he shall give not less than one month's notice thereof in writing to the will which is a party to a collective agreement and information -

(a) the number of employee likely to become redundant;

(b) the occupations and remuneration of the employees affected;

(c) the reasons for the redundancies ; and

(d) the date when the redundancies are likely to take effect

Remedies against unfair termination of services.

10. (1) Where an employee alleges that his services have been unfairly terminated, or that the conduct of the employer towards him has been such that the employee can no longer be expected to continue in his employment, the employee may file a complaint with the Labour Commissioner, whereupon the Labour Commissioner, using the powers accorded to him Part II of the Employment Act, 1980 shall seek to settle the complaint by such means as may appear to be suitable to the circumstances of the case.

(2) Where the Commissioner of Labour succeeds in achieving a settlement of the complaint, the terms of the settlement shall be recorded in writing ,signed by the employer and by employee and

witnessed by the Commissioner of Labour one copy of the settlement shall be given to the employer, one copy shall be given to the employee and the original shall be retained by the Commissioner of Labour.

(3) If the Commissioner of Labour is unable to achieve a settlement of the complaint within twenty-one days of it being filed with him, the complaint shall be treated as an unresolved dispute

and the Commissioner of Labour shall forthwith submit a full report thereon to the Industrial Court which will then proceed to deal with the matter in accordance with the Industrial Relations Act.

Burden of proof.

11. (1) In the presentation of any complaint under Part V of the Employment Act, 1980 the employee shall be required to prove that at the time services were terminated that the employee was an employee to whom section 12 applied.

(2) The services of an employee shall not be considered as having been fairly terminated unless the employer proved -

- (a) that the reason for the termination was one permitted by section 13 and
- (b) that, taking into account all the circumstances of the case, it was reasonable to terminate the services of the employee.

Repatriation of employees.

12. (1) Where an employee has been brought to the place of the employment by the employer, or by a person acting on his behalf, and the employee's contract of employment is terminated by the employer for any cause, the employer shall be liable for the expenses of repatriating the employee by reasonable means to the place from which the employee was brought.

(2) The expenses of repatriation shall include -

- (a) the cost of travelling and subsistence expenses for the journey
- (b) subsistence expenses during the period, if any, between the date of the termination of the contract and date of repatriation.

Offences under this Part

13. Any employee who -

- (a) except where section 33 (8) of the Employment Act, 1980 (Section 3 of this Schedule) applies, fails or refuses to give an employee whose services are being terminated the minimum period of notices required by that section;
- (b) fails or refuses to an employee whose services are being terminated to be absent from work for the purposes of seeking other employment as required by section 34 (6) section 4 of this Schedule;
- (c) terminates the contracts of employment of five or more of his employees for reasons of redundancy without giving prior notice thereof as required by section 40 (section 10 of this Schedule); or

(d) fails to pay the expenses of repatriating an employee as required by section 43 (section 12 of this Schedule);

(e) fails to pay severance allowance as required by regulation 10 shall be guilty of an offence and liable on conviction therefore to a fine of two hundred and fifty Emalangeni or imprisonment for three months.

M. E. VILAKATI
Principal Secretary
Ministry of Enterprise and Employment

LEGAL NOTICE NO. 50 OF 2004

THE WAGES ACT, 1964
(Act No. 16 of 1964)

THE REGULATION OF WAGES (DOMESTIC EMPLOYEES) ORDER, 2004
(Under Section 11)

In exercise of the powers conferred upon him by Section 11 of the Wages Act, 1964, the Minister for Enterprise & Employment hereby makes the following order-

Citation and commencement.

1. This Order may be cited as the Regulation of Wages (Domestic Employees) Order, 2004 and shall be deemed to have come into effect on the 1st March, 2004.

Interpretation.

2. In this Order, unless the context otherwise requires-

“casual employee” means a domestic employee who is employed for not more than one day at a time and who is paid at the end of the day’s work;

“children’s nurse” means a person who takes care of children and oversees their activities, gives children all necessary assistance, carries out such other duties in connection with the care of children, including the washing of their clothes, as may be required;

“cook” means a person who is capable of, and is mainly engaged in, preparing and cooking meals suitable to the dietary and other requirements of the household in which he/she is employed and who may be required to assist in other household duties;

“domestic employee” means any person employed in or about any private household or part thereof in the capacity of cook, house attendant, waiter, butler, childrens’ nurse, valet, groom, gardener, laundress, or watchman;

“gardener” means a person who carries out all gardening activities including the planting and cultivation of flowers, shrubs and vegetables, maintains lawns and paths and attends to cleanliness of compounds and yards and, who may be required to carry out other duties such as cleaning vehicles;

“house attendant” means a person who carries out domestic duties including the preparation of food, washing of dishes, cleaning rooms, dusting and polishing furniture, washing windows, washing clothes and textiles by hand and ironing them, making bed etc;

“laundress” means a person who is mainly employed to carry out washing of clothing using either the washing machine or washing the clothing by hand and ironing them using any kind of iron;

“part time employee” means a domestic employee, other than a casual employee, who is employed for less than twenty four hours in any week;

“public holiday” means a public holiday mentioned in regulation 9 (1);

"watchman" means a person who is responsible for the safeguard of his employer's property against fire, theft and illegal entry; carries out such other duties as are similar to these responsibilities, as required by his employer.

"herdsman" means a person who looks after domestic animals such as goats, cattle, donkeys etc and may include any other general domestic duties such as cleaning the yard, mending a kraal and carrying out other duties associated with those of a handyman provided the pastures are protected.

Application.

3. This Order shall apply to all persons employed as domestic employees as specified in the First Schedule.

Basic Minimum Wage.

4. (1) The basic minimum wage to be paid to employees specified in the First Schedule shall be calculated at a rate not less than that specified therein.

(2) The daily and hourly rates specified in the First Schedule shall be the basic minimum wage applicable to part time and casual employees only.

Hours of Work.

5. The normal working week shall consist of forty-eight hours, exclusive of meal breaks, spread over six days each of eight hours in a week or as may be agreed between the employer and the employee.

Overtime.

6. (1) An employee required to work in excess of the normal hours of work referred to in Regulation 5 or on any day as agreed between the employer and the employee, shall be paid for such overtime at the rate of one and half times his normal rate of wages.

(2) For any time worked on a Public holiday specified in regulation 9 and on a rest day shall be paid at double time.

Annual leave.

7. (1) On completion of twelve months continuous service with an employer, an employee shall, be entitled to annual leave of not less than twelve working days with full pay and which may be taken at a time convenient to both parties.

(2) Any employee whose services are terminated after three months' service shall be paid at the time of termination pro rata cash payment in respect of leave earned but not taken and such pro rata cash payment shall be equal to not less than one day's wage for each month during which leave had been earned but not taken.

Sick Leave.

8. (1) After three consecutive months of continuous service with an employer and subject to the production of a medical certificate signed by a medical practitioner, registered under the Medical and Dental Practitioners Act, 1970, an employee shall be entitled to sick leave up to a maximum of fourteen days on full wages and thereafter to a maximum of fourteen days on half wages in each

period of twelve months continuous service.

(2) Notwithstanding sub-regulation (1),:-

- (a) an employee shall not be entitled to the benefits provided for under sub-regulation (1) if the sickness or accident causing his absence was as a result of his own negligence or misconduct; and
- (b) a certificate issued by a registered nurse shall be accepted in place of a medical certificate if a medical practitioner is not available.

Paid Public Holidays.

9. (1) The following shall be public holidays with full pay:-

Ascension day;

Easter Monday;

Good Friday;

Incwala Day;

King's Birthday;

Umhlanga (Reed Dance) Day;

Somhlolo Independence Day;

Christmas Day;

Boxing Day;

New Year's Day;

National Flag Day; and

May Day.

(2) No employee shall be entitled to payment under sub regulation (1) unless he is available for work on a working day immediately before and after the public holiday.

Maternity Leave.

10. (1) After nine months of continuous service with an employer, and subject to the production of a certificate signed by a registered nurse recommending that an employee should refrain from work because she is pregnant, an employee shall be entitled to thirty (30) working days maternity leave on full pay thereafter without pay in respect of that pregnancy.

(2) Such leave shall be in addition to any sick leave to which the employee may be entitled under Regulation 8.

(3) No employee shall be entitled to maternity leave provided for under sub-regulation(1) for two (2) consecutive years.

Uniforms.

11. An employer shall, as a condition of employment, provide suitable uniform for the domestic employee, casual employee, or part time employee, whichever is the case and such uniform shall remain the property of the employer.

Compassionate Leave.

12. (1) An employee who has completed the probation period shall be entitled to compassionate leave as follows-

- Widows - 37 working days with full pay;
- Widower - 7 working days with full pay ;
- Natural father or mother - 7 working days with full pay;
- Natural Child - 7 working days with full pay; and
- Married woman's mother - in-law
- or father -in-law - 7working days with full pay.

Written particulars of employment to be provided

13. An employer shall on engagement of an employee, give such employee a completed copy of the form on the Second Schedule of this Order.

Rest Day

14. Every employee shall be granted one rest day each week; such day to be fixed by mutual agreement between the employee and his employer.

Accommodation.

15. Where an employer requires an employee to occupy accommodation provided by the employer as part of his conditions of employment, such accommodation shall be provided free of charge to the employee.

Revocation of Legal Notice No. 166 of 2001

16. The Regulation of Wages (Domestic Employees) Order, 2001is revoked.

FIRST SCHEDULE**Basic Minimum Wage**

	Monthly	Daily	Hourly
Cook	400.23	15.39	1.92 cents
Gardener	390.45	15.02	1.88 cents
House attendant	390.45	15.02	1.88 cents
Laundress	390.45	15.02	1.88 cents
Childrens' nurse	390.45	15.02	1.88 cents
Herdsman.....	390.45	15.02	1.88 cents

Watchman to be paid as provided under the Regulation of Wages (Security Services Industry) Order.

The monthly rate specified in the first column of the above Schedule shall be the basic minimum wage for employees engaged on a monthly contract inclusive of the ration element.

The daily rate specified in the second column of the Schedule shall be the basic minimum wage for part time employees engaged on a daily contract inclusive of the ration element.

The hourly rate specified in the third column of the Schedule shall be the basic minimum wage for casual employees employed casually and paid by the hour inclusive of the ration element.

SECOND SCHEDULE

(Regulation II)

WRITTEN PARTICULARS OF EMPLOYMENT FORM

1. Name of employer
2. Name of Employee
3. Date of Employment
4. Wage and method of calculation
5. Internal at which wages are paid
6. Normal hours of work

7. Short description of employee's work
-
8. Probation Period
9. Annual Holiday Entitlement
10. Paid Public Holiday
11. Payment during sickness
12. Compassionate Leave
13. Maternity Leave (if employee female)
14. Notice employee entitled to receive
15. Notice employee required to give
16. Pension Scheme (if any, other than N.P.F Scheme)
-
17. Any other matter either party wishes to include

Notes: (a) An industry Union is recognised by this undertaking. Any employee is free to join it.

(b) The grievance procedure in this undertaking requires that a grievance should be first referred to

.....

.....

.....

(c) When any heading is inapplicable enter nil.

Signed : Employer

..... Employee

..... Witness

..... Date

J. G. DLAMINI
Acting Principal Ssecretary
Ministry of Enterprise Employment

LEGAL NOTICE NO. 51 OF 2004

THE WAGES ACT, 1964
(Act No.16 of 1964)

THE REGULATIONS OF WAGES (MANUFACTURE AND SALE OF HANDICRAFT
INDUSTRY ORDER, 2004
(Under Section 11)

In exercise of the powers conferred on him by Section 11 of the Wages Act, 1964, the Minister for Enterprise and Employment hereby makes the following Order.

Citation and Commencement.

1. This Order may be cited as the Regulation of Wages (Manufacture and Sale of Handicrafts) Order 2004 and shall be deemed to have come into effect on the 1st March, 2004.

Application.

2. This Order shall apply to all persons employed in any undertaking which consists wholly or mainly in the carrying on of one or more of the following activities -

- (a) the manufacture primarily by hand, with minimal use of powered machines of spinning, glass-work, grass-plaiting, weaving, knitting, sewing, batic-work, carving, dyeing, casting, forging, pottery, tanning, painting screen printing and drawing of goods to be sold as handicrafts of Swaziland, glass planting, neating, batic-working ; or
- (b) the sale of handicrafts in establishments responsible for or associated with or part of undertakings for the manufacture of goods described in the preceding paragraph (a):

Provided that this Order shall not apply to persons employed by -

- (i) the government of Swaziland;
- (ii) a local authority; or
- (iii) such charitable, or religious organisations or medical institutions declared in writing, by the Minister to be exempted from the provisions of these Regulations.

Interpretation.

3. In third Order, unless the context otherwise requires -

“bobbin winder” means an employee who winds yarn into a bobbin in preparation for weaving with hand;

“carder” means an employee who cards by hand or machine;

“casual labour” shall have the same meaning as that ascribed to it in the Employment Act;

“checker” means an employee who checks the receipt of unfinished goods and raw materials

or the despatch of finished goods or unfinished goods and checks quality and quantity;

"clerk/storeman" means an employee who undertakes clerical duties, correspondence preparation, filing and despatch, keeping stores and stock control, invoicing and the handling of petty cash;

"craftsman" means a person who, after completing 6 months period as a trainee craftsman, grass-plaiting is appointed to be a craftsman in spinning, weaving, knitting, sewing, carving casting, forging, molding, pottery tanning, painting, drawing batik, candlemaking or in whatever other aspect of handicraft he may be assigned to exercise his skill or skills;

"cleaner" means an employee who is responsible for the cleaning of the factory, offices, toilets or canteen;

"cook" means an employee who is engaged in cooking and issuing food to other employees;

"continuous service" means service in the employment of the employer interrupted only by the death, retirement or discharge of the employee concerned and an employee who is re-engaged within two months of his discharge shall be deemed to be in the continuous service of that employee;

"driver (LDV)" means an employee in possession of a current driving licence who drives a vehicle of not more than 3 tons tare weight, and whose responsibilities include the care and cleanliness of the vehicle, simple maintenance, the handling of cargo to and from the vehicle and such other duties as from time to time, may be assigned to him;

"dyer" means an employee who prepares dyes, mixes and supervises the dying of materials;

"engraver" means an employee who engraves, smoothens, polishes the finished glassware and carries out duties related thereto;

"engraver assistant" means an employee who engraves, smoothens, polishes the finished glass ware and carries out duties given by the engraver;

"finisher" means a person who is employed to complete the manufacture of any article and makes final preparations for its sale or display;

"general labourer" means a person employed to perform tasks not requiring the exercise of particular skills or scholastic attainment;

"handyman" means an employee who does not hold a trade test certificate but who carries out simple repairs and supervises and allocates work to subordinate staff under his control;

"machinist" means an employee who operates an electrical sewing machine to manufacture clothing or garment;

"machinist assistant" means an employee, other than a learner machine operator, who attends and operate a guillotine machine, bending machine, spot welding machine or any other machine requiring similar skills;

"machine operator" means an employee, other than a learner operator, engaged in operating a machine;

"master screen printer" means an employee who is capable of cutting screen mixing pigments and has thorough knowledge of screen printing techniques;

"master potter" means an employee who is skilled in making pots to any specification, who has a general knowledge of glazing and firing techniques;

"master weaver" a person who knows all aspects of weaving both frame and loom weaving, preparing of warps and warping materials and production of woven articles to specification;

"master silversmith" means an employee who is capable of working silver to any specification;

"melter" means an employee who melts glasses in glass factory;

"outworker" shall have the same meaning as that ascribed to it in the Employment Act;

"office clerk" means an employee who does, general clerical duties including typing and answering the telephone;

"piece work" shall have the same meaning as that ascribed to it in the Employment Act;

"potter" means an employee who makes pots by hand or pot wheels;

"security guard" or "watchman" shall mean a person employed to protect his employer's premises and property and, generally, to safeguard the livelihood of the employer's work force;

"shop assistant" means a person employed to sell goods to the public, to transact business with customers, to display goods that are for sale, to prepare invoices and receipts, to receive and disburse cash and remittances, to pack goods purchased by customers and to ensure the cleanliness and good appearance of the sales premises;

"supervisor" means a person employed to oversee the work, quality of work and productivity of the personnel placed in his charge and to be responsible for their conduct and discipline;

"screenprinter" means an employee who screenprints by hand pulling a squeegee;

"semi-skilledkiln hand" means an employee who has limited knowledge in operating kiln and packs it according to specification;

"silver-smith" means an employee who is capable of working silver by hand;

"spinner" means an employee who carries out spinning operations of wool or other materials according to specification;

"trainee craftsman" means a person who, after successful conclusion of the probation period has been appointed to be a trainee craftsman and who serves in that capacity in whatever skill or craft he may be assigned for a period, not exceeding 6 months from the date of appointment;

"weaver" means an employee who carries out duties either by operating hand loom or other equipment to manufacture the required goods;

"washer" means an employee who washes and dries material or wool and if necessary moth-proof the wool;

Basic Minimum Wage

4. The basic minimum wage inclusive of rations or cash in lieu thereof to be paid to employees specified in the First Schedule shall be calculated at a rate not less than that specified therein provided that :-

- (a) an employee who, at the date of the commencement of this Order is in receipt of a wage higher than that prescribed by this Order, shall not suffer any reduction in such wages by reason of this order; and
- (b) where no definition of an employees duties are provided for in the Order such employee shall be paid a basic wage not less than that applicable to a general labourer.

Hours of Work.

5. The normal working hours for employees, other than those engaged as outworkers, piece workers and casual labourers and subject to the provisions of regulations 6 of this Order shall be :-

- (a) for those engaged, other as watchman or casual labourers, forty five hours a week; and
- (b) for those engaged as security guards or watchman, sixty hours in five shifts of twelve hours each in a week.

Overtime.

6. (1) An employee required to work hours in excess of weekly hours specified in regulation 5 shall be remunerated as follows for any hours so worked :-

- (a) for hours worked on a day, other than Sunday or a public holiday specified in regulation 7 in excess of those specified in regulation 6 of this Order shall be at the rate of one and a half times the hourly rate; and
- (b) for hours worked on a Sunday or a public holiday specified in the regulation 7, in excess of those specified in regulation 5 (a) payment shall be at the rate of twice the hourly rate.

(2) An employee engaged as a security guard or watchman required to work hours in excess of those specified in regulations 5 (b) or who is required to work on a public holiday specified in regulation 7 shall be remunerated for the hours so worked at twice the hourly rate or, by agreement between the employee and the employer, shall be granted an equivalent amount of time off on another occasion in lieu of thereof;

(3) The basic hourly rate of wages shall be calculated :-

- (a) in respect of employees whose hours are specified in regulation 5 (a) by the division of the monthly rate of wages specified in the First Schedule by one hundred an ninety three hours and half an hour (193.5 hours) ;and
- (b) in respect of employees whose hours are specified in regulation 5 (b) by the division of the monthly rate of wages specified in the First Schedule by two hundred and ten hours (210 hours)

Public Holiday

7. (1) The following shall be public holidays with full pay -

Incwala;

New Years Day;

Good Friday;

Easter Monday;

King's Birthday (19th April);

Umhlanga;

Somhlolo Day;

Christmas Day;

Boxing Day; and

Workers Day.

(2) Where a public holiday falls on a Sunday, the following day shall be deemed to be a public holiday.

(3) An employee who is absent without leave on the working day before or the working day after public holiday, shall not be entitled to any payment in respect of that public holiday in terms of this Regulation.

Payment for Overtime.

8. (1) For an employee other than a watchman or security guard shall be payable at the following rate -

- (a) during the normal working week, for overtime worked before midnight in excess of the normal working hours, at one and half times his normal hourly rate of wages;
- (b) for any time worked on a public holiday specified in regulation 7 or Sunday at twice his normal hourly rate of wages.

(2) Overtime in respect of a watchman or security guard shall be calculated at twice his hourly rate for all time worked on a public holiday specified in regulation 7 or any time worked in excess of twelve hours on any normal working day, provided that any watchman or security guard who has been absent from work during any week without reasonable cause shall not be entitled to overtime in that week until he has completed seventy-two hours of work.

Annual Leave.

9. (1) After three months of continuous service, an employee shall be entitled to one working day's leave on full pay in respect of each months continuous service, such leave is in addition to the Public Holidays specified in regulation 7.

(2) Where the employment of an employee is terminated after a period exceeding three months but not amounting to one year from the date of its commencement the employer shall pay to the employee a sum not less than one days' wages for each completed month of such period.

Sick Leave.

10. (1) After three months of continuous service with an employer and subject to the production of a medical certificate signed by a medical practitioner, registered under the Medical and Dental Practitioners act, 1970, an employee shall be entitled to sick leave up to a minimum of fourteen days on full wages and thereafter to a maximum of fourteen days on half wages in each period of twelve months continuous service..

(2) Notwithstanding sub-regulation (1),

- (a) an employee shall not be entitled to the benefits specified in sub-regulation (1) if the sickness or accident causing his absence was caused by his own negligence or misconduct;
- (b) a certificate issued by a registered nurse shall be accepted in place of a medical certificate if a medical practitioner is not available.

Maternity Leave

11. (i) Every female employee, whether married or unmarried, who has been in the continuous employment of her employer for twelve months or more shall be entitled to maternity leave on full pay for a period not exceeding one month (30 calendar days) upon delivering to her employer of-

- (a) a certificate issued by a medical practitioner or a midwife setting the expected or actual date of her confinement ; or
- (b) such other evidence in support of the entitlement to maternity leave as is reasonable, having regard to all the circumstances of the case:

(ii) Provided that no employee shall be entitled to the maternity leave provided for under sub-regulation (i) for two (2) consecutive years.

Compassionate Leave

11. (1) After three months of continuous service, an employee shall be entitled to compassionate leave with full pay as follows:

- Widow/Widower - 37 calendar days
- Child - 7 calendar days
- Natural parents - 7 calendar days

(2) Entitlement to compassionate leave of any other relatives in addition to the above shall be at the discretion of the employer.

Written particulars of employment to be provided.

12. An employer shall on engagement of an employee, give such employee a completed copy

of the form on the Second Schedule of this Order.

Continuous Service.

13. Where, following upon a change of ownership of an establishment or undertaking an employee enters the service of the new owner without interruption, his service shall be deemed to be continuous service in the employment of the new owner.

Protective clothing.

14. Where it is necessary to protect an employee from physical or chemical injury which may arise from the work he is required to do, the employer shall supply that employee with protective clothing and such employee shall use the protective clothing as instructed.

Lay-Off.

15. (1) Where an employer is unable to provide work for any employee due to -

- (a) unavailability of working materials; or
- (b) temporary cessation of work,

he may, subject to him giving the employee not less than twenty four hours notice, lay-off the employee, without pay, for a maximum period of fifteen working days in the circumstances mentioned in sub-regulation (a) and for a maximum period of thirty working days in the circumstances mentioned in sub-regulation (b).

(2) At the expiry of fifteen working days or thirty working days as may be applicable, the employer shall either provide work for the employee, or terminate his employment under the provisions of the Employment Act.

(3) An employee who has been engaged for the duration of a specific project or in connection with a specific project shall, upon commencement of work be informed of the date upon which it is estimated the project will terminate.

(4) The specifying of such date of termination, notwithstanding any other law whether or not the project has in fact terminated, shall constitute an adequate notice by the employer to the employee of the date of notice of termination of such contract of service.

Piece Work.

16. An employee engaged on piece work shall be remunerated at a rate not less than that specified in the First Schedule.

Revocation of Legal Notice No. 44 of 2002.

17. The Regulation of Wages (Manufacture and Sale of Handicrafts) Order, 2002 is revoked.

FIRST SCHEDULE
(Regulation 4)

BASIC MINIMUM WAGE
(Emalangen per month)

General Labourer	E440.00
Cleaner	
Trainee Craftsman	
Piece Worker	
Washer	
Cook	
Casual Labourer	

Batik Maker	
Carder	
Bobbin Winer	
Spinner	E506.00
Handyman	
Finisher	
Melter	
Engraver Assistant	
Machinist Assistant	
Semi-skilled Kiln hand	
Security Guard	

Office clerk	
Shop Assistant	
Machine Operator	E550.00
Machinist	
Weaver	
Engraver Craftsman	
Potter	
Screenprinter	
Silversmith	

Master Potter	
Master Weaver	
Master Silverfish	
Master Screenprinter	E616.00
Clerk/Storeman	
Master Dyer	
Checker Driver	
Supervisor	

SECOND SCHEDULE
Regulation 12

WRITTEN PARTICULARS OF EMPLOYMENT FORM

1. Name of Employer
2. Name of Employee
3. Date Employment began
4. Wage and method of calculation
5. Interval at which wages are paid
6. Normal hours of work
7. Short description of employee's work
.....
.....
8. Probation Period
9. Annual Holiday Entitlement
10. Paid Public Holiday
11. Payment during sickness
12. Maternity Leave (if employee female)
13. Notice employee entitled to receive
14. Notice employee required to give
15. Pension Scheme (if any, other than N.P.F. Scheme)
16. Any other matter either party wishes to include

Notes (a) An Industry Union is recognised by this undertaking any employee is free to join it.

The address of the Industry Union is:

.....
.....

(b) The grievance procedure in this undertaking requires that a grievance should be first referred to

When any heading is inapplicable enter nil

Signed Employer
..... Employee
..... Witness
..... Date.

J.G. DLAMINI
Acting Principal Secretary

The address of the Industry Union is

(b) The grievance procedure in the collective bargaining agreement should be first

referred to

When any heading is responsible under all

Employer

Employees

Witness

Date

I.O. O'LEARY
Acting Regional Secretary