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R. 625 Basic Conditions of Employment Act (75/1997): Investigation into minimum wages and conditions of employment of domestic workers: Invitation for representations .....

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## GOVERNMENT NOTICE

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### DEPARTMENT OF LABOUR

No. R. 625

10 July 2001

#### **BASIC CONDITIONS OF EMPLOYMENT ACT, NO 75 OF 1997**

#### **INVESTIGATION INTO MINIMUM WAGES AND CONDITIONS OF EMPLOYMENT OF DOMESTIC WORKERS INVITATION FOR REPRESENTATIONS**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, in terms of Section 54 of the Basic Conditions of Employment Act, No 75 of 1997, hereby announce that the report attached hereto on the outcome of the investigation into minimum wages and conditions of employment has been submitted to the Employment Conditions Commission for their consideration and advise.

Interested parties are hereby given the opportunity to make written representation to the Employment Conditions Commission on the content of the report. Such representations must be submitted to the following address within 60 days after publication of this notice.

The Chairperson, Employment Conditions Commission, c/o Directorate Employment Standards, Department of Labour, Private Bag X 117, PRETORIA, 0001.

**M M S MDLADLANA MP  
MINISTER OF LABOUR**

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## **EXECUTIVE SUMMARY**

# **INVESTIGATION INTO MINIMUM WAGES AND CONDITIONS OF EMPLOYMENT OF DOMESTIC WORKERS**

### **1. Introduction**

The state carries the responsibility of protecting vulnerable workers. Domestic workers enjoy protection under the Basic Conditions of Employment Act, 1997 (BCEA). However these standards are not always tailored to their specific needs. The BCEA does not itself lay down minimum wages, but provides for sectoral determinations, which do so for particular sectors. The Minister of Labour therefore instructed the Director-General to conduct an investigation into the establishment of minimum wages and conditions of employment for domestic workers.

Domestic workers represent a particularly vulnerable category of workers. In general, domestic work is an undervalued activity performed by people from disadvantaged social groups. It is work with perceived low economic value and limited social recognition.

Domestic work is performed in the homes of the worker's employers and their main duties include cleaning, cooking, gardening, looking after children the old and the frail and driving for the household.

Domestic work is perceived as an extension of unpaid household duties. Consequently women domestic workers are not always seen as wage labourers.

### **2. Profile of a domestic worker**

The picture of domestic work that emerges is one of people – mainly women – entering the domestic service not by choice, but rather as a means to alleviate poverty.

Domestic workers as members of a community service sector tend to exhibit similar characteristics globally: isolation, invisibility and low organization.

Black women mainly perform domestic work in South Africa. The majority of workers have a primary education or less. Their average age is 41 years. The majority of workers are based in rural areas.

Domestic workers find themselves within a highly individualized employment relationship, subjected to unequal power relations, which contributes towards their vulnerability.



The challenge is to find a balance between decent employment standards, flexibility to meet the needs of the employers within the sector, and maintenance or increasing levels of employment.

### **3. Present conditions of employment**

The Basic Conditions of Employment, Act 1997, is already applicable to domestic workers. These conditions compare positively with international standards. Observations from the hearings indicated that there is a lack of awareness about some aspects of the legislation.

The investigation revealed that the management and control of working time is difficult and complex. Different standards regarding hours of work apply to live-in and live-out domestic workers and the first category of workers generally is worst off. They are more likely to have to be available for work at all hours, have inadequate resting time, etc. Employers seldom consult the legislation when overtime, Sunday time and payment for work on a Public Holiday is calculated. The sectoral determination should clearly determine working time issues. A contract of employment would also be useful in formalizing arrangements in this respect.

Domestic workers experienced incidents of intolerance when it came to the granting of sick and family responsibility leave. However should the relationship be good, few problems are experienced and some employers grant more leave than prescribed by the legislation. The major proportion of annual leave is taken during December and April of each year. The recording of the different periods and types of leave is problematic and the sectoral determination could address this issue by providing standardized leave forms.

The provision of a contract of employment or issuing of written particulars of employment was a common demand and could form the cornerstone through which the employer/employee relationship could be formalized.

In respect of accommodation, domestic workers complained less about the standards of their accommodation and more about their privacy and refusal by the employer to receive friends and family. A contract of employment/agreement would be useful to regulate arrangements in this respect.

The provisions on termination of employment and payment of severance pay as contained in the BCEA are sufficient. However a probation period of several months is proposed since the relationship is highly individualized. A wrong choice in this respect could put the domestic worker and household through unnecessary trauma.

Other benefits such as food, clothes, medical assistance, when they are provided, are more often than not provided free of charge. No conclusive proof could be found that lower wages are paid in lieu of such benefits.

Employers seldom complied with the provision in the BCEA that stipulates that a certain amount had to be added to the wage for the calculation of overtime pay, Sunday pay, pro rata leave, etc. The continuation of the payment in kind provisions must be carefully considered in that it is difficult to determine the monetary value of the said benefit.

#### **4. Present wage levels**

Domestic workers are some of the lowest earners in the South African labour market. The evidence shows that they receive substantially lower earnings than other occupational groups except farm workers. The national median wages for domestic workers in 2000 were R409,00 in rural areas and R588,00 per month in urban areas. A domestic worker will earn about 20% of the wage of a clerk. If occupations are aggregated into skilled, semi-skilled and unskilled categories the following trends emerge:

- domestic workers earn between 7% and 12% of the income earned by skilled workers
- the wage of domestic workers is between 20% and 30% of the semi-skilled workers
- excluding farm workers, domestic workers earn between 37% and 43% of the wage of unskilled workers.

The rural wages is about 70% of the urban wage. Clearly, as would be expected, earnings for domestics are distinguished according to location.

The age data reveals that older domestic workers generally earn more than younger ones.

The highest earners were those in Gauteng. This is expected given that the province is highly urbanised and that it is the richest province in the country. Somewhat surprisingly, the provinces with the highest wages after Gauteng were found in Mpumalanga and the Northern province, the latter being one of the poorest provinces in the country. The relatively low wages for the Western Cape may be explained by the significant number of rural domestic workers included in this province. The lowest earners were located in the Free State, followed by the Northern Cape and Eastern Cape, with the Free State reporting the lowest wage of R326,00 per month.

The Gini coefficient provides information on income inequality. The national Gini is about 0.6, reflecting, as is well known, a highly unequal society. The Gini for domestic workers is about 0.4. What this suggests is that, relative to the national estimate, there is a lower level of income inequality amongst domestic workers themselves. This serves to highlight the fact that in the wage determination around domestic workers, the problem is not high levels of differential earnings amongst these workers, but rather the very low absolute levels of earnings of these employees.

Information gathered from the hearings and surveys on wage levels vary. It is not possible to make direct comparison between what domestic workers reported and employers' reports. Employers tend to report higher wage levels, which probably include compensation for payment in kind. Wage levels vary between areas within a province as well as between provinces, which strongly suggest that the determination of a minimum wage should follow the same trends.

Although some domestic workers felt strongly about the implementation of a skill based minimum wage, this is probably premature in that no standards exist to evaluate the present skills or to determine the monetary value thereof. An hourly based minimum wage seems to be more appropriate since employers would be able to determine the number of hours they would be able to afford.

Employers and domestic workers responded positively to the inclusion of domestic workers in the Unemployment Insurance Fund as well as the Compensation Fund. The administration and collection of contributions raised concerns. Domestic workers felt strongly about the establishment of a compulsory provident fund. Those who attended the hearings were prepared to pay up to R50 per month in this respect. Employers did not share their enthusiasm. Additional costs were their greatest objection.

#### **5. Feasibility of setting a minimum wage for domestic workers**

In evaluating the feasibility of setting a minimum wage for domestic workers the Department of Labour considered a number of factors, namely,

- the needs of the domestic workers and employers
- the impact of minimum wages on poverty alleviation
- the impact of minimum wages on employment creation
- the present wage levels as reported by domestic workers and employers.

During the last five years employment levels for domestic workers have increased despite the implementations of new labour laws. This clearly points to the need for domestic work. However in assessing the wage paid by employers it was established that it is low and that it constitute a combination of cash and benefits.

Setting a minimum wage would not eradicate poverty but would greatly assist in improving the livelihood of domestic workers.

Rural domestic workers are more likely to be affected negatively should minimum wages be set at too high a level. Although the simulation exercises had some weaknesses, they suggest that job losses could occur. However the number of job losses can be minimised by setting an appropriately low minimum wage. Setting a minimum wage for domestic workers is therefore feasible and appropriate if location (urban-rural) differentials are taken into consideration in determining the actual levels.

## **6. Recommendations**

### **6.1 Scope of the Sectoral Determination**

It is recommended that the sectoral determination apply to all employers and employees in the domestic worker sector in the Republic of South Africa, including those employed by employment agencies and those who operate as independent contractors but deserve protection as workers.

### **6.2 Wage differentiation per area**

There is a strong link between the earnings of domestic workers and the particular region where they live. Stated crudely, domestic workers in poorer provinces are likely to earn lower wages than those living in richer provinces. The differences are quite large in relative terms. The same principal apply in relation to location i.e. whether a domestic worker is in an urban or rural area. For this reason, one national wage might not be feasible, at least at this stage, and that differentiation could be based on an urban and rural divide. The wage schedule must thus be constructed in such a way that it provides for different wage levels in different locations.

The National Demarcation Board completed the demarcation of new municipal boundaries in preparation for the local government elections of late 2000. The demarcation distinguished between three categories, namely metropolitan, local and district councils. These three divisions correspond in broad terms to the richest, middle-income and poorest types of areas within the country. It is recommended that the area and scope of the sectoral determination be determined by using the National Demarcation Board classifications. The sector should be demarcated as follows:

- Area A:           municipal council areas where the urban portion is 61% and higher
- Area B:           municipal council areas where the urban portion is between 41% to 60%
- Area C:           municipal council areas where the urban portion is 40% and less.

### **6.3 Basis of contract**

It is recommended that domestic workers be paid according to the number of hours worked. For example if the minimum wage is set at R3,07 per hour a domestic worker who is working 45 hours per week should be paid R138,46 per week. If a domestic workers is working 30 hours per week he or she must be paid R92,10 per week.

### **6.4 Four-hour proviso**

It is recommended that if an employee works for less than four hours per day he/or she shall be deemed to have worked for four hours on that day and be paid for at least four hours.

### **6.5 Determining the wage levels**

It is recommended that minimum wage levels be considered in line with the way in which the sector would be demarcated. The levels for rural, urban-rural and urban areas should be R2,05, R2,56 and R3,07 per hour, respectively for the first 12 month after promulgation. It would mean that if domestic workers are working 45 hours per week the monthly wage in rural areas would be R400,00 in urban-rural areas R500,00 and urban areas R600,00 per month.

The table below contains the proposed minimum wages.



**TABLE 23: Minimum wages for domestic workers\***

<b>AREA A</b>					
Metropolitan and the local councils of Ashburton TLC, Baviaans, Beaufort West, Blue Crane Route, Breede River/ Winelands, Breede Valley, Buffalo City, Camdeboo, Cape Agulhas, CedarvilleTLC, Christiana/Bloemhof, City of Cape Town, City of Johannesburg, Dan-Lime, Delmas, Dihlabeng, Dipaleseng, Drakenstein, Dundee TLC, Durban Metropolitan Unicity, Emalahleni, Emfuleni, Emnambithi, Gammagara, Gariep, GAROP, George, Glencoe TLC, Greater East Rand Metro, Hantam, Highveld East, Hilton TLC, Howick TLC, Ikwezi, Indlovu Regional Council, Inkwanca, Inxuba Yethembamo, Kimberley, Klerksdorp, Knysna, Kopanong, Kouga, Lekwa, Lesedi, Lukanji, Mafube, Maguassi Hills, Makana, Maletswai, Mangaung, Mantsopa, Masilonyana, Matatiele TLC, Matjhabeng, Metsimaholo, Middelburg, Midvaal, Mier, Mogale City, Mohokare, Moqhaka, Mossel Bay, Msukaligwa, Mzinyathi Regional Council, Nala, Naledi, Ndlambe, Nelson Mandela, Newcastle, Ngwathe, Nketoana, Nokeng tsa Taemane, Nxuba, Oranje-Karoo, Oudtshoorn, Overstrand, Plettenberg Bay, PMB/Msunduzi TLC, Potchefstroom, Priemaday, Randfontein, Re A Ipela, Renosterberg, Saldanha Bay, Schweizer-Reneke, Stellenbosch, Thusanang, Towerberg, Tshwane Metropolitan, Umtshezi, Warrenton, and Westonaria.					
Applicable rates for the first twelve months after the promulgation date		Applicable rates for the second twelve months after the promulgation date		Applicable rates for the third twelve month after the promulgation date and thereafter	
Hourly rate (R)	3,07	Hourly rate (R)	3,28	Hourly rate (R)	3,50
Daily rate (R)	27,63	Daily rate (R)	29,56	Daily rate (R)	31,62
Weekly rate Ⓔ	138,46	Weekly rate Ⓔ	148,15	Weekly rate Ⓔ	158,52
Monthly rate (R)	600,00	Monthly rate (R)	642,00	Monthly rate (R)	686,94



**AREA B**

Metropolitan and local councils of Ba-Phalaborwa, Bela Bela, Bergrivier, Boesmanland, Camperdown TLC, Cederberg, Dolphin Coast/ Ballito TLC, Frasuwil, Hibbercene TLC, Highlands, Ilembe Regional Council, Kamiesberg, Kareeberg, Kokstad TLC, KwaDukuza/ Stanger TLC, Laingsburg, Langeberg, Letsemeng, Lichtenburg, Louwsburg TLC, Matzikama, Mkhondo, Modimolle, Musina, Nkomazi, NkwaziZinkwazi Beach TLC, Pennington TLC, Phumelela, Polokwane, Prince Albert, Richtersveld, Rustenburg, Sakhisizwe, Scottburgh/ Umzinto North TLC, Seme, Sunday's river Valley, Swartland, Swellendam, Theewaterskloof, Tokologo, Tswelopele, Ugu Regional Council, Umhlathuze, Umjindi, Ventersdorp, Vryheid TLC, Witzenberg, and Zululand Regional Council.

Applicable rates for the first twelve months after the promulgation date		Applicable rates for the second twelve months after the promulgation date		Applicable rates for the third twelve month after the promulgation date and thereafter	
Hourly rate (R)	2,56	Hourly rate (R)	2,73	Hourly rate (R)	2,92
Daily rate (R)	23,04	Daily rate (R)	24,65	Daily rate (R)	26,37
Weekly rate (R)	115,38	Weekly rate (R)	123,45	Weekly rate (R)	132,09
Monthly rate (R)	500,00	Monthly rate (R)	535,00	Monthly rate (R)	572,45

**AREA C****Areas in the rest of South Africa not mentioned in Area A and B**

Applicable rates for the first twelve months after the promulgation date		Applicable rates for the second twelve months after the promulgation date		Applicable rates for the third twelve month after the promulgation date and thereafter	
Hourly rate (R)	2,05	Hourly rate (R)	2,19	Hourly rate (R)	2,34
Daily rate (R)	18,45	Daily rate (R)	19,74	Daily rate (R)	21,12
Weekly rate (R)	92,31	Weekly rate (R)	98,77	Weekly rate (R)	105,68
Monthly rate (R)	400,00	Monthly rate (R)	428,00	Monthly rate (R)	457,96

- Minimum wage are payable after three months from the date of publication of this determination.

## **6.6 Wage increases and application period of the sectoral determination**

It is recommended that the wages be prescribed for a three-year period. There should be across the board wage increases of 7% per year in the second and third year of application.

## **6.7 Payment in kind**

It is recommended that no deductions should be allowed except in respect of accommodation. However, employers will not be expected to increase wages to accommodate payment in kind when calculating over time, Sunday time, etc as presently provided for in transitional arrangements in the Basic Conditions of Employment Act, 1997.

## **6.8 Phasing in of the sectoral determination**

It is recommended that the minimum wages be phased in over a short period of time i.e. that employers should not be required to pay the minimum wage for the first three month after the promulgation of the determination. The other clauses will be immediately applicable.

## **6.9 Conditions of employment**

It is recommended that the conditions of employment of domestic workers mirror those contained in the Basic Conditions of Employment Act, 1997 (BCEA). However to provide for the unique circumstance of the sector, the following variations to the BCEA is recommended:

### **6.9.1 Overtime**

Weekly limitations should be extended to 15 hours per week. In instances where employees will be required to work overtime on a regular basis an agreement may provide for an employer to-

- increase the monthly wage by one sixth for every five hours of overtime worked per week
- increase the monthly wage by two sixth for every ten hours of overtime worked per week
- increase the monthly wage by three sixth for every fifteen hours of overtime worked per week.

Employers and domestic workers who choose this method of payment will not be required to pay overtime premium otherwise required.

### **6.9.2 Night Work**

The following are recommended pertaining to night work:

An employer may require a domestic worker to sleep-in but not more than five times in a month or 50 times in a year.

An employee who is required to sleep-in must agree to it in writing.

An employee who is regularly required to sleep-in between 20:00 – 06:00 must be paid an allowance of R16.00 per shift or granted on additional week's leave per annum.

### **6.9.3 Family Responsibility Leave**

It is recommended that family responsibility leave be extended to five days per annum:

- (a) when the employee's child is born;
- (b) when the employee's child is sick; or
- (c) In the event of the death the employee's spouse or life partner; the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

### **6.9.4 Administrative Obligations**

It is recommended that domestic workers be issued with a pay slip or wage envelope.

An employer must keep an attendance register, which indicates the hours of work, overtime, night work, work on a Sunday and public holiday unless an agreement regarding the issues mentioned has been concluded.

### **6.9.5 Deductions**

The following is recommended pertaining to deductions and other acts concerning remuneration:

No employer shall be allowed to penalize domestic workers for any damages that might occur during the performance of their duties.

### **6.9.6 Accommodation**

The following is recommended pertaining to accommodation:

- (a) An employer shall not as a condition of employment require an employee to work for longer than 10 hours a week without remuneration in exchange for accommodation.
- (b) An employer may deduct an amount of not more than 25% of the wage in lieu of accommodation provided that the following conditions are met:
- The room must be weatherproof and generally kept in a good condition.
  - The room must have at least one window and door, which can be locked.
  - The room must be fitted with a toilet and bath or shower if the domestic worker does not have 24-hour access to another bathroom.

#### **6.9.7 Code of Good Practice**

It is recommended that a code of good practice be developed to regulate the following:

- Termination of employment with a specific focus on different types of employment contracts.
- Severance pay in relation to what would constitute a claim in this respect.

#### **6.9.8 Allowances**

It is recommended that the sectoral determination does not prescribe allowance but that a code of good practice be developed to regulate the payment thereof.

#### **6.9.10 Social Security**

Domestic workers across the board supported the establishment of a provident fund. Employers on the other hand resisted this notion to the extent that they felt that such a requirement is not compulsory at their own work places. It would require additional costs that could have gone to higher wages. Employers were also worried about the enforcement and administration of such fund.

The Unemployment Insurance Fund is presently busy with an investigation regarding the extension of benefit to the domestic worker sector. It is recommended that the process of establishing a provident fund be taken forward through that forum.

## CHAPTER ONE

### BACKGROUND

#### 1. Introduction

Domestic workers represent a particularly vulnerable category of workers. In general, domestic work is an undervalued activity performed by people from disadvantaged social groups. It is work with low economic value and limited social recognition.

Domestic work has been historically viewed as the responsibility of women, and the majority of workers are women and black. They work in private households doing work of a nature that further shapes existing perceptions around the employment relationship in that women also usually do this work for free in their own households. Since domestic workers work alone, it is difficult to monitor, and regulate and intervene in their conditions of employment.

Given the economic and social invisibility domestic workers suffer from; they are often forced into a trap of vulnerability that affects different areas of their lives. The different aspects of this vulnerability can be categorised as follows:

- **Vulnerability in the labour market:** Unemployment, poverty and other factors compel people to accept employment at any cost. For the poor and homeless, domestic work provides a means to attain accommodation when housing is scarce.
- **Vulnerability in the law:** Domestic workers suffer from a lack of protection and control by labour authorities. The tendency internationally is to either grant them fewer rights or simply to exclude them from the scope of labour laws.
- **Vulnerability in civil society:** Domestic workers are socially marginalised through perceptions that domestic workers are "just domestic workers"; "non-productive workers"; perform "women's work" or "unskilled work", etc<sup>1</sup>.

It is evident that society should play a proactive role in addressing the plight of the domestic worker. This could be achieved in various ways e.g. by recognising the social value of work in the domestic sector, inclusion of domestic workers in all the relevant labour legislation and by promoting unionisation.

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<sup>1</sup> J Grossman 2000 Submission on domestic workers to the Department of Labour.



Given this background the Department of Labour has committed itself to extend the protective net to domestic workers by utilising the mechanisms in the Basic Conditions of Employment Act, 1997, to lay down a minimum wage and conditions of employment by way of a sectoral determination. The Ministry of Labour's Fifteen-Point programme of action for 1999-2004 specifically targeted the improvement of conditions of employment of domestic workers.

### *Protecting Vulnerable Workers*

*The State carries the responsibility of protecting vulnerable workers to ensure that they have the same basic rights and are afforded their dignity. The Basic Conditions of Employment Act is the principal instrument through which such protection is extended. In the coming period we shall focus on its effective and appropriate implementation, bearing in mind the above mentioned requirement to seek a balance between security and flexibility.*

*Extract from the Fifteen-Point Programme of Action of the Ministry of Labour 1999-2004*

Prior to January 1994, domestic workers were not covered by any of the labour laws. The Basic Conditions of Employment Act, 1983 was extended to domestic workers in that year and the National Manpower Commission extensively debated the introduction of a minimum wage. The Commission failed to reach consensus in extending the Wage Act to such employees. The major concern raised was the fact that prescribing a minimum wage could lead to large-scale unemployment since employers who could not afford to pay the rates might dismiss workers. This view is still held today by many and will be returned to later in the report.

Although domestic workers enjoy protection under the present Basic Conditions of Employment Act, 1997 they require standards and policies tailored to their specific needs. In particular the Basic Conditions of Employment Act, 1997 does not itself lay down minimum wages, but provides for sectoral determinations, which do so for particular categories of workers. The Minister of Labour therefore instructed the Director-General to conduct an investigation into the establishment of minimum wages and conditions of employment for domestic workers. The Employment Conditions Commission must consider the report on the investigation and make recommendations to the Minister.

The plight of domestic workers is not only recognised in relation to their conditions of employment and a minimum wage but extends to other areas of their lives which require legislative interventions. In this respect the Skills Development Act, 1999, allows for the training of domestic and other workers through the establishment of a SETA. A home for the training of domestic workers has been found under the Cleaning Chamber of the Services SETA.



Extension of the Unemployment Insurance Act and Compensation for Occupational Injuries and Diseases Act are being considered to address their social security needs. However, for the purpose of this report the focus will be on employment standards.

*Other national labour laws that currently cover domestic workers are the:*

- *Labour Relations Act, 1996*
- *Employment Equity Act, 1998*
- *Skills Development Act, 1999*
- *Occupational Health and Safety Act, 1993.*

*The extension of the Unemployment Insurance and Compensation for Occupational Diseases and Injuries Acts are currently under discussion.*

## **2. Terms of reference**

The terms of reference for this investigation, as approved by the Minister, are as follows:

“To investigate the appropriate demarcation of the Domestic Worker Sector for purposes of a sectoral determination: and

To investigate conditions of employment, including minimum rates of remuneration in respect of the sector.”

## **3. Methodology**

The investigation was structured in three phases.

### **3.1 Phase One: Data Collection**

This phase dealt with the administrative processes, and data collection through workshops and surveys.

#### ***Publication of a Notice***

Public comments were invited through a notice that was published in Government Gazette No. R 20032 of 7 May 1999. Interested parties had 90 days to submit their written representations to the Employment Conditions Commission.

The period was extended till 27 August 1999 since the response was poor. The extension notice was published in national newspapers.

114 written representations were received through this process. The majority of submissions were received from employers. This was expected given the low levels of literacy among workers.

### **National and Provincial Workshops**

#### ***National workshop***

A national workshop was arranged with mainly internal role players to identify issues that could be included in a sectoral determination. Representatives from the Commission for Conciliation, Mediation and Arbitration (CCMA) as well as the following Directorates and offices of the Department of Labour attended:

- Chief Directorate, Employment and Skills Development Services (ESDS)
- Unemployment Insurance Fund (UIF)
- Compensation Fund (CF)
- Provincial Office Gauteng North
- Provincial Office Gauteng South.

#### ***Provincial workshops***

Provincial offices of the Department were required to conduct provincial workshops with a wide range of stakeholders to assist with information gathering. Questionnaires were distributed amongst employers asking questions on minimum wages and conditions of employment. Employers returned 803 questionnaires across all provinces. Markdata (Pty) Ltd was requested to do the analysis of the questionnaires.

#### ***Surveys***

Two surveys were conducted. A telephone survey was conducted by the Fafo Institute for Applied Social Science and an in-house taxi rank campaign was conducted by the Directorate of Employment Standards.

The Chief Directorate of Skills Development also commissioned a survey to determine the skills levels of domestic workers. In this survey questions on wages were included. An analysis thereof is discussed later in the report. Valid data was collected for a total of 982 domestic workers.

### ***Telephone survey: Gauteng Province***

A telephone survey was conducted to determine trends in wages and conditions of employment in a predominantly urban area. A sample of 300 households, which was statistically representative, was used. The Research Policy and Planning Directorate managed the survey and outsourcing of the survey.

### ***Taxi Rank Campaign***

The purpose of the taxi rank campaign was to create awareness about the investigation and to involve workers who might under normal circumstances not be able to participate in the process. Nine ranks participated in the campaign. They were Khayelitsha in Cape Town, Bloed Street in Pretoria, Louis Trichardt, Nelspruit, Rustenburg, Kimberley, Welkom, Pietermaritzburg and Mdantsane in East London. The campaign thus covered nine provinces.

25 000 questionnaires regarding wages and conditions of employment were distributed per taxi rank. 2 885 domestic workers completed and returned questionnaires. Markdata (Pty) Ltd was requested to do the analysis of the questionnaires.

### ***Development Policy Research Unit: University of Cape Town (DPRU)***

The DPRU was commissioned to provide inputs on the following:

- An overview of monthly earnings in the domestic worker labour market, focusing on a defined set of covariates.
- An estimation of the simultaneous determinants of these covariates on domestic worker wages, by way of a regression analysis.
- A derivation of the number of workers that may be affected at the different minima proposed.
- The impact of the proposed minima on employment levels, in the short- and long-run.
- The impact on employment of the minima for the poorest of the poor amongst domestic workers.
- An assessment of the value and nature of payments in kind offered by employers.

- An assessment of the most appropriate steps and considerations required by the Department of Labour and the ECC under the present conditions with respect to the successful implementation of a minimum wage programme for domestic workers.

### ***Publicity and Awareness***

Advertisements were published in leading regional and national newspapers informing the general public about the extension of the period for the submission of comments regarding the investigation. The advertisement served as a guide to the public on the issues the Department wished them to comment on.

Provincial Offices were required to manage their own awareness campaigns about the hearings and workshops.

### **3.2 Phase Two: Consultation**

This phase involved the processing of the information gathered during phase one as well as consultation with role players on a national basis on the comments received.

64 hearings were conducted on a national basis. Approximately 1 800 domestic workers and 350 employers attended the hearings. Visit points included urban and rural areas.

It was difficult to attract employers to attend the hearings. Overall, it is likely that employers who attended the hearings were those who already have upholding decent conditions of work.

### **3.3 Phase Three: Employment Conditions Commission**

This phase involves the Employment Conditions Commission process, publication of the draft report for public comments, training of inspectors and promulgation of sectoral determination.

It is important to note that there is a distinct lack of research and current data on domestic workers in South Africa. Studies done are not necessarily representative of the total domestic worker labour market. However, the information gathered provided reliable indicators and observations that sufficiently inform the report and recommendations.

#### 4. Structure of the Report

**Chapter 2** of this report outlines the historical perspective and description of the domestic worker sector. **Chapter 3** endeavors to define domestic work.

**Chapter 4** sets out the findings of the investigation regarding key issues related to conditions of employment. **Chapter 5** sets out the findings of the investigation related to present wage levels. **Chapter 6** provides an evaluation on the impact of a minimum wage on alleviation of poverty, job creations and the affordability thereof. **Chapter 7** deals with the recommendations to the Employment Conditions Commission.

## CHAPTER TWO

# HISTORICAL PERSPECTIVE AND DESCRIPTION OF THE SECTOR

### 1. Evolution of domestic work

Domestic work in the western world was regarded as a respectable occupation until the beginning of the industrial era. The nature of the work changed during the 19<sup>th</sup> and 20<sup>th</sup> century, becoming increasingly female-dominated. In this process, domestic work was progressively considered as being an occupation of low status, mainly left to poorer groups or those from a specific ethnic group.

“Womens work” has traditionally been undervalued, as the skills are associated with women’s unwaged work in the home. In the past, women were responsible for the provision of home comforts, cleaning services and childcare to enable men to work outside the home, unhindered by these activities. When women started to enter the labour market, the burden was merely shifted to less empowered women.

Improvements in technology, community services, water, electricity, etc, the expansion of the services sector and opportunities for female education after World War II, to some extent decreased the demand for paid domestic workers. However, domestic work has remained a major employment prospect for female workers, particularly for unskilled women.

In South Africa the history of domestic work took its own course. Apartheid policies implemented by the previous South African Government created the ideal opportunity to uphold the historical perceptions discussed above. In entering the broader labour market, white women were given preference, whilst black women had to be satisfied with low status and ill-paid jobs. Demands of the labour market made it difficult for women employed in the formal sector, to cope with their households without assistance and this led to the employment of mainly black females as domestic workers. Domestic workers took over routine household activities such as cleaning, cooking and child rearing.

The establishment of the homeland system further restricted the limited opportunities available to black women. Distorted access to markets and services, landlessness and over-crowding forced women to seek a better life in the cities. This “escape” from the homelands created a pool of labour to be absorbed into white households as domestic workers. Strict migrancy and influx control laws regulated their movements, and made passes and working permits compulsory. This contributed towards their vulnerability and need for shelter.

Domestic workers were excluded from all labour law protection until 1 January 1994 and



11 November 1995 when the Basic Conditions of Employment Act, 1983 and Labour Relations Act, 1956, respectively were extended to cover domestic workers.

With the advent of democracy in South Africa the apartheid-era pass laws and associated restrictions have been repealed. Although the new dispensation has afforded domestic workers rights and freedoms that were withheld under the previous government, their position in society and daily lives have not improved much.

*"For domestic workers the struggle is not over until there is action," says a Western Cape union member Adelaide Buso. "The book on apartheid has been closed, but there has been no funeral. We are the ones who can bury apartheid."*

*Gilson, D, The Home Front, 2000*

## 2. The nature of the sector

Over recent decades, there has been somewhat of a shift from full time to other forms of domestic work. Limbrick<sup>2</sup> estimated in a report released in 1993 that between one half and two-thirds of domestic workers were employed on a full time basis and the remainder as chars or casuals. He also suggested that non-regular employment might be a preferred choice for workers. He argued that since the skills required are minimal, unskilled females who may only wish to work for short periods in order to satisfy an immediate need for money, should find it easy to access employment. Budlender had a different opinion. She argued that although this might be a real choice for some workers, for most the "choice is more likely constrained by the demand from potential employers, or by supply-side factors such as the necessity of looking after their own families in the absence of adequate provision."<sup>3</sup> Her argument was supported by comments from domestic workers in Nelspruit during the investigation. The workers indicated that although they had matric certificates the lack of employment opportunities forced them to resort to domestic work.

Contract cleaners and garden services are also finding their way into the sector. The utilisation of contract cleaners was especially evident in KwaZulu-Natal and the Western Cape agencies that offer a drop-off char service, which employs a team of workers on a regular basis. The agency is the employer, rather than the person who lives in the house, which changes the employment relationship. Such employees are not regarded as domestic workers although they do the tasks of a domestic worker. The agencies and not the owners of the households pay their wages. The same principal apply where workers are employed by governing bodies (body corporates) to do domestic work in town house complexes or flats.

<sup>2</sup> Budlender D 1997 Domestic workers

<sup>3</sup> Ibid pg 31

*Contract cleaners, garden services and agencies will not be covered by the proposed sectoral determination for domestic workers. Sectoral Determination 1: Contract Cleaning South Africa covers employers and employees whose main business entails the cleaning of workplaces.*

Persons working in the domestic worker sector range from highly paid governesses to unpaid relatives and sometimes-even children. School leavers who cannot find employment do domestic chores in and around the house for "pocket money". Employers who attended the hearing in Mmabatho, for instance, indicated that if the minimum wages were going to be unaffordable, they would ask relatives who live in rural areas to come and assist with their household work.

Despite the above changes in the domestic labour market, there remain a large number of women today who on a daily, weekly or monthly basis perform low-paid and relatively low-skilled domestic tasks in private households in a direct employee-employer relationship with the person or people living in that household. It is these women who are the main focus of this investigation.

### **3. Positioning of domestic workers within the labour market**

Figures from Statistics South Africa (OHS99) indicated that there were about 10,4 million people employed in South Africa in October 1999, of whom approximately 799 000 workers were employed in domestic work. Expressed differently, the domestic worker sector accounted for about 18 % of all the people employed in South Africa and they performed their duties in approximately one million households.

**Table 1** below provides a profile of domestic workers within the South African labour market by race, sex and location, in 1995.

**Table 1: Basic demographic characteristics: Domestic workers**

Category	Domestic Workers	Share
<b>Race</b>		
African	619 150	88%
Coloured	81674	11%
Indian	450	0,1%
White	2049	0,3%
<b>Total</b>	<b>703 323</b>	<b>100.00</b>
<b>Gender</b>		
Male	22 363	3%
Female	680 960	97%
<b>Location</b>		
Rural	409 170	58%
Urban	292 153	42%

OHS95

The table indicates that females account for the overwhelming majority of domestic workers. Their representation in this sector is disproportionate in that, overall, 38% of all employed people are females. Expressed differently, less than one percent of employed men are domestic workers, against 17% of females. The majority of domestic workers are Africans followed by Coloureds, Whites and Indians. The Indian and White share are marginal in that together they represent less than one percent of the all the domestic workers. A greater part of domestic workers (58%) are employed in rural areas.

**Table 2** reflects the educational levels of domestic workers. It shows that most domestic workers have primary education or less. At the other end of the scale, the overall national figure among employed people for a matric is 23% against 2% for domestic workers. Domestic workers thus fall well short of the average.<sup>4</sup>

<sup>4</sup> Bhorat H, 1999 The Economics of the South African Labour Market. Course presentation to the ECC.

**Table 2: Share of employment by education cohort**

	No Education	Grade one - Grade seven	Grade eight – Grade eleven	Matric	Tertiary
<b>Domestic Workers</b>	20%	50%	26%	2%	2%

Bhorat 1999

Mainly middle-aged females attended the hearings held by the Department of Labour. This was even more evident in rural areas such as Piet Retief, Springbok and Theunissen. According to the report by Fafo, the age of domestic workers in Gauteng averaged 41,5 years.<sup>5</sup> In the survey on the skills levels of domestic workers commissioned by the Skills Development Directorate; the average age was also 41 years.

The Fafo survey also provides insights into the age distribution and average years worked by age group.

**Table 3: Age distribution, and average years worked by age group.**

Age group	Percent of domestic workers in this age category	Average years worked as a domestic worker	Average years worked for this employer
19-29	12	4,6	3,6
30-39	34	10,1	5,4
40-49	33	18,0	7,8
50-59	15	24,2	10,6
60-	7	31,9	16,5
<b>Total</b>	100	15,6	7,5

Fafo 2000

Table 3 indicates that persons in Gauteng on average worked 15,6 years as domestic workers, and not surprisingly, work experience increases with age. In the oldest age group (above 60 years), the average years of work are 31,9 – in other words over half of their life length. The average work length for the present employer is 7,5 years, with 3,6 years among the youngest and 16,5 years in the oldest age group.

<sup>5</sup> Fafo South Africa, 2000 Unpublished report on Domestic Workers in Gauteng: Wage and Working Conditions, pg3.

*"My domestic worker raised me. She is like family."*

*Comment by an employer in her early twenties who attended a hearing in Lydenburg*

## CHAPTER THREE

### DEFINING DOMESTIC WORK

#### 1. Introduction

Defining domestic work is complex and requires some discussion, firstly to ensure that all the role players (internal and external) have a common understanding of this particular occupational class and, secondly, to determine the appropriateness of the present definition in the Basic Conditions of Employment Act, 1997.

Defining domestic work and domestic workers is done on two levels. Firstly, we can refer to the legal definition and, secondly, we can consider particular factors that determine the employer/employee relationship.

#### 2. Legal Definition

The International Labour Organisation (ILO) has defined domestic work broadly as “[a] wage-earner working in a [private] household, under whatever method and period of remuneration, who may be employed by one or by several employers who receive no pecuniary gain from this work.”<sup>6</sup>

The definition focuses on four elements, namely:

- The type of activities carried out by the worker.
- The workplace.
- Absence of pecuniary gain by the employer.
- Remuneration.

##### 2.1 Type of activities

The following positions and their corresponding tasks were considered by the ILO to fall within the category of domestic work: housekeeping, cooking, home-based child care, home-based personal care, home-based protective service worker or watchperson, gardener, chauffeur and domestic helper or cleaner. The spectrum of tasks is broad and it does not mean that a domestic worker needs to do all or most of the functions in order to be considered as such.

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<sup>6</sup> ILO, 1999 Unpublished report: DOMESTIC WORK, CONDITIONS OF WORK AND EMPLOYMENT: A LEGAL PERSPECTIVE Pg 4



## 2.2 Workplace

Domestic work is carried out within the sphere of the home, the employers' private residence. This feature is the cornerstone of domestic work. Not only does it define the physical parameters of the work but also the working relationship. The occupant of the dwelling is considered to be the employer.

## 2.3 Absence of pecuniary gain by the employer

This aspect of the definition pinpoints the household as the exclusive recipient of the work. The domestic workers are usually not engaged in any commercial or business venture of the employers.

## 2.4 Remuneration

Remuneration takes on different forms such as in cash or in kind (board and lodging) or both in cash or in kind. The fact that domestic workers are paid for their services helps to make visible the economic aspect of the domestic task.

In analysing the above elements a specific occupational class of employees emerges namely one who performs certain duties within the homes of their employers for which they receive remuneration.

The Basic Conditions of Employment Act, 1997, accords well with the ILO definition above when it defines a domestic worker as follows:

*"domestic worker" means an employee who performs domestic work in the home of his or her employer and includes-*

- (a) *a gardener;*
- (b) *a person employed by a household as driver of a motor vehicle;*
- (c) *a person who takes care of children, the aged, the sick, the frail or the disabled, but does not include a farm worker."*

The Basic Conditions of Employment Act, 1997, sufficiently defines a domestic worker, his or her duties and the workplace where those duties should be executed. Persons doing domestic work on a farm are excluded from this definition because a different set of rules applies to farm workers.

Another matter that the sectoral determination for domestic workers should take cognisance of is the fact that an "employee" in the Basic Conditions of Employment Act, 1997 is defined as any person, excluding an **independent contractor**, who works for another person or for the State and who receives, or is entitled to receive remuneration; and any other person who in any manner assists in carrying on or conducting the business of an employer. There is evidence that employers are using various forms of atypical employment such as subcontracting to opt out of an employer-employee relationship,

thus avoiding statutory obligations. Since it is the intention of the Department of Labour to extend the protection to all categories of domestic workers, the enactment of section 83 of the Basic Conditions of Employment Act, 1997, should be explored to ensure that all domestic workers be covered in the sectoral determination.

#### DEEMING OF PERSONS AS EMPLOYEES

*83. (1) The Minister may, on the advice of the Commission and by notice in the Gazette, deem any category of persons specified in the notice to be employees for purposes of this Act or any sectoral determination.*

*(2) Before the Minister issues a notice under subsection (1), the Minister must—*

- (a) publish a draft of the proposed notice in the Gazette; and*
- (b) invite interested persons to submit written representations on the proposed notice within a reasonable period.*

*Basic Conditions of Employment Act, 1997, Section 83*

The Skills Development survey provides an excellent reflection of what domestic work in a South African context entails.

**Table 4** and **5** contains information on the additional tasks domestic workers have to perform for their employers. General cleaning, washing and ironing are major work tasks for nearly all the domestic workers, whether they live-in (at the homes of their employers) or not. Just over a quarter of respondents said they took care of their employers' children, while only a relatively small proportion said they took care of ill (5%) and elderly members (3%) of the household.

Only 7% of the domestic workers reported that they helped with the home-run business of their employer, however, it is not certain how many of the other employers actually had such a business.

Gardeners and drivers are under represented in the sample, due to the fact that they do not work in the house, and thus would be less likely to participate in the survey. During the hearing process it was established that gardeners are often hired on weekends only. In some instances the husband of the live-in domestic worker might be required to work in the garden to pay for his rent.

**Table 4: Proportion of domestic workers who perform other duties than cleaning**

<b>Taking care of employers' children</b>	<b>26%</b>
<b>Taking care of ill members of the household</b>	<b>5%</b>
<b>Taking care of elderly members of the household</b>	<b>3%</b>

Skills Development Survey 2001

**Table 5: Proportion of domestic workers who also carry out tasks in connection with other business**

	<b>N</b>	<b>%</b>
<b>Yes</b>	<b>71</b>	<b>7</b>
<b>No</b>	<b>891</b>	<b>93</b>
<b>Total</b>	<b>962</b>	<b>100</b>

Skills Development Survey 2001

### **3. Factors that determines the employer/employee relationship**

Factors such as the nature of the contract, hours of presence at work, employee's place of residence and method of payment play an important role in determining the parameters of the employer/employee relationship. It was established during the hearings that employers misinterpret these factors (intentionally or unintentionally) to "opt out" of a formal employer/employee relationship and to evade the legislation. To ensure successful enforcement of a sectoral determination it will be necessary to identify and describe these factors so that employers and employees have a common understanding of parameters of the relationship and its relation to the applicability of the sectoral determination.

#### **3.1 Nature of the contract**

The nature of the contract refers to the basis on which the employee is hired to perform a task i.e. temporary or permanent. The relationship can be **temporary** when the domestic worker is employed either for a fixed period of time (one day, one week or one month) or for the achievement of a particular task that will last over a certain period (assisting during pregnancy or establishment of a garden). The employment becomes **permanent**<sup>7</sup> when work is carried out on a continuous basis.

#### **3.2 Hours of presence at work**

Employers mainly use this measure to determine the relationship. Some employers are under the impression that if a domestic worker is paid on an hourly or daily basis they are

<sup>7</sup> Permanent in this respect refers to an indefinite period of employment.

regarded as a casual or part-time employee, and therefore not entitled to any employment rights regardless of the number of hours worked.

The Basic Conditions of Employment Act, 1997, stipulates that only persons who work less than 24 hours per month are excluded from certain provisions of legislation. All others are entitled to proportional rights in terms of the Act. This particular point should be clarified by the sectoral determination.

### **3.3 Place of residence**

Domestic workers may be resident when they live with the employer or non-resident when they live away from the employers' premises. In practice employers and domestic workers use the term "live-in" or "live-out" to make the distinction.

For the purpose of the sectoral determination it is suggested that the terms "live-in" and "live-out" be used when required.

### **3.4 Method of payment**

The majority of domestic workers who attended the hearings are paid on a monthly basis. However, it was found that some employers who want to circumvent the legislation pay domestic workers on a daily basis. These employers argue that the relationship in terms of other legislative obligations ends when an employee has received his or her remuneration for the day.

## CHAPTER FOUR

### PRESENT CONDITIONS OF EMPLOYMENT

#### 1. Problems faced by domestic workers

Domestic workers experience various problems that impacts on their vulnerability, which will be discussed below. The sectoral determination for domestic workers will endeavour to address these problems to the extent that it would be able to do so.

As a result of the personal and individualised nature of the employment, the employer exposes the employee to **high levels of control**. In addition, domestic workers might have to respond to the conflicting demands of different members of the family during the day with little private time.

Domestic workers may have a **regimented lifestyle**, in that they have to follow certain rules that limit their freedom of movement within the workplace.

They are **isolated**. In this respect, it is usually the live-in domestic worker that suffers most. In a contract of employment presented at a hearing held in Pretoria the domestic worker was allowed limited visitation rights from family or friends. Other reasons that reinforce domestic worker's isolation are language problems, limited access to public transport, lack of social integration, etc.

**Lack of privacy** is a common complaint. Especially live-in domestic workers experience problems in this regard. There is always the possibility of the employer inspecting at any time the worker's living quarters, monitoring of his or her spare time, etc.

Domestic workers are faced with very high levels of **job insecurity**. Arbitrary changes of working contracts, pay cuts and non-payment of wages are common. At a hearing held in East London a domestic worker complained that the employer had borrowed her wages since they were short of money. In Postmasburg in the Northern Cape workers who attended the hearings enquired about procedures to be followed in case they got dismissed for attending the meeting.

**Poor working conditions** are common features of the sector. Domestic workers are often deprived of benefits such as medical attention or compensation for injuries on duty. They are often unable to accumulate savings, pension or property rights.



**Wages are low** and many domestic workers find it difficult to cope with the day-to-day demands of making a living. They rely on the provision of accommodation, free food and other benefits to make ends meet.

**Long hours and a heavy workload** deprive many domestic workers of almost any freedom and leisure time. One finds that some live-in domestic workers are on call almost day and night.

**Low levels of organisation** impact on the domestic workers' ability to bargain collectively for their rights and to create or develop class awareness. Enforcement and monitoring of the legislation are left to the labour authorities that more often than not, do not have the capacity to oversee compliance to the extent they are suppose to.

*Violence and other forms of abuse*

*"My friend who worked in Pinelands, she was pregnant but she didn't know who it was – the father or the son – they both raped her. They use our bodies anyway they want."*

*Brenda Grant, Quote by Grossman J in an article on Domestic Workers: Employers and Servants.*

Another issue that needs closer consideration is the **intensity of work**. The domestic worker has to provide a wide range of services. These services include housekeeping, cleaning, cooking, home based personal and child care, gardening, chauffeuring and even protective services. This does not mean that a domestic worker need assume all or most of such functions in order to be considered as such. Although in general terms domestic work does not require a high level of specialisation, they are normally expected to be competent and able to cope with this wide range of duties and responsibilities of a different domestic nature. More often than not the domestic workers are required to stay on the premises during working hours, either working or ready and available to work especially when he/she is looking after children, the old and the frail. According to domestic workers who attended the hearings the most productive time is during the morning, before lunch, when most of the cleaning and washing are done. Afternoons are spent completing tasks or attending to children who return from school. During late afternoon, early evening live-in domestic workers are required to assist with chores when other members of the household return from work. Although employers argued that domestic workers have the freedom to manage their own hours and workload, the investigation has revealed that it is not as simple as that.



The Basic Conditions of Employment Act, 1997, already applies to domestic workers. Some provisions pertaining to administrative obligations have been varied downwards in an attempt to accommodate the peculiar nature of the sector. This will be discussed later in the report. However, in a statute of this nature it is impossible to provide for all the specific needs of a particular sector. Therefore, making a sectoral determination for domestic workers is a more appropriate measure to ensure sufficient protection.

Since standards of employment already exist, this section will deal with the analysis of the appropriateness of the prescribed conditions of employment inclusive of working time matters, leave provision, administrative obligations, wages, payment in kind, accommodation and social security matters.

The section reflects, among others, views that were expressed at the hearings and in written submissions on the context in which the wage determination should be made. A survey was conducted on how other countries deal with conditions of employment and minimum wages. An attempt was made to draw on it in the discussions below.

## 2. Working time

Legislation in other countries deals with domestic workers' hours of work in very different ways by either referring to periods of rest or by fixing daily hours. Mexican law for instance does not provide for fixed hours of work but refers to hours of rest. In Peru the provision that domestic workers or household help must have eight hours of rest within each twenty-four hours has been widely interpreted as a license to employers to exact a sixteen-hour workday. Canadian law on the other hand stipulates that domestic workers could work up to twelve hours per day. It is within these parameters that the sectoral determination for domestic workers in South Africa should find the balance between flexibility and sufficient protection from abuse. Assessing the international experience it is clear that the best route to follow in this respect is to determine fixed hours of work and rest period. Flexibility could be achieved through averaging and compressing of hours of work that will be discussed later in the report.

### *Hypotheses addressed during the investigation*

#### *Domestic workers:*

- *work long and excessive hours, especially live-in domestic workers.*
- *Do not have sufficient daily and/or weekly rest periods.*
- *Are not paid for work in excess of their normal hours of work.*
- *Are required to work on public holidays and Sundays without additional remuneration.*
- *Are required to work at night without the benefit of a night allowance.*

## 2.1 Hours of work

The Basic Conditions of Employment Act, 1997 prescribes hours of work on a weekly basis, namely, 45 hours per week, nine hours in any day if the employee works for five days or fewer, or eight hours in any day if the employee works on more than five days a week.

Assessing the way in which hours of work are managed in the domestic worker sector is complex. Employers and workers who attended the hearings were more often than not aware of the fact that hours of work are regulated. However, due to the nature of employment, it is difficult to monitor and control hours of work directly. Some employers who work outside the house, monitor hours through telephone calls or by the workload allocated to the domestic worker.

Employers and domestic workers have opposing views on how long they work. Domestic workers generally reported longer hours than employers. Live-in domestic workers and domestic workers who worked for a single employer tended to work longer hours.

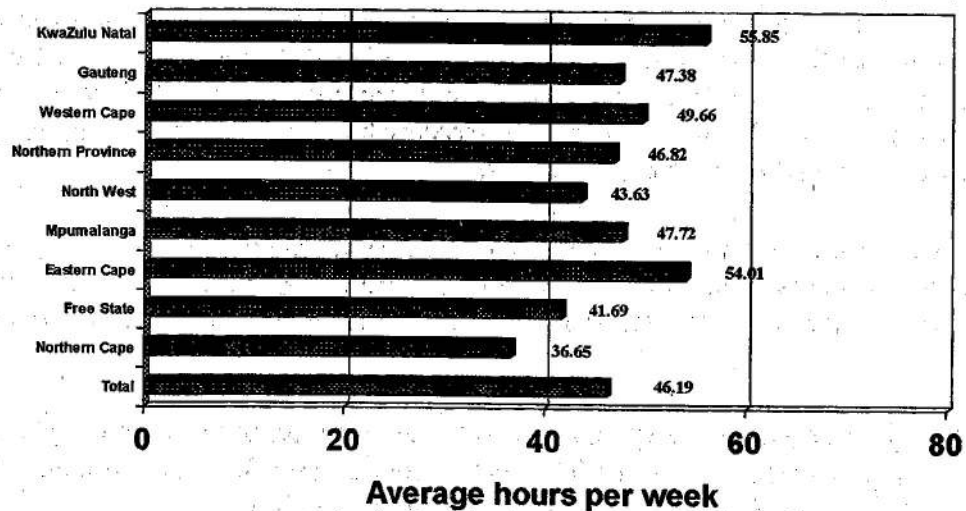
Most of the domestic workers reported that they start work between 07:00 and 08:00 in the morning and stop work at 17:00. Live-in domestic workers are required to work after 17:00. Sometimes they start work earlier and stop work later.

Figure 3 provides information on the total hours of work as reported by domestic workers who participated in the taxi-rank campaign. Information on hours of work gathered through the hearing process and provincial workshops reflect more or less the same trends.

The information gathered through the surveys could be slightly inaccurate since it is not always clear whether respondents have taken lunch breaks and other rest periods into consideration. Such rest periods do not legally form part of the normal hours of work. However, the inclusion of lunch breaks should not skew the data significantly.

Figure 3:

### Domestic workers: Average hours working per week per province



**Figure 3** suggests that the average number of hours domestic workers work per week is 46.2. The average time worked by domestic workers is longest in KwaZulu-Natal (55.9 hours) and Eastern Cape (54.0). Domestic workers in North West (43.6), Free State (41.7) and the Northern Cape (36.7) work shorter hours, on average, than the 45 hours per week maximum prescribed in the Basic Conditions of Employment Act, 1997.

**Table 6** reflects the view of employers who participated during the provincial workshops on hours of work. About half of the employers employ a domestic worker for more than four days in a week. Domestic workers will probably work shorter hours if they work for one employer on less than four days in a week.

The average number of hours domestic workers work per week is 27.4.

**Table 6: Hours of work per week of domestic worker as reported by employers**

	Hours
Mean	27.4
Median	30,0

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There is general consensus that the hours of work prescribed in the Basic Conditions of Employment Act, 1997, are appropriate for the sector. However, it is the management of these hours of work that raises concerns. Employers are more often than not absent from the workplace, which makes it difficult to monitor and control hours of work. Informal arrangements are made between the parties in terms of when work commences or stops. Live-in domestic workers are worst off when it comes to the management of hours of work. They are staying on the premises, which makes it easy for the employer to call them at any time to perform work.

*The following are recommended pertaining to ordinary hours of work in line with the BCEA:*

*An employer may not require or permit an employee to work more than-*

- (a) 45 hours in any week; and*
  - (i) nine hours in any day if the employee works for five days or fewer in a week; or*
  - (ii) eight hours in any day if the employee works on more than five days in a week*

## **2.2 Averaging and compressing of working hours**

The Basic Conditions of Employment Act, 1997, allows for the averaging and compressing of working hours. This means that by agreement domestic workers can work flexi-time as long as the average hours per week do not exceed 45 hours per week. Domestic workers can also work 12 hours shifts on four days per week on condition that the hours in the following period are equally reduced.

Averaging of hours is allowed in terms of a collective agreement. Since the sector is not well unionised, an individual agreement should suffice.

Both employers and domestic workers were unaware of the provisions on the averaging and compressing of working hours contained in the Basic Conditions of Employment Act, 1997. They found the concepts difficult to grasp and argued that the work patterns of domestic workers are such that they do not require special provisions of this nature.

The inclusion of averaging and compressing of hours of work would provide the necessary flexibility when variation from the fixed hours provisions are required. It will also reduce the costs since it would not be necessary to pay overtime rates.

*The following are recommended in line with the BCEA:*

**(a) Compressed Working Week**

An agreement in writing may require or permit an employee to work up to twelve hours in a day, inclusive of the meal intervals without receiving overtime pay.

An agreement in terms of paragraph (a) may not require or permit an employee to work –

(i) more than 45 ordinary hours of work in any week;

(ii) more than ten hours' overtime in any week; or

(iii) on more than five days in any week.

**(b) Averaging of hours of work**

(i) Ordinary hours of work and overtime of an employee may be averaged over a period of up to four months in terms of a written agreement.

(ii) An employer may not require or permit an employee who is bound by the agreement to work more than –

- an average of 45 ordinary hours of work in a week over the agreed period;

- an average of five hours' overtime in a week over the agreed period..

(iii) The agreement must be reviewed every 12 months.

**2.3 Rest period**

We look here at meal intervals, and daily and weekly rest periods.

**a) Meal intervals**

Mealtime is generally not considered as work time. However if domestic workers are required to perform duties that cannot be left unattended, they should be remunerated.



**b) Daily rest periods**

Internationally one group of countries acknowledges the necessity of a rest period but refers to them in a very imprecise way. In Swaziland the law says that the normal working week shall consist of forty-eight hours, exclusive of a meal break but meal breaks are neither included in the hours of work nor determined by the law.

The second group of countries prescribes the minimum daily rest periods in a more precise way. In El Salvador, Guatemala and Spain domestic workers are entitled to a meal interval of two hours. Chile and Nicaragua prescribe the total number of daily rest hours and the amount of those hours that must be of night rest.

The third group of countries has enacted different provisions depending on the status of the worker i.e. live-in or live-out. For instance, in Malta live-in domestic workers are entitled to a daily rest period of three hours in the aggregate of every day. This time is fixed through consultation. If domestic workers do not live-in, a 45-minute rest period is prescribed for eating or resting. In Austria, live-in domestic workers must have interruptions in their daily hours of work representing a total of at least three hours including at least two uninterrupted breaks of 30 minutes for main meals. Live-out domestic workers' breaks are determined by the number of hours they work continuously i.e. after more than four-and-a-half hours work but not more than six, they must get 20 minutes. After more than six hours' work but not more than nine, they must get 30 minutes.

**c) Weekly rest periods**

Where weekly rest periods are prescribed internationally, they vary between 24 and 36 hours including or excluding Sundays. Sometimes work during periods of rest is regulated and only allowed under special circumstances. In France work during rest periods is only allowed in connection with special occasions, such as emergency work. Work during rest periods is paid at a higher rate, which could vary from 25% to an additional 200% of the normal hourly rate of pay or the equivalent in time-off.

In South Africa the Basic Conditions of Employment Act, 1997, provides for rest periods in the same way. It allows for a meal interval of one hour, which could be reduced to 30 minutes per written agreement. Domestic workers who look after children the old and the frail are not entitled to a meal interval but should have an opportunity to eat. Their lunch break forms part of the ordinary hours of work. The Act also prescribes a daily rest period of at least 12 hours between ending and recommencing work and a weekly rest period of at least 36 consecutive hours, which, unless otherwise agreed, must include a Sunday. A written agreement may vary the daily rest periods for employees who live on the premises of the employer or whose meal interval last for at least three hours. An agreement allows a further downwards variation pertaining to the weekly rest periods.



Domestic workers across the board indicated that they do not get a lunch break. They complained that the workload more often than not does not allow them to do so. If they do take a lunch break, they might not finish their work for the day. They literally eat standing up. However, they admitted that their employers do not refuse their taking lunch. Some indicated that they prefer not to break for lunch as it allows them to go home earlier.

The majority of non-resident (live-out) domestic workers who attended the hearings worked between 08:00 to 17:00 thus complying with the daily rest period provisions.

Live-in domestic workers reported that they more often than not have to work after 18:00. Their services are required between 17:00 and 20:00, sometimes later. Others indicated that they do rest in the afternoon. They can decide on the time period but the workload determines whether they will be able to rest or not.

Employers in Mmabatho complained that they have no control over the rest periods and that domestic workers take advantage of the situation. They visit each other, watch TV, etc. The result is that they have to work after 17:00 to catch up.

Only a few participants indicated that they have written agreements on hours of work as provided for in section 29 of the Basic Conditions of Employment Act, 1997.

The provisions in the Basic Conditions of Employment Act, 1997, is sufficient and appropriate. It provides for meal intervals, daily and weekly rest periods. However the sectoral determination should clearly specify daily rest periods. If the domestic worker is not able to take an adequate rest break, all hours worked after 17:00 would be regarded as overtime and paid at a higher premium.

*The following is recommended in line with the BCEA:*

*(a) Meal Intervals*

- (i) An employer must give an employee who works continuously for more than five hours a meal interval of at least one continuous hour.*
- (ii) A written agreement may reduce the meal interval to 30 minutes.*
- (iii) A written agreement may allow an employee to forgo a meal interval if he/she works fewer than six hours per day.*
- (iv) When on any day by reason of overtime worked an employer is required to give an employee a second meal interval, such interval may be reduced to not less than 15 minutes.*

(v) *During a meal interval the employee may be required or permitted to perform only duties that cannot be left unattended and cannot be performed by another employee.*

(vi) *An employee must be remunerated –*

- *for a meal interval in which the employee is required to work or is required to be available for work; and*
- *for any portion of a meal interval that is in excess of 75 minutes unless the employee lives on the premises at which the workplace is situated.*

(vii) *Work is regarded as continuous unless it is interrupted by an interval of at least 60 minutes.*

**(b) Rest Periods**

(i) *An employer must allow an employee –*

- *a daily rest period of at least twelve consecutive hours between ending and recommencing work; and*
- *a weekly rest period of at least 36 consecutive hours which, unless otherwise agreed, must include a Sunday.*

(ii) *A daily rest period may, by written agreement, be reduced to 10 hours for an employee –*

- *who lives on the premises at which the workplace is situated; and*
- *whose meal interval lasts for at least three hours.*

(iii) *An agreement in writing may provide for –*

- *a rest period of at least 60 consecutive hours every two weeks; or*
- *an employee's weekly rest period to be reduced by up to eight hours in any week if the rest period in the following week is extended equivalently.*

## **2.4 Overtime**

Overtime refers to the portion of time, which an employee works in excess of the ordinary hours of work prescribed by the law. Internationally, overtime is quantified in

different ways. Countries such as Austria and Burkina Faso do not specify any limitations whilst Swaziland, Tanzania and Zimbabwe set daily limitations of not less than three hours in excess of twelve hours of work in a day. France prescribes weekly limitations and in Spain overtime must not exceed 80 hours in any year. Domestic workers usually have to consent to working overtime and compensation entails time off, cash payment or a combination of both.

Under certain circumstances of an exceptional nature some laws in countries such as Austria, Sweden and Finland also allow for the conclusion of a special arrangement to extend hours of work. For instance in Sweden where the work includes the care of a child or other member of the household unable to attend to their own needs, the law allows hours of work to be increased if the household members who are responsible for the attending of such person are unable to do so because they are engaged in remunerative work outside the home. However, there is a limit of 12 hours per week, averaged over a four-week period.

The Basic Conditions of Employment Act, 1997 sets daily and weekly limitations of not more than three hours per day and ten hours per week. A variation for small businesses allows the weekly limitation to be extended to 15 hours per week. Employees must consent and the premium for overtime equals one and one half times the hourly rate. Small businesses (which would include most domestic workers) pay time and a third for overtime worked for the first 10 hours and time and a half times thereafter. Compensation could be either in cash or time off or a combination of both.

The Act also provides for various ways to organise hours of work without paying for overtime i.e. through averaging or compressing of hours of work.

Domestic workers indicated during the hearings and workshops that they are required to work overtime but that they are seldom remunerated for it. In Standerton and Middelburg (Mpumalanga) workers work five to seven hours overtime per week. In Durban live-in domestic workers work two to three hours overtime per day, etc. The majority of workers did not complain about the number of overtime hours worked but they raised concerns about the employers' failure to remunerate them properly. Promises of time off are usually forgotten or disputed since records are seldom kept.

Remuneration for overtime takes different forms e.g. time off, cash or even a plate of food or leftovers from parties or functions. In Welkom one worker complained that it does not pay to work overtime. Her employer would give her R20 for a Saturday's work whilst the bus fare is R35. Employers admitted that they almost never refer to the Basic Conditions of Employment Act, 1997 when calculating overtime pay. They also seldom keep track of overtime hours worked.

It is evident from the information gathered that although domestic workers do work overtime it is not necessarily excessive. In the instances where the weekly limitation is exceeded, evidence suggests that it is not more than five hours a week. Live-in domestic workers are usually required to clean-up after dinner or to look after the children for

whatever reason. The extension of the weekly overtime limitation to fifteen hours per week is therefore advised.

In cases where domestic workers are required to work overtime on a regular basis, agreements may be concluded which allow for the payment of a "flat rate". Agreements can be concluded to work five, ten or fifteen hours overtime per week whereby the wage has to be increased by one sixth, two sixths and three sixths of the wage respectively. This principle applies irrespective of the method of payment i.e. whether the domestic worker is paid per hour, day, week or month. Employers and domestic workers who choose this method of payment will not be required to pay the overtime premium otherwise required. This provides an option that is less sophisticated than the averaging provision but ensures that domestic workers receive remuneration for overtime. This also reduces record keeping and disputes about the number of hours when employers may not be present.

Payment for any overtime work can either be in cash or by giving time-off. All payments done in respect of overtime must be reflected on the pay slip.

The Basic Conditions of Employment Act, 1997, provides for various ways to organise hours of work without paying for overtime i.e. through averaging or compressing of hours of work.

*The following are recommended in relation to overtime and the payment thereof:*

*(a). Overtime*

- (i) An employer may not require or permit an employee to work overtime otherwise than in terms of an agreement concluded by the employer with the employee and such overtime shall not exceed –*

- *3 hours overtime a day; or*
- *15 hours in any week.*

*(b) Payment for overtime*

- (i) An employer shall pay an employee who works overtime at a rate of not less than one and a half times the hourly wage in respect of the overtime worked.*
- (ii) Any time worked on Sundays and paid public holidays shall be paid in accordance with the provisions determined for Sundays and public holidays as set out in the BCEA.*
- (iii) In instances where employees will be required to work fixed overtime hours on a regular basis an agreement may provide for an employer to-*

- Increase the wage by one sixth for every five hours of overtime worked per week.
- Increase the wage by two sixths for every ten hours of overtime worked per week.
- Increase the wage by three sixths for every fifteen hours of overtime worked per week.
- The formula for the calculation of the increases in proviso (iii) of paragraph (b) will be as follows:

<p>Formula for calculating the increases of the monthly wages as provided for in proviso (iii) of paragraph (b) above, for employees who are regularly required to work fixed overtime hours. The amount indicated by an X in the columns below must be added to the wage of the employee.</p>		
Formula to increase the wage by one sixth for five hours overtime worked per week	Formula to increase the wage by two sixths for ten hours overtime worked per week	Formula to increase the wage by three sixths for fifteen hours overtime worked per week
<p>Wage rate divided by six.</p> <p>(Hourly rate <math>\div</math> 6=X)</p>	<p>Wage rate divided by six and multiplied by two.</p> <p>(Hourly rate <math>\div</math> 6 x 2=X)</p>	<p>Wage rate divided by six and multiplied by three.</p> <p>(Hourly rate <math>\div</math> 6 x 3=X)</p>

(iv) An agreement may provide for an employer to –

- pay an employee not less than the employee's ordinary wage for overtime worked and grant the employee at least 30 minutes' time off on full pay for every hour of overtime worked; or
- grant an employee at least 90 minutes' paid time off for each hour of overtime worked.

(v) An employer must grant paid time off within one month of the employee becoming entitled to such time off.

(vi) An agreement in writing may increase the period contemplated by point (iv) to 12 months.



- (vii) *An agreement concluded pertaining to overtime work, lapses after one year.*

## 2.5 Night work

There are good examples on night work in the international experience. A number of countries explicitly refer to night work. Philippine law explicitly excludes domestic workers from the provisions on night work. Italy provides for adequate subsequent rest. In Denmark night work is not allowed unless a valid reason can be given. France provides for night work in detail in that:

- It is obligatory for the domestic worker to sleep at the employers home, in a personal room.
- Night work takes place between 22:00 and 06:00.
- Night work must be specified in a contract of employment.
- Domestic workers shall not work more than five consecutive nights.
- Night spread-over shall not exceed twelve hours.

Some of the above conditions are already contained in the Basic Conditions of Employment Act, 1997. Others have a high degree of merit for inclusion in a sectoral determination e.g. when domestic workers are required to be on standby, they should not be allowed to do so on more than a certain number of nights.

The Basic Conditions of Employment Act, 1997, broadly stipulates that night work is work that takes place between 6 pm and 6 am. A night allowance is payable although the rate is not prescribed. The employer must arrange transport where necessary. The health and safety of employees are taken into consideration and medical examinations are required should an employee work after 11 pm.

Only two instances of extended night work as intended by the Basic Conditions of Employment Act, 1997, were encountered during the hearings. In Kimberley two domestic workers work day and night shifts, taking care of an elderly woman. In Theunissen (Free State) the domestic worker resides with an elderly lady and is required to be available during the night should the employer need assistance.

For the purpose of a sectoral determination night work could be defined as work, which requires the domestic worker to sleep in the employer's home and to either work or be available for work, thus working shifts of eight to nine hours during night hours. Transport should be available if need be. Night work commences at 18:00 and ends at 06:00.

In some instances domestic workers are required to sleep-in during the night looking after children, the old or the frail. They might not necessarily be working physically but are required to be available for work should any member of the family need assistance. The payment of a sleep-in allowance for domestic workers who are on the premises between



20:00 and 06:00 is proposed for the inconvenience of such a sleep over. Alternatively the domestic worker could opt for additional leave.

*The following are recommended pertaining to night work:*

- (a) *An employer, who requires or permits an employee to perform night work, may do so, provided that*
  - (i) *it is by agreement;*
  - (ii) *transportation is available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's shift.*
- (b) *Night work takes place when an employer requires an employee to work between 18:00 and 06:00.*
- (c) *An employer shall not require an employee to sleep-in for more than five times per month or 50 times per year.*
- (d) *An employee who is required to sleep-in must agree to it in writing.*
- (e) *An employee who is regularly required to sleep-in between 20:00 – 06:00 must be paid an allowance of R16.00 per shift or granted on additional week's leave per annum.*
- (f) *Sleep-in means when an employee is required to be at work during the night but sleeping and available for work.*
- (g) *Working time means time actually worked excluding sleep-in periods.*

## **2.6 Work on Sundays and public holidays**

Namibia, Guatemala, and the Philippines exclude domestic workers from general rules on public holidays. Costa Rica allowed half days off or half pay for work done on a public holiday. In countries such as Swaziland, Tanzania or Zimbabwe domestic workers can be requested to work on public holidays and if they agree they are remunerated at a higher rate. Information on Sunday work was unavailable. The Basic Conditions of Employment Act, 1997, also provides for additional incentives should domestic workers be required to work on public holidays and Sundays which are in line with the international experience.

Employers and domestic workers were aware that the Basic Conditions of Employment Act, 1997, makes provision for work on Sundays and public holidays. Irrespective of this, a large number of complaints were received during the hearings that domestic

workers are required to work on Sundays and public holidays without extra remuneration. Working on Sundays and Public Holidays deprives domestic workers from spending time with their own families.

Employers indicated that live-in domestic workers do not work a full day on Sundays. They said that some would do the afternoon or evening dishes and be remunerated by provision of a meal.

Domestic workers who work for less than five days for the same employer reported that they are not paid for public holidays if they do not work. Employers regard these workers as non-permanent and therefore apply the principle of no-work-no-pay.

The provisions in the Basic Conditions of Employment Act, 1997, pertaining to work on Sundays and Public Holidays are appropriate and should be retained in a sectoral determination.

*The following are recommended in line with the BCEA:*

*(a) Payment for work on a Sunday*

- (i) An employer must pay an employee who works on a Sunday at double the employee's wage for each hour worked.*
- (ii) If an employee works less than the employee's ordinary shift on a Sunday and the payment that the employee is entitled to is less than the employee's ordinary daily wage, the employer must pay the employee the employee's ordinary daily wage.*
- (iii) An agreement may permit an employer to grant an employee who works on a Sunday, paid time off equivalent to the difference in value between the pay received by the employee for working on the Sunday and the pay that the employee is entitled to receive.*
- (iv) Any time worked on a Sunday by an employee who does not ordinarily work on a Sunday is not taken into account in calculating an employee's ordinary hours of work but is taken into account in calculating the overtime worked.*
- (v) If a shift worked by an employee falls on a Sunday and another day, the whole shift is deemed to have been worked on the Sunday, unless the greater portion of the shift was worked on the other day, in which case the whole shift is deemed to have been worked on the other day.*

- (vi) *An employer must grant paid time off within one month of the employee becoming entitled to it. An agreement may extend this period to 12 months.*

(b) *Public Holidays*

- (i) *An employer may not require an employee to work on a public holiday except in accordance with an agreement.*
- (ii) *If a public holiday falls on a day on which an employee would ordinarily work, an employer must pay –*
  - (aa) *an employee who does not work on the public holiday, at least the wage that the employee would ordinarily have received for work on that day;*
  - (ab) *an employee who does work on the public holiday –*
    - (i) *at least double the amount referred to in paragraph (aa); or*
    - (ii) *if it is greater, the amount referred to in paragraph (aa) plus the amount earned by the employee for the time worked on that day.*
- (iii) *If an employee works on a public holiday on which the employee would not ordinarily work, the employer must pay that employee an amount equal to –*
  - (aa) *the employee's ordinary daily wage; plus*
  - (bb) *the amount earned by the employee for the work performed that day, whether calculated by reference to time worked or any other method.*
- (iv) *An employer must pay an employee for a public holiday on the employee's usual payday.*
- (v) *If a shift worked by an employee falls on a public holiday and another day, the whole shift is deemed to have been worked on the public holiday, but if the greater portion of the shift was worked on the other day, the whole shift is deemed to have been worked on the other day.*

### 3 Leave Provisions

#### 3.1 Annual leave

Internationally, laws commonly include the following provisions, which generally mirror the Basic Conditions of Employment Act, 1997:

- Qualifying periods of work must be completed to ensure leave entitlement.
- Leave periods vary from 10 to 30 days per year.
- Some laws prescribe proportional rights.
- Domestic workers are entitled to full pay or pro rata pay should services be terminated, etc.

The Basic Conditions of Employment Act, 1997 provides, for 21 consecutive days annual leave in a cycle of 12 completed months. The Act allows for proportional rights if employees are not employed on a full time basis.

It was established during the hearings that most domestic workers get 14 to 21 days leave per annum. If the employment relationship is healthy more leave than prescribed is granted. For example, one employer in Pretoria indicated that her domestic worker goes home during school holidays without any reduction in pay. She still gets the normal three weeks annual leave each December. The most popular times for employers to grant leave are during December (Christmas holidays) and April (Easter Holidays).

Domestic workers across the board complained that they do not get leave pay. When asked whether they received their normal wage for the month they all replied, "yes", which meant that they were paid. They expected additional payments. Employers of domestic workers who work less than four days per week for the same employer were under the impression that workers are not entitled to annual leave since they were regarded as non-permanent workers.

There was consensus that the provisions in the Basic Conditions of Employment Act, 1997, are appropriate. The sectoral determination should be clear on how employees are remunerated for annual leave.

*The following is recommended regarding annual leave that is similar to the BCEA:*

(a) *An employer must grant to an employee at least:*

- (i) *21 consecutive days' annual leave on full remuneration in respect of each annual leave cycle; or*
- (ii) *by agreement, one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid; or*
- (iii) *by agreement, one hour of annual leave on full remuneration for every 17 hours on which the employee worked or was entitled to be paid.*

- (b) *An employer must grant an employee an additional day of paid leave if a public holiday falls on a day during an employee's annual leave on which the employee would ordinarily have worked.*
- (c) *The employer shall pay an employee in respect of the leave prescribed an amount not less than three times the weekly wage which the employee was receiving immediately prior to the date on which the leave commenced.*
- (d) *The leave prescribed shall be granted and be taken at a time to be fixed by the employer: Provided that if such leave has not been granted earlier, it shall be granted and be taken not later than six months after the end of the annual leave cycle.*
- (e) *The period of leave shall not be concurrent with any period during which an employee is absent on sick leave in the aggregate to not more than 10 weeks in any period of 12 months or during which the employee is under notice of termination of employment.*
- (f) *If so requested an employer may grant an employee occasional leave on full pay in an annual leave cycle.*
- (h) *An employer may reduce an employee's entitlement to annual leave by the number of days of occasional leave granted on full remuneration to the employee in an annual leave cycle.*
- (h) *The remuneration in respect of the leave prescribed shall be paid not later than the last working day before the date of commencement of the leave.*
- (i) *Upon termination of employment the employer shall pay the employee the pay in respect of any period of leave, which has accrued to the employee but was not granted to the employee before the date of termination of the employment; and*
- (j) *If the employee has been in employment longer than four months, in respect of the employee's annual leave entitlement during an incomplete annual leave cycle one day's remuneration in respect of every 17 days on which the employee worked or was entitled to be paid; or remuneration calculated on any basis that is at least as favourable to the employee.*
- (k) *An employer may for the purpose of annual leave grant an employee at least 21 consecutive days leave during December.*

### **3.2 Sick leave**

Common provisions drawn from laws in other countries are as follows:



- In the event of incapacity to work due to illness or accident, sick leave is granted and paid (Argentina, Austria, France, Swaziland, etc).
- Incapacity as a result of own misconduct or gross negligence is not covered (Austria, Zimbabwe, etc).
- Medical certificates are required as proof.
- The duration of sick leave varies from a few days to several months.
- Some laws provide for instances where the relationship could be temporarily terminated if the domestic worker has a contagious disease.

The Basic Conditions of Employment Act, 1997, prescribes sick leave in a three-year cycle. Proportional rights are given to employees who are employed on a daily or hourly basis. Medical certificates are required as proof of absence due to illness after a certain number of days.

Sick leave was extensively discussed at the hearings. The management of sick leave in the domestic worker sector is "casual". If the employment relationship is healthy domestic workers get sufficient sick leave at full pay. However, if the relationship is bad employers apply the Act either meticulously or they refuse to pay for sick leave taken. The same principle applies with regard to the submission of medical certificates from traditional healers and other medical practitioners.

Domestic workers in Nelspruit reported intolerance from employers in this respect. Workers in Witbank indicated that if they struggle with a chronic illness they find it difficult to keep their jobs since employers try to find all sorts of reasons for dismissal. Workers in Upington indicated that they go to work even though they are sick since they feel they cannot disappoint their employers. There was a sense that it was more a matter of fear of losing their jobs than loyalty towards the employers.

On the other hand, a domestic worker in Welkom said that her employer sees to all her medical needs. She is taken to the doctor and the employer takes care of the bill. Only about a quarter of employers who participated in the provincial workshops indicated that they pay their workers' medical expenses<sup>8</sup>

Domestic workers usually use the services of local clinics. This means that they have to queue for long hours and if they forget to ask for a sick note it is difficult to go back for it. This causes problems with unsympathetic employers. Live-in domestic workers complained that employers give them medicine and thereafter require them to carry on with their work.

Employers admitted that they seldom keep record of the number of sick days taken and that informal arrangements are made.

<sup>8</sup> Markdata, 2000 Unpublished report on Domestic Workers and Employers Report. Pg 18



There was consensus that the provisions in the Basic Conditions of Employment Act, 1997, were sufficient and appropriate. However, domestic workers felt that if the employer insists on a medical certificate they should assist them to get one.

Although no mention was made during the hearings about HIV/AIDS, its impact will touch the lives of domestic workers and households. It is therefore necessary to provide guidance on how to deal with situations of this nature. It is recommended that a code of good practice on key aspects of HIV/AIDS in employment be referred to in this respect.

The present conditions in the Basic Conditions of Employment Act, 1997 are appropriate. Domestic workers have reasonable access to medical help and it is not necessary that employers assist in getting a medical certificate required for payment purposes.

*The following is recommended pertaining to sick leave, which is similar to the BCEA:*

- (a) *During every sick leave cycle of 36 consecutive months of employment with the employer, 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. Provided that in the first 6 months of employment an employer shall grant an employee one-day's paid sick leave for every 26 days worked.*
- (b) *An employer may, as a condition prior to payment of any amount claimed by an employee in respect of any absence from work for more than three consecutive working days, require the employee to produce a certificate within a reasonable period, signed by a registered medical practitioner, traditional healer or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament stating the nature and duration of the employee's incapacity.*
- (c) *An employer is not required to pay an employee in terms of this clause if the employee has been absent from work for more than three 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.*

### **3.3 Family responsibility leave**

Under certain circumstances laws in other countries provide for paid leave of absence on occasions such as the birth of a child, marriage, death of a family member, etc. In Swaziland the law stipulates that such leave is at the employer's discretion.

The Basic Conditions of Employment Act, 1997, provides for three days family responsibility leave in an annual leave cycle if an employee works for longer than four consecutive months and at least four days in a week. Leave is granted in the case of the birth of a child, when a child is sick and when there is death in the family. The employer may request reasonable proof.

A high percentage of participants at the hearings and workshops, more especially in the Free State, did not know that such provision exists. In Mpumalanga domestic workers reported high intolerance. A worker in Nelspruit reported that her employer refused that she attends the funeral of her brother. She eventually left without permission. The employer allowed her to resume duty afterwards but it affected the relationship negatively. The Fafo survey reflected that 36% of the respondents received family responsibility leave.<sup>9</sup> Domestic workers in KwaZulu-Natal and North West suggested that the number of days granted for the attendance of funerals should be increased to at least five days per annum to accommodate customs. Live-in domestic workers spend a lot of time traveling, which leave little time to attend to problems that might require his or her attention. This request was presented to employers at the hearings and the majority indicated that they would have no problem if the number of leave days were increased.

The conditions pertaining to family responsibility leave as set out in the Basic Conditions of Employment Act, 1997, should be retained in the sectoral determination as is. The number of occasional leave should be increased to five days per year due to the fact that many domestic workers are separated from their families.

*The following is recommended regarding family responsibility leave:*

- (a) *An employee who has been in employment with an employer for longer than four months and who works for at least four days a week for that employer will be entitled to five days family responsibility leave per year.*
- (b) *An employee is entitled to take family responsibility leave*
  - (i) *when the employee's child is born;*
  - (ii) *when the employee's child is sick; or*
  - (iii) *in the event of the death the employee's spouse or life partner; the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.*
- (c) *An employer must pay an employee for a day's family responsibility leave the wage the employee would ordinarily have received for work on that day; and on the employee's usual payday.*
- (d) *An employee may take family responsibility leave in respect of the whole or a part of a day.*
- (e) *Before paying an employee for leave in this respect, an employer may require reasonable proof of an event for which the leave was required.*

<sup>9</sup> Fafo, 2000 Unpublished report on Domestic Workers in Gauteng: Wage and Working Conditions. Pg 15

- (f) *An employee's unused entitlement to leave in this respect lapses at the end of the annual leave cycle in which it accrues.*

### 3.4 Maternity leave

The Basic Conditions of Employment Act, 1997, allows for four months unpaid maternity leave. It also provides protection to women before and after the birth of the child in that the employers should ensure that the work is not hazardous to her health or the health of the child.

Although domestic workers officially enjoy the full protection of the law, pregnancy results in direct job losses. Employers are inconsistent in complying with the law. Maternity leave granted varies from two to four months. Domestic workers are often required to arrange for replacement labour. However, the majority of domestic workers were comfortable with this arrangement since it serves as a means of securing their jobs.

Maternity leave is usually not paid. COSATU was very vocal on the need for payment for maternity leave, which was supported by domestic workers. They proposed that maternity leave should be granted at full pay. Unemployment Insurance could also bring some relief but does not currently apply to domestic workers. Domestic workers in KwaZulu-Natal suggested that 50% of the wage should be paid for the first two months of maternity leave. Employers disagreed. They indicated that they would consider a payment of 25% of the wage. Employers in other provinces indicated that they would not be able to afford payment of maternity leave since they have to pay for replacement labour.

There was consensus that the present provisions of the Basic Conditions of Employment Act, 1997 are appropriate and sufficient. The extension of the Unemployment Insurance Act to domestic workers is currently under discussion. If this happens, it may provide for the payment of maternity benefits.

*The following are recommended pertaining to maternity leave and protection of an employee before and after the birth of the child.*

- (a) *An employee is entitled to at least four consecutive months' maternity leave.*
- (b) *An employee may commence maternity leave at any time from four weeks before the expected date of birth, unless otherwise agreed or on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.*
- (c) *No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.*
- (d) *An employee who has a miscarriage during the third semester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the*

*miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.*

- (e) *An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to commence maternity leave and return to work after maternity leave.*
- (f) *Notification of an employee's intention to go on maternity leave must be given at least four weeks before the employee intends to commence maternity leave or as soon as is reasonably practicable to do so.*
- (g) *No employer may require or permit a pregnant employee or an employee who is nursing her child during the first six month of employment to perform work that is hazardous to her health or the health of the child.*

#### **4. Termination of employment**

Internationally, notice periods vary from five days to up to three months. In countries such as Argentina, Belgium and France the notice period depends on the length of service, and normally increases as the length of service increases. Notice periods for employers and employees are usually of equal duration but in Belgium and France employers are required to give longer notice than employees. Payment in lieu of notice is a common practice.

The Basic Conditions of Employment Act, 1997, prescribes a four-week notice period for both employers and employees. Notice must be in writing unless the employee is illiterate. Employers may pay in lieu of notice and services may be terminated immediately for a reason recognized by law as sufficient. Live-in domestic workers are allowed to remain on the premises for one month or for a longer period, until the contract of employment could lawfully be terminated.

Domestic workers and employers held opposing views on the termination of employment. Workers are satisfied with the four weeks required by the Act, whilst employers prefer shorter periods especially when they employ workers for less than five days a week. There was a call for probation periods, which will allow for shorter notice periods. Employers felt that the relationship is highly personalised and therefore should serious personality clashes exist; they should be able to terminate the contract of employment without problems.

It is suggested that the notice periods in the Basic Conditions of Employment Act, 1997 are retained. A probation period could be considered. Amendments to the Labour Relations Act, 1996 is addressing this issue, which if supported by the legislator, would also apply to domestic workers. However it is felt that a more appropriate way to bring about stability and clarity on how to manage the termination of employment including dismissal is through a code of good practice which could provide guidance in relation to issues such as types of employment contracts, probation periods, etc.



*The following is recommended in line with the BCEA pertaining to termination of employment:*

- (a) An employer or an employee, who desires to terminate the contract of employment, shall give four weeks notice in writing, except when it is given by an illiterate employee.*
- (b) No agreement may require or permit an employee to give a period of notice longer than that required of the employer.*
- (c) An employee may terminate the contract without notice by paying the employee in lieu of such notice, provided that this shall not affect the right of an employer or an employee to terminate the contract without notice for any cause recognised by law as sufficient.*
- (d) Notice shall be given on any working day, provided that the period of notice shall not run concurrently with, nor shall notice be given during, an employee's absence on leave, or sick leave.*
- (e) If the employer of an employee who resides in accommodation that is situated on the premises of the employer or that is supplied by the employer terminates the contract of employment of that employee before the date on which the employer was entitled to do so or when the employer pay in lieu of notice, the employer is required to provide the employee 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.*
- (f) If an employee elects to remain in accommodation after the employer has terminated the employee's contract of employment by way of payment in lieu of notice the employer and employee may agree to deduct money for the accommodation.*

## **5. Severance pay**

Several countries provide for the payment of severance pay and South Africa is no exception. It was established during the hearings that employer and domestic workers are ignorant as to what severance pay entails and under which circumstances it should be paid. Domestic workers felt that the amount prescribed should be at least two weeks' pay for each completed year service instead of the present one-week's pay.

The conditions in this respect as reflected in the Basic Conditions of Employment Act, 1997, are sufficient and appropriate. The above mentioned code of good practice could also regulate matters such as what constitute a claim for severance pay i.e. when the contract of employment is terminated when the employer moves to other premises, or the job content changes, etc.

*The following is recommended pertaining to severance pay:*

- (a) *An employer must pay an employee who is dismissed for reasons based on the employer's operational requirements, severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer, calculated in accordance with clause 4.*
- (b) *An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer is not entitled to severance pay.*
- (c) *The payment of severance pay in compliance with this clause does not affect an employee's right to any other amount payable according to law.*
- (d) *If there is a dispute only about the entitlement to severance pay in terms of this section, the employee may refer the dispute in writing to the CCMA.*

#### **6. Administrative obligations**

The Basic Conditions of Employment Act, 1997, excluded domestic workers from certain administrative obligations such as the keeping of records and issuing of pay slips. The main complaints regarding these issues were the fact that domestic workers found it difficult to keep track of overtime worked and that they could not open bank or other accounts without a pay slip or letter from the employer. Employers said they had no problem with issuing pay slips although they seldom did so.

The sectoral determination should provide for the full range of administrative obligations as contained in the Basic Conditions of Employment Act, 1997. The Determination could provide standardised forms to assist the employers. However, employers should have the option not to complete an attendance register if written agreements have been concluded pertaining work related to overtime, night work, Sundays and public holidays.

*The following is recommended pertaining to the administrative obligations.*

- (a) *An employer must give an employee a pay slip or wage envelope on each payday that contains the following information:*
  - (i) *the employer's name and address.*
  - (ii) *the employee's name.*
  - (iii) *the employee's occupation.*
  - (iv) *the period for which payment is made.*



- (v) *the amount and purpose of any deductions made from the remuneration.*
- (vi) *the nett amount paid to the employee.*
- (vii) *if relevant to the calculation of that employee's remuneration –*
  - *the employee's rate of remuneration and overtime rate;*
  - *the employee's allowance rate.*
  - *the number of ordinary hours worked by the employee.*
  - *the number of overtime hours worked by the employee.*
  - *the number of hours worked by the employee on a Sunday or a public holiday during that period.*
- (b) *Such envelope or container on which these particulars are recorded or such statement shall become the property of the employee: Provided that-*
- (c) *The amount due to the employee may be paid into the employee's nominated building society or bank account, by manual or electronic funds transfer, by the employer, who shall, however, hand to the employee the aforementioned statement.*
- (d) *An employer must keep an attendance register, which indicates the hours of work, overtime, night work, work on a Sunday and Public Holiday unless an agreement regarding the issues mentioned has been concluded.*
- (e) *On termination of employment an employee is entitled to a certificate of service stating:*
  - *the employee's full name.*
  - *the name and address of the employer.*
  - *a description of any sectoral employment standard by which the employer's business is covered.*
  - *the date of commencement and date of termination of employment.*
  - *the title of the job or a brief description of the work for which the employee was employed at date of termination.*
  - *the remuneration at date of termination.*
  - *if the employee so requests, the reason for termination of employment.*

## 7. Deductions

Information on deductions in the international literature review is lacking. The Basic Conditions of Employment Act, 1997, allows a deduction of 25% of wage for malicious damages as well as loans, etc if a fair procedure was followed and a written agreement concluded.

It was established that although deductions for damages are made, it is not the rule. These deductions are usually calculated in respect of replacement value rather than what the item had cost at the time of purchase as intended by the legislation.

Due to the nature of the work it is highly possible that glasses, crockery and other items could break or garments that needed ironing are burnt. Penalising workers who have to operate in such a high-risk environment would be inappropriate. Therefore no allowance should be made for deductions due to damages. Domestic workers and employers agreed that this provision in the Act is difficult to apply. If instances of malicious damages occur employers would be able to address the matter through the mechanisms provided for in the Labour Relations Act.

Employers were not aware of the fact that domestic workers are supposed to pay back loans at the rate indicated above. Some would deduct the total amount owed on the next payday, whilst others would eventually write the loan off due to humanitarian reasons. Written agreements are seldom concluded.

Wage levels are low and deductions for whatever reason should be set at a lower rate. Employers indicated at the hearings that a deduction of 10% of the wage would be acceptable.

*The following is recommended pertaining to deductions and other acts concerning remuneration:*

- (a) *Unless an employee agrees in writing, an employer may not make any deductions from an employee's remuneration other than for accommodation, provident or pension fund, trade union subscriptions or debt specified in the agreement.*
- (b) *Deductions for debt should not exceed more than one-tenth of the total amount of the debt.*
- (c) *An employee may agree in writing to deductions, which the employer has paid or undertaken to pay to any banking institution, building society, insurance business, registered financial institution or local council, in respect of a payment on a loan granted to such an employee to acquire a dwelling.*
- (d) *The employer may deduct monies from the employee's wages if the deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.*

- (e) *An employer may not require or permit an employee to repay any remuneration except for overpayments previously made by the employer resulting from an error in calculating the employee's remuneration or acknowledged receipt of an amount greater than the remuneration actually received.*

#### **8. Contracts of employment and written particulars**

Only a few countries provide for a contract of employment. Austria, Burkina Faso, Chile, China and Zimbabwe require parties to conclude a contract of employment. Others require the issuing of written particulars of employment, in line with the provisions of the Basic Conditions of Employment Act, 1997.

Information gathered from the hearings shows that a small number of employers enter into a contract of employment or issue written particulars of employment. It is not clear whether non-compliance is mainly due to ignorance of the law or the hassle factor. There was also confusion as to what the law requires i.e. a contract of employment or written particulars as well as what the difference between the two are. Employers alleged that domestic workers do not want to sign the contract of employment. In fact some workers allegedly felt offended. Where contracts have been concluded, domestic workers complained that they are not provided with copies of the contract.

The Skills Development Survey confirmed that the vast majority of domestic workers (83%) did not have any written contract with their employers. Respondents working for one employer were more likely to say that although they had a written contract with their employers, they did not have a copy of the contract. On the other hand domestic workers working for more than one employer (two) were more likely to have a copy of the written contract. People who had a contract were paid approximately R10 more a day on average than either those respondents who didn't have a contract or those who had a contract but did not possess a copy of the document.

Domestic workers across the board indicated that they would like to have a contract of employment. A common reason given was that the contract could assist in determining the parameters of their work and create opportunities to dispute unfair requests regarding their work. For instance, domestic workers complained that they are required to look after the welfare of guests who visit the household without additional remuneration. There is usually no arrangement regarding the worker's responsibilities towards guests or her entitlement to some form of remuneration for the additional workload that it brings. This causes conflict and employers are not always approachable to discuss concerns in this respect. It would give the domestic worker as basis from where he or she could dispute such "unfair" request.

It is clear that the sectoral determination should provide for at least the issuing of written particulars of employment.

*The following is recommended pertaining to written particulars of employment:*

(a) *An employer must supply an employee, when the employee commences employment, with the following particulars in writing –*

- *the full name and address of the employer.*
- *the full name and address of the employee.*
- *the place of work, and, where the employee is required or permitted to work at various places, an indication of this.*
- *the date on which the employment began.*
- *the employee's ordinary hours of work and days of work.*
- *the employee's wage or the rate and method of calculating wages.*
- *the rate of pay for overtime work or method of remunerating overtime.*
- *any other cash payments that the employee is entitled to.*
- *how frequently remuneration will be paid.*
- *any deductions to be made from the employee's remuneration.*
- *the leave to which the employee is entitled.*
- *the period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate;*

## **9. Accommodation**

Only a few countries refer to standards of lodgings. Denmark, Austria, Finland and France have legislated very precise norms in this respect. These norms refer to issues such as size of the room, lighting, heating, sanitation, ventilation, privacy, minimum furniture, etc.

Accommodation: Denmark

- "(1) A worker who is provided with lodging in the employer's household shall be given a room which is weatherproof, free from damp, and generally kept in good condition, light and well-aired, with at least one easily opened window, the inside frame of which throws an area of light covering at least 10 percent of the floor area. The window shall not overlook a manure heap, pigsty or the like. If the walls are whitewashed, the coating shall be renewed at least once a year. The size of the room shall be at least 15 cubic metres for one person and 25 cubic metres for two persons; it shall have a floor area of at least 6 and 10 square metres respectively, and shall be at least 2 metres wide. No room may be used as sleeping quarters for more than two workers. Rooms arranged or brought into use after the commencement of this Act shall not be used as sleeping quarters for more than one worker. The floor shall not be made of stone or similar material. No room shall be so situated that its only means of access is through a room used as sleeping quarters by another member of the household or that it affords the only means of access to a room used by another member of the household. The exit from the room shall not be difficult and, if the room is not on the ground floor, it shall be reached by means of an easy stairway with a handrail. If the room is situated on an upper floor, the opening onto the stairway shall not be blocked by means of a trapdoor, but shall be enclosed on three sides by a balustrade. If the room is in a building containing stables, access to the room shall not be through the stables.
- (2) If the room is situated in the loft or a building attached with straw reeds or other equally flammable material, the employer shall, within two years following the commencement of this Act, adopt such safety measures for the exits as are deemed necessary by the local inspectorate of Labour. Before a worker's room is arranged or brought into use after the commencement of this Act, the proper safety measures for the exits shall be taken.
- (3) The room shall be capable of being locked and have adequate lighting and heating installations. Each worker shall have his own bed and chair and, if he does not bring his own cupboard or chest of drawers with him, he shall be provided with a wardrobe that is capable of being locked; the room shall also contain a strong table. If the worker does not have access to a properly fitted washroom, the room shall be provided with a washbasin with the necessary fittings or a bowl.
- (4) Clean bedding shall be provided at least once a month and clean towels at least once a week."



*Denmark, Lex cit. note 16, Section 8*

The Basic Conditions of Employment Act, 1997, only refers to accommodation when the services of an employee are terminated. The Act stipulates that an employee has the right to stay on the premises for a period of one month after the termination of the contract of employment. There is no reference to the nature of the accommodation or any standards that should be complied with.

Domestic workers who participated in the hearings did not complain so much about the accommodation arrangements *per se*. The only significant complaints came from the Piet Retief area in Mpumalanga. One domestic worker complained that the employer shut off the hot water since she (the domestic worker) was wasting water. Others claimed that they are staying in tool sheds or wendy houses without sanitation.

Domestic workers were, however, very unhappy with the fact that they live isolated lives. Employers are reluctant to allow friends and family members to visit or sleepover. They have little privacy.

Table 7 gives a sense of the types of housing domestic workers is utilizing.

**Table 7: Accommodation utilized by domestic workers**

Type of accommodation	%
Allocated a free room on this employer's property	36
I own a house	31
Other	10
I own a shack/traditional dwelling/hut	7
I rent a house	6
I share a shack/traditional dwelling/hut	4
Live on another employer's property	3
I rent a room in a house	3
<b>Total</b>	<b>100</b>

Skills Development Survey 2000

Just over a third (36%) of the respondents said they lived on their employer's property while just under a third (31%) said they lived in their own house. A small proportion (1-2%) of respondents said that their employers deducted money from their salaries for electricity, water, room, food and so on.

The provision of accommodation is closely related to the payment in kind issue. According to OHS 1997 data 27% of the employers reported providing free accommodation to domestic workers. They valued accommodation the highest of the payment in kind expense, with a monthly mean of R294,00 and a median of R200,00.



Although many domestic workers may not pay directly for accommodation, employers often pay lower salaries if "free" accommodation is provided. Employers pay rates and taxes as well as water and electricity of all accommodation. It would therefore not be "unreasonable" to expect some compensation from domestic workers in lieu of accommodation. However, the quality of the accommodation should be taken into consideration.

In some instances domestic workers provide a free service to employers in exchange for accommodation. This practice could lead to exploitation but total prohibition might prevent domestic workers from finding much needed accommodation. Therefore it is suggested that no domestic worker should be allowed to render a free service of more than 10 hours per week in exchange for accommodation.

*The following is recommended pertaining to accommodation:*

- (a) *An employer shall not as a condition of employment require an employee to work for longer than 10 hours a week without remuneration in exchange for accommodation.*
- (b) *An employer may deduct an amount of not more than 25% of the wage in lieu of accommodation provided that the following conditions are met:*
  - *the room must be weatherproof and generally kept in a good condition*
  - *the room must have at least one window and door, which can be locked*
  - *the room must be fitted with a toilet and bath or shower if the domestic worker does not have access to another bathroom.*

## **10. Other Allowances**

Domestic workers complained that they are required to accompany employers on holiday. When they arrive at their destination they are required to cook and clean for several families without additional compensation. They would like to get additional compensation in these instances to allow them to contact their families or have some spending money. This was however not necessarily the rule. An agreement between the parties regarding the payment of subsistence and travel allowances would be sufficient.

The payment of transport allowance varies. The payment of allowances was more a trend in larger cities and towns such as Bloemfontein and East London. Where the townships are within walking distance few incidences of payment were reported. Transport allowances are not taken into consideration in the calculation of wages and are paid either on a daily or weekly basis. Live-in domestic workers complained that they found it difficult to save transport money if their homes are in other provinces. They are therefore in a disadvantaged position. The payment of a transport allowance would allow them to go home more often. Prescribing a transport allowance could put downwards pressure on the minimum wage and it is suggested that the sectoral determination does not prescribe such payments.

Some employers pay bonuses at the end of each year but there is no consistency in this respect. If the relationship is good the domestic worker will have the benefit of a cash bonus plus food parcels. If not, no benefits are given. It also depends on the income of the household whether bonuses are paid or not. This was a very sensitive issue for employers and they felt that a compulsory bonus would not be appropriate since it is difficult to determine beforehand if such an expenditure would be affordable at the time or not. Compulsory bonuses would put unnecessary pressure on household budgets and it is suggested agreements in this respect should be left to the parties concerned.

*It is recommended that the sectoral determination does not prescribe allowances pertaining to subsistence and travel, transport or bonuses. A code of good practice could be developed to regulate the payment of allowances indicated above.*

## 11. Social security

Three issues were discussed at hearings in this respect, namely, unemployment insurance, compensation for injuries on duty and occupational diseases and the possible establishment of a provident fund for domestic workers.

As COSATU rightly pointed out, in the majority of cases workers who have put in decades of service either retire or are dismissed as they age with no retirement provision other than public pensions. The failure of private employers to provide for their domestic workers' retirement amounts to a cross-subsidisation of these employers by the rest of society.<sup>10</sup>

- *A domestic worker in Vryburg who has worked for 35 years and earns R280 per month. She is very concerned about her retirement. She hopes that the legislation would at least provide for long service.*
- *An employer in Bloemfontein pays her domestic worker R1 500 per month, provides decent accommodation and contributes towards an insurance policy that will take care of her retirement needs.*

*Information from participants at the hearings.*

Domestic workers are excluded from the Unemployment Insurance Act and Compensation for Occupational Injuries and Diseases Act. This leaves them unprotected during periods of unemployment and when injuries on duty occur. Two particular injury risks identified by COSATU were dog bites and injuries related to the use of electrical equipment.

<sup>10</sup> COSATU 1999 Submission on wages and conditions of employment for domestic workers pg7.

Participants at the hearings responded positively to the proposed inclusion of domestic workers under the Unemployment Insurance Act and the Compensation for Occupational Injuries and Diseases Act. Employers were concerned about the administration and collection of monies in this respect.

Domestic workers across the board supported the establishment of a national provident fund. They were prepared to spend up to R50 per month if need be as a contribution to such a fund. They were generally concerned that they would not have any money for retirement and felt that government should intervene. In fact, some domestic workers indicated that establishing a provident fund is even more urgent than setting a minimum wage. Employers on the other hand resisted this notion to the extent that they felt such a requirement is not compulsory at their own workplace so why should it be for domestic workers. They felt it would incur additional costs that could have gone to higher wages. They were also worried about the enforcement and administration of such a fund.

The Unemployment Insurance Fund is presently busy with an investigation regarding the extension of benefits to the domestic worker sector. *It is recommended that the process of establishing a provident fund be taken forward through that forum.*

## CHAPTER FIVE

### PRESENT WAGE LEVELS

#### 1. Contextualisation

The determination of minimum wages for domestic workers is not an uncommon phenomenon. Countries such as Canada (Ontario), the Central African Republic, France, Malta, Philippines, Swaziland, Tanzania and Zimbabwe fix minimum wages. In Colombia and Spain the national minimum wage applies to domestic workers. In Finland the Council of State lays down provisions that govern minimum wages.

Given the fact that many domestic workers live-in, benefits in kind are closely linked to the payment of minimum wages. It is dealt with in different ways internationally. In Zimbabwe domestic workers are entitled to free board and lodging, transportation, lights, fuel for cooking, etc. In Malta meals are provided free of charge if an employee is required to work for longer than five hours. In Ecuador, Haiti and Mexico salaries include board and lodging unless there is an explicit agreement to the contrary. Where deductions are allowed, it should not exceed a certain percentage of the total wage. In Panama, benefits in kind cannot represent more than 20 percent of the total wage.

The Basic Conditions of Employment Act, 1997, does not prescribe minimum wages but provides for the mechanism through which they can be established. It provides for payment in kind to the extent that employers have to add a certain amount to the wage of a domestic work when calculating overtime, Sunday pay, pro rata leave, etc. The employer has to determine the amount and, if he/she fails to do so, the amount will equal R100,00 per month.

Accessing reliable information on wages through the consultation processes was difficult. There were various determinants that had to be taken into consideration that affected the actual wage levels such as payment in kind, transport allowance, whether the domestic

worker works full time or part time, live-in or live-out, etc. There is no consistency in the way employers determine wages. The number of participants at the hearings and workshops was also small and therefore it would be presumptuous to say that the information gathered through these processes is representative of the total domestic worker labour market. The data collected from employers and employees can also not be compared directly, as there is no direct link between the employer and the domestic workers.

#### **IMPORTANT NOTE**

*For the purpose of this report comparisons regarding wages will usually be done by using the median wages. The median is the wage that the worker at the 50% point earns when workers are ordered from lowest to highest earner.*

*The means are higher than the median because the few workers who receive relatively high wages skew the means. The median is therefore a better measure to use.*

Information on wages was mainly sourced through internally initiated surveys and public hearings as well as the October Household Surveys. The Development Policy Research Unit of the University of Cape Town (DPRU) was also requested to provide an overview of key issues pertinent to the domestic worker labour market, in particular relation to cash and in-kind wages paid to this segment of the labour force.

The DPRU used the OHS 95 figures for wages of domestic workers, which made this data more reliable. The reason was that this is the latest survey reporting actual wages of domestic workers. All later, nationally representative surveys, report wage data mainly in categories, which makes it very difficult to gauge the impact on poverty of a specific minimum wage setting. DPRU used the consumer price index (CPI) to inflate wages so as to yield wages in 2000 values<sup>11</sup>.

## **2. Overview of domestic wages**

### **2.1 Wage differentials per occupational groups**

<sup>11</sup> Using Reserve Bank data, the CPI in 1995 base year prices for 2000 was set at 136.37, implying an accumulated inflation of 36.37% since 1995.



Domestic workers are some of the lowest earners in the South African labour market. The evidence shows that they receive substantially lower earnings than other occupational groups. In trying to assess the relative wages of domestic workers, Table 8 provides an estimate of domestic worker wages in comparison with other occupations within the labour market. The mean and median wage of the domestic worker have been calculated, as a percentage of the mean and median of a sub-set of all other occupations in the labour market.

**Table 8** shows that domestic workers' mean or median wages are less than 100% of the wages earned by other occupations. For example, a domestic worker will earn about 20% of the mean or median wage of a clerk.

**Table 8: Domestic workers' median and mean earnings  
as a percentage of other Occupations' Earnings**

Occupation	Median %	Mean %
Armed forces	18	15
Managers	7	4
Professionals	8	6
Technicians	12	11
Clerks	19	20
Sales & Services	27	23
Craft	24	16
Machine operator	30	27
Farm Labourer	93	93
Mining Labourer	43	42
Manuf. Labourer	39	40
Transport Labourer	37	39
Domestic worker	41	44

Relative to the highest median earners in the labour market, namely managers, domestic workers only earn about 7% of the wage of these individuals.

If the above occupations are aggregated into skilled, semi-skilled and unskilled categories the following trends emerge:

- domestic workers at the median earn between 7% and 12% of the income earned by the median skilled worker



- the median wage of domestic workers is between 20% and 30% of the semi-skilled median
- as a proportion of unskilled workers (excluding farm workers), domestic workers earn between 37% and 43% of their median wage.

Ultimately then, it is evident that even when considering unskilled workers, domestic workers together with farm workers are extremely low earners in the South African labour market.

## **2.2 Wage differentials involving other variables**

Given the overview of relative wages, it is important to provide an overview of how wages earned by domestics are stratified according to a set of defined variables.

**Table 9** therefore attempts to provide an analysis of comparative mean and median wages within the cohort of domestic workers. The analysis is done by race, gender, location, age, education and province.

The national mean monthly wage for domestic workers is R598,00, while the median value is R524,00. This is fairly representative of the African sample, since the mean and median wages reported here are within this range. While the figures for Indians and Whites are much higher, the sample size of these cohorts is marginal.

**Table 9: Mean and median wages for domestic workers, by specific variables (OHS95, in 2000 prices)**

Category	Median	Mean	Number
Total	524	598	713 035
<b>Race</b>			
African	518	599	625 711
Coloured	502	574	84 825
Indian	1 023	1264	450
White	1 023	1026	2 049
<b>Gender</b>			
Male	588	742	22 363
Female	514	593	690 672
<b>Location</b>			
Urban	588	697	315 339
Rural	409	520	397 696
<b>Age</b>			
16-24	425	533	66 276
25-34	480	572	196 413
35-44	514	588	227 131
45-54	546	651	160 629
55-64	573	646	61 410
<b>Education</b>			
None	398	516	141 355
Grade 1 - 7	464	546	356 204
Grade 9 - 11	588	742	187 258
Matric	614	797	17 156
Tertiary	588	578	11 062
<b>Province</b>			
Western.Cape	588	651	68756
Eastern.Cape	409	481	94697
Northern.Cape	409	453	20683
Free.State	273	326	126774
KwaZulu.Natal	588	675	123272
North-West Province	355	489	60005
Gauteng	750	876	110405
Mpumalanga	588	705	59385
Northern.Province	588	698	49058
<b>Gini</b>	<b>0.391</b>		

The gender data, reveals that the mean female wage is R593,00 and the median R514,00. This conforms well to the national estimate as expected, since the majority of domestic workers are women. The location figures begin to yield differences. We see that the rural mean is about 74% of the mean urban wage, with median rural wages being 70% of the urban median. Clearly, as would be expected, earnings for domestic workers are distinguished according to location.

The age data reveals that older domestic workers generally earn more than younger ones. For example, a domestic aged between 45 and 54 can expect to earn on average about 14% more than a domestic age between 16 and 24 years. In terms of the education results, again the monotonic relationship holds, as a domestic with a matric will earn about 54% more than a similar worker with no education.

The provincial figures yielded some predictable results, namely for example that the highest mean earners were those in Gauteng. This is expected given that the province is highly urbanised and is the richest province in the country. Somewhat surprising is the fact that the provinces with the highest mean wages after Gauteng were Mpumalanga and the Northern province, the latter being one of the poorest provinces in the country. The relatively poor mean wages for the Western Cape may be explained by the significant number of rural domestic workers included in this province. The lowest mean earners were located in the Free State, followed by the Northern Cape and Eastern Cape, with the Free State reporting the lowest mean of R326,00 per month.

Finally, the **table** provides an estimate of the Gini coefficient amongst domestic workers<sup>12</sup>. The Gini coefficient<sup>13</sup> measures income inequality. The national Gini is about 0.6, reflecting, as is well known, a highly unequal society. The Gini for domestic workers is about 0.4. What this suggests is that relative to the national estimate, there is a lower level of income inequality amongst domestic workers themselves. This serves to highlight the fact that in the wage determination around domestic workers, the problem is not high levels of differential earnings amongst these workers, but rather the very low absolute levels of earnings for these employees.

<sup>12</sup> The Gini coefficient has a value between zero and one. The bigger the number, the greater the level of inequality in the cohort being measured.

<sup>13</sup> The Gini index measures the extent to which the distribution of income (or sometimes expenditure) among individuals or household within an economy deviates from a perfectly equal distribution. A Gini index of zero represents perfect equality, while an index of 100 implies perfect inequality.

### 3. Information on wages gathered through the internal surveys and hearing processes

#### 3.1 Wages as reported by employees

##### a) Wages

Domestic workers who participated in the taxi rank campaign reported the following wage rates as set out in **Table 10** below.

**Table 10: Hourly and total wages of domestic workers per province<sup>14</sup>**  
**2000**

		PROVINCE									
		Total	Northern Cape	Free State	Eastern Cape	Mpumal anga	North West	Northern Province	Western Cape	Gauteng	KwaZulu Natal
Hourly	Mean	2.75	2.34	2.19	1.92	2.76	3.52	2.28	3.62	2.79	2.86
	Maximum	15.00	6.67	12.00	6.88	14.06	15.00	11.11	12.00	13.75	10.93
	Median	2.50	2.01	1.93	1.51	2.50	2.95	1.93	3.61	2.58	2.27
	Minimum	0.31	0.38	0.58	0.69	0.31	0.51	0.60	0.81	0.52	1.02
Total wage	Mean	453.72	316.87	318.01	372.23	468.71	512.19	360.96	671.60	456.91	552.88
	Maximum	2400.00	800.00	825.00	990.00	1250.00	2400.00	850.00	1800.00	1000.00	1140.00
	Median	400.00	300.00	300.00	350.00	450.00	400.00	350.00	700.00	450.00	500.00
	Minimum	28.00	28.00	50.00	120.00	50.00	100.00	60.00	150.00	89.00	250.00

Unpublished Markdata analysis 2000

**Table 10** shows the minimum and maximum figures as well as the median and mean. The overall median hourly wage is R2.50 with a maximum of R15.00 and the minimum R0.31 per hour. Overall the highest salaries are paid in the Western Cape and KwaZulu-Natal followed in decreasing order by North West, Mpumalanga, Gauteng, Eastern Cape, the Northern Province, Free State and Northern Cape.

The hourly rates reflected above were not calculated on a 45-hour working week. Aligning rates to a 45-hour week give a more accurate picture of what workers would earn if they work the normal hours prescribed in the law. Therefore, the total wages have been recalculated in **Table 11** to reflect the hourly rates if the domestic workers had worked a 45-hour week.

<sup>14</sup> An hourly wage was also calculated by dividing the total monthly salary of a domestic worker by the total number of hours worked per month.

**Table 11: Total hourly wages of domestic workers per province as reported by employees reworked to a 45-hour week.**

		PROVINCE									
		Total	Northern Cape	Free State	Eastern Cape	Mpumal anga	North West	Northern Province	Western Cape	Gauteng	KwaZulu Natal
Hourly Wage	Mean	2.32	1.62	1.63	1.91	2.40	2.62	1.85	3.44	2.34	2.83
	Median	2.05	1.53	1.53	1.79	2.30	2.05	1.79	3.59	2.30	2.56

Own calculations

The average total wage (median) per month is R400,00. It will translate into R92,30 per week, R18,45 per day and R2,05 per hour.

The average wages mentioned in the paragraph above can be compared with the information gathered through the Skills Development Survey. The following was established:

- For the 65 workers who reported **daily wages**, pay ranged from R10,00 to R300,00. The **median** payment was R38,00. The mean was R49,00. The hourly median and mean wage are R4,22 or R5,44 respectively.
- For the 49 workers who reported **weekly wages**, pay ranged from R20,00 to R720,00. The **median** payment was R140,00. The mean was R172,00. The hourly median and mean wage are R3,11 or R3,82 respectively.
- For the 12 workers who reported **bi-weekly wages**, pay ranged from R170,00 to R800,00. The **median** payment was R230,00. The mean was R387,00. The hourly median and mean wage are R2,55 and R4,20 respectively.
- For the 812 workers who reported **monthly wages**, pay ranged from R4,00 to R2 000,00. The **median** payment was R490,00. The mean was R543,00. The hourly median and mean wage are R2,51 and R2,78 respectively.

**The majority of workers who participated in the said survey earn R2,51 per hour, R22,59 per day, R112,95 per week or R490,00 per month.**

The Fafu survey investigated what distribution of wages would look like within the predominantly urban Gauteng Province. The wages of the domestic workers vary from zero to R2000,00 per month, with an average of R717,00 per month<sup>15</sup> or R3,67 per hour. Some domestic workers work for their rooms, paying for it by working for the employer free of charge. Thus, zero wages are possible.

The Fafu survey also suggested that hours of work do not play a role in the determination of wages.

<sup>15</sup> Median = R650  
Mode = R600

However, the Fafo survey (Table 12) found substantial differences between the areas in Gauteng. Based on a 45-hour week domestic workers in Johannesburg an average earn R4,53 per hour, they only earn R3,46 in Pretoria and R2,98 in the East Rand. Hourly wages are also higher in Johannesburg than in the other areas. These results indicate clearly that wage levels will vary strongly not only between provinces, but probably also within provinces.

**Table 12: Hourly and monthly wage of domestic workers by area**

Area	*Hourly wag (R)	Monthly wage (R)
Johannesburg	4.53	883
Pretoria	3.46	674
West Rand	2.98	581
East Rand	3.02	588
Vaal Triangle	2.25	438
Average	3.53	688

Own calculations based on 45-hour week

**b) Payment in kind**

The investigation into minimum wages for domestic workers also looked at the relationship between wages and payment in kind.

A particularly hypothesis which was looked at during the investigation was that lower wages would be paid given the provision of benefits such as food, accommodation, clothes, school fees, medical expenses, etc. Thus live-in and live-out domestic workers would earn different wages and that the wages of live-out domestic workers would be substantially higher, since live-in domestic workers would more likely receive additional remuneration in kind.

**Table 13: Wages of live-in and live-out domestic workers in Gauteng 2000**

	Working hours per week (average)	Wage per month (R)	*Wage per hour (R)	
			Actual hours	45 per week
Live-in	51	748	4.10	3.38
Live-out	32	622	5.50	4.48
Average	47	718	4.40	3.52

Fafo 2000

Wage rate recalculated on 45-hours per week as prescribed by the Basic Conditions of Employment Act, 1997



**Table 13** indicates an interesting pattern; the live-in workers have a higher monthly wage than the live-out workers, but they also work on average 19 hours more per week than the other group. Thus, when the hourly wage is compared, the live-in workers earn less than the live-out workers.

It was established that the majority of domestic workers receive food and clothes from their employers. Some workers are paid a bonus by the end of the year. Support for children's school fees is rare, but a large number of the live-out domestic workers get a transport allowance. No proof could be found that lower wages were compensated or substantially compensated by additional benefits. It was evident that domestic workers across the board rely on these benefits to sustain a livelihood.

### 3.2 Wages as reported on by employers

#### a) Wages

Employers who participated in the consultation process more often than not were reluctant to share information related to the wages paid. The Markdata analysis on employer's responses regarding wages is reflected in **Table 14**. Employers reported that domestic workers work an average of 27,4 hours per week. For the purpose of this discussion the daily wages reported, has been translated into the hourly rate based on 45 hours per week as showed in **Table 15**.

**Table 14: Daily wages of domestic workers per province as reported by employers 2000**

		PROVINCE									
		Total	Northern Cape	Free State	Eastern Cape	Mpumal anga	North West	Northern Province	Western Cape	Gauteng	KwaZulu Natal
Daily wage*	Mean	32.45	32.63	24.92	35.49	35.00	35.00	20.00	47.50	50.71	27.00
	Maximum	80.00	60.00	55.00	70.00	40.00	35.00	20.00	55.00	80.00	27.00
	Median	30.00	30.00	20.00	35.00	37.00	35.00	20.00	50.00	50.00	27.00
	Minimum	10.00	30.00	10.00	10.00	25.00	35.00	20.00	35.00	30.00	27.00
Total wage	Mean	341.34	313.08	253.32	365.88	371.84	433.08	248.89	496.88	602.00	298.00
	Maximum	338.00	700.00	800.00	1600.00	900.00	1300.00	380.00	1400.00	1500.00	450.00
	Median	300.00	300.00	240.00	300.00	350.00	300.00	220.00	400.00	600.00	340.00
	Minimum	60.00	80.00	60.00	60.00	70.00	100.00	80.00	175.00	120.00	108.00

Unpublished Markdata analysis 2000

**Table 15: Total hourly wages of domestic workers per province as reported by employers based on a 45-hour week**  
**2000**

		PROVINCE									
		Total	Northern Cape	Free State	Eastern Cape	Mpumal anga	North West	Northern Province	Western Cape	Gauteng	KwaZulu Natal
Hourly Wage	Mean	3.60	3.62	2.76	3.94	3.88	3.88	2.22	5.27	5.63	3.00
	Maximum	8.80	6.66	6.11	7.77	4.44	3.88	2.22	6.11	8.88	3.00
	Median	3.33	3.33	2.22	3.88	4.11	3.88	2.22	5.55	5.55	300
	Minimum	1.11	3.33	1.11	1.11	2.77	3.88	2.22	3.88	3.33	300

Own calculations based on 45 hours per week

Overall, the highest wages are paid in Gauteng and Western Cape at a rate of R5,55 per hour followed in decreasing order by North West, Mpumalanga, Eastern Cape, Northern Cape, KwaZulu-Natal, Free State and Northern Province.

**b) Payment in kind**

Employers generally indicated that domestic workers received food, clothes, bonuses and a transport allowance. Transport allowances were not calculated as part of the wages. Further, contrary to what workers reported, employers said that such payments are more the exception than the rule. Contributions in this respect varied from R4,00 per day to R40,00 per week. The allowances are usually paid on a daily basis, whilst wages are paid on a monthly basis.

Some "free" benefits were provided but employers indicated that the setting of a too high minimum wage would force them to do away with it. It is mostly live-in domestic workers that reap the benefit of getting extra compensation in kind. In Mmabatho employers referred to the Ubuntu principle. Mainly black employers indicated that domestic workers are usually staying in the home of the employer like a member of the family. The domestic worker shares in the good and the bad that such a household provides. The employers contribute towards schooling, funerals, etc. Therefore wages are relatively lower than in the white areas in Mmabatho. Black employers in Mmabatho pay an average of R300,00 per month plus Ubuntu, whilst white employers in Mafikeng pay an average of R500,00 per month but no Ubuntu.

**UBUNTU**

*"UBUNTU" is a phenomenon, which is all about depicting positive humanity towards other people in life.*

*It is about people showing how people should love one another, be it in a workplace situation or social interactions. In the context of a domestic employer claiming that, the low wages she/he is paying is linked to the phenomenon of "UBUNTU", it is when they claim they take responsibility as employers for their social demands, like paying for their children's education, funeral arrangements, etc. This is debatable because "UBUNTU" is not only about material things, but also manifests itself in personalities – how you treat other people, be it at work, at social gatherings and other places where you interact with people.*

**Ubuntu principle as explained by David Chabalala**

### **3.3 Wages reported during the hearing**

**Table 16** contains information on the average wage levels for different categories of workers reported during the hearing process in the various provinces. A full time worker is defined as a domestic worker who works 45 hours per week. Part-time workers work four days per week or less and not more than nine hours on any day.

**Table 16: Average wages currently paid as reported at the hearings per province  
2000**

Wage rates reported for certain categories of workers	Gauteng South	Gauteng North	Western Cape	North West	Mpumalanga	Free State	KZN	Northern Cape	Northern Province	Eastern Cape
	(R)	(R)	(R)	(R)	(R)	(R)	(R)	(R)	(R)	(R)
Full time										
Highest rate	1 000,00	1 350,00	1 500,00	600,00	700,00	520,00	800,00	800,00	400,00	500,00
Lowest rate	200,00	250,00*	500,00	180,00**	120,00	200,00	350,00	250,00	200,00	150,00
Average	450,00	500,00	700,00	400,00	300,00	350,00	500,00	350,00	350,00	250,00
Part time										
Monthly rate	300,00	300,00		300,00	-	200,00	-	400,00	-	370,00
Weekly rate	75,00	105,00		-	-	80,00	-	-	-	60,00
Daily rate	50,00	50,00	30,00	-	25,00	15,00	50,00	15,00	-	12,00
Gardener										
Monthly rate	30,00	40,00	-	40,00	-	-	-	250,00 per fortnight	-	500,00
Daily rate								40,00		20,00

\* Domestic worker in Laudium  
(Pretoria)

She works 7 days -live-in, it is a double storey house. She cleans, irons and child minding.

\*\* Employer reported that, it is not only R180 per month but it includes payment in kind.

#### 4. Comments on payment in kind

Payments in kind are notoriously difficult to estimate, given firstly that it remains an amorphous category of payment by the employer to the employee. Secondly, there is little reliable data, which provides information on payments in kind, particularly in the case of domestic workers. However, one such relatively reliable database does exist within the October Household Survey of 1997 (OHS 97). Here respondents were required to provide the Rand value of the payment in kind that was given to domestic workers in the last month before the survey was conducted. Information was required on the following issues:

- contributions to personnel funds (such as pension and medical aid)
- estimated value of free food
- estimated value of free accommodation
- free clothing, health care etc, provided.

**Table 17** provides an overview of the payments in kind provided for by employers. As is evident, the forms of payment in kind reported include food, accommodation and an 'other' category, which would capture, as shown above, things such as free clothing.

**Table 17: Overview of the payments in kind made by employers**

Type of payment	Number	% of total	Mean payment	Median Payment
Employer contributions	277	8	140.45	100
Food	3029	84	178.91	100
Accommodation	979	27	293.93	200
Other	1283	36	133.88	100
Payment in kind total	3857	100	269.73	120

The largest payment in kind category, again not surprising given the nature of work, was food. Here, 84% of all employers stated that they provided their domestic workers with free food. The mean value of the payment was close to R180,00 per month, while the median though, was only R100,00 per month. Given that this translates into about R8,00 per day for food, using a 22-day month, this would seem to be a fairly accurate representation of food transfers by employers.

The accommodation data is of course biased, given that it includes employers who have a day-worker only and not a domestic worker who lives in the household. Of all employers, about 27% reported providing free accommodation to the domestic worker. The accommodation was valued the highest of the payments in kind, with a monthly mean of R294,00 and a median of R200,00.

Finally, the most common payment in kind after food, was the 'other' category. In this case, about 38% of all employers reported providing some form of free clothing, free

health care and so on. They valued this contribution at about R134 ,00 per month on average.

It is clear therefore that, in total, the mean contribution in terms of payments in kind, including contributions by employers to domestic workers stood at about R270,00 per month on average, with a median of R120,00.

In terms of the rural and urban divide urban employers contribute about 40% of the social wage in terms of payments in kind, whilst the figure for rural domestic workers is 35%. Hence the argument that lower rural wages are compensated for by payment in kind does not hold.

## **5. Demands and expectations regarding wages**

The demands and expectations in respect of wages emerging from the hearings and submissions were highly individualised. In some areas domestic workers expressed concerns about employment losses whilst others were adamant that their employers would be able to increase wages substantially.

Generally, domestic workers indicated that they would be able to sustain themselves and their dependants if they earned at least the following minimum wage rates:

- Minimum R400,00 in rural areas
- Minimum R800,00 on urban areas.

Domestic workers would like to see a skills-based minimum wage where they are remunerated in relation to the skills they have. Thus child minders should earn more than cleaners, etc.

COSATU stated that they support a system of graded minimum wages for domestic workers. In principle the different levels should be based not on tasks, but on skills. The minimum wage levels recommended are:

- R1 200,00 per month plus transport costs for skilled workers
- R800,00 per month plus transport cost for semi-skilled workers
- Part-time workers should earn R75,00 per day or R9,72 per hour plus transport costs.

COSATU also proposed that if a deduction for benefits is allowed, it should not exceed 25% of the minimum wage. There should also be mutual consent in this respect.

COSATU proposed that the sectoral determination provides for annual wage increases to ensure that the living standards are raised.



Employers were cautious in committing themselves to the payment of specific wage levels. Employers who submitted written representations varied substantially as to the proposed levels. Some employers suggested monthly wages ranging from R160,00 to R900,00 per month, R20,00 to R60,00 per day and R3,50 to R5,00 per hour. Some felt that a national minimum wage for domestic workers would be inappropriate since the economical climate differs from area to area and province to province. Employers pointed out that households do not generate profits and that they might not be able to immediately pay the prescribed wages. They would like to see a phased in process in the implementation of a minimum wage.

It is proposed that minimum wages be set on an hourly basis inclusive of payment in kind. Different wage levels should be prescribed for different geographical areas with due regard to the economic and social circumstances. The demarcation and actual wage levels are discussed later in the report.

## CHAPTER SIX

# EVALUATION OF THE IMPACT OF THE SETTING OF MINIMUM WAGES ON ALLEVIATION OF POVERTY, JOB CREATION AND AFFORDABILITY

### 1. Alleviation of poverty

Poverty is characterized by the inability of individuals, households or communities to command sufficient resources to satisfy a socially acceptable minimum standard of living.<sup>16</sup> Norma Tregurtha defines poverty to mean “being poor”, “being deprived”, “having no money”, lacking the basics of life.”<sup>17</sup> Poverty is experienced in different ways, which include food insecurity, overcrowded homes, lack of adequately paying jobs, etc. Poverty goes beyond these experiences where one could also be isolated through the exclusion from decision-making, social services and access to community and family support. Thus, poverty is not only about income, rather it is about being malnourished, unhealthy, illiterate and homeless.<sup>18</sup> Poverty can strike at any time and individuals; households and communities are particularly vulnerable if they are unable to devise appropriate coping mechanisms in times of crises.

#### *Reasons for working as a domestic worker?*

	%
<i>I do not have adequate skills to work in other occupations</i>	37
<i>Easier to find work as a domestic worker</i>	34
<i>I enjoy working as a domestic worker</i>	14
<i>It allows me to work and take care of my children</i>	5
<i>Other</i>	11
<i>Total</i>	100

- *Few women (14%) worked as domestic workers because they enjoyed it as an occupation, and lack of other opportunities, seemed to be the primary reason. For example, a third (34%) of the respondents said it was easier to find work as a domestic worker than in other occupational fields, and another third (37%) felt they had inadequate skills for other types of work. It therefore appears that most domestic workers do not have a choice about the type of work they do.*

*Skills Development Survey 2001*

<sup>16</sup> May J, 1998 Poverty and Inequality in South Africa. pg 2

<sup>17</sup> N Tregurtha 2001 South African Farm Workers: A Poverty Profile Unpublished Draft Report pg4.

<sup>18</sup> Ibid pg 4

Poverty can therefore be judged on a capability and/or consumption level. On a capability level one would look at a worker's access to social services and on a consumption level one would consider income.

Commonly, poverty is measured in terms of basic consumption needs or the income required satisfying them. Poverty lines are indicators that have been determined to reflect the monetary value of consumption with the purpose to differentiate between the poor and the non-poor. They provide a useful guideline in assessing the absolute minimum income a person or household can survive on. For instance, the report on Poverty and Inequality determined the poverty line to be R353,00 per month in 1998, using a definition of poverty whereby 40% of all South African households are poor. This poverty line increased to R391,00 per month in 2000 if inflated by the CPI.

Location is an important determinant of poverty. The majority of the poor live in rural areas. While 50% of the population of South Africa is rural, the rural area contains 72% of those members of the total population who are poor. It is unevenly distributed among the nine provinces. The Poverty and Inequality Report found that provincial poverty rates were highest for the Eastern Cape (71%), Free State (63%), North-West (62%), Northern Province (59%), and Mpumalanga (57%). Gauteng and Western Cape experienced poverty levels of 17% and 28% respectively.<sup>19</sup>

If the profile of domestic workers as discussed earlier in the report is compared with poverty indicators such as those reflected above, it is clear that domestic workers are likely to be poverty-stricken.

The wider characteristics of domestic workers that fall within the definition of the 'poorest of the poor' tend to be mainly African and Coloured women who are more highly concentrated in the rural locations of the Free State, North West, Northern Cape and Eastern Cape Provinces.

It was established that being in a particular province will affect the earnings of a domestic worker i.e. compared to the Western Cape, domestic workers in Gauteng are likely to earn 19% more, while those in the Northern Province will earn about 23% more than their counterparts in the Western Cape. The earnings of domestic workers in the Free State are 71% of what they are in the Western Cape.

The location variable played a significant role in determining the earnings of a domestic worker. Location here refers to whether a domestic worker is in an urban or rural area. Being in a rural area, would reduce the earnings of a domestic worker by 23% after when controlling for other variables, such as gender, age province and so on.

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<sup>19</sup> May J, 1998 Poverty and Inequality in South Africa. Pg2

In terms of their educational attainment, these domestic workers will have completed at most their primary schooling but in many cases would have had no schooling whatsoever.

Although anecdotal, poverty was very "visible" in certain areas visited during the hearing process such as Piet Retief, Cradock, BeauFort-West, Bothsabelo, Orkney and Calvinia. It could be seen in the appearances of the domestic workers.

Assessing the impact of poverty alleviation in the domestic worker sector focuses on the change in consumption level induced by a minimum wage at particular levels.

### 1.1 Poverty alleviation impact generated through specific earnings levels

Using OHS 1995 data, three possible minima for rural domestic workers, namely R400,00, R450,00 and R500,00 per month and five possible minima for urban domestic workers, namely R500,00, R550,00, R600,00, R650,00 and R700,00 per month were modeled to determine the number of domestic workers who would be affected by the certain wage levels.

**Table 18: Number and percentage of domestic workers earning less than stipulated minimum wage, by location 2001**

Minimum	Base Minima		Minima plus 10%		
	Number	% of total	Minimum	Rural	% of total
<b>Rural</b>					
<b>400</b>	187 595	45	<b>440</b>	213 750	52
<b>450</b>	216 504	52	<b>495</b>	236 127	57
<b>500</b>	236 933	57	<b>550</b>	258 263	62
<b>Urban</b>					
<b>500</b>	112 494	38	<b>550</b>	133 150	44
<b>550</b>	133 150	44	<b>605</b>	162 188	54
<b>600</b>	159 872	53	<b>660</b>	177 748	59
<b>650</b>	175 340	59	<b>715</b>	191 717	64
<b>700</b>	190 432	64	<b>770</b>	200 160	67

Table 18 shows the actual number, and share of rural and urban domestic workers earning below specific minimum wages. For example, the number of rural domestic workers earning less than R400,00 per month is 187 595, while the number of urban domestic workers earning less than R500,00 is 112 494. At these minima, these figures constitute 45% and 38% of the total rural and urban domestic labour markets respectively.

In examining the rural results, it is clear that at the lowest minimum wage of R400,00 per month, close to half of this labour force would be affected. A minimum wage of R400,00 per month would affect 45% of the rural domestic labour market. If the wage is increased by 10% the number of workers affected will increase from 7% to 52%.

This implies that the poverty alleviation consequences of this minimum would be significant, *controlling* however for the disemployment effects. The **Table** also shows that at the highest proposed minima for rural domestics, close to 60% of the labour force would be affected, constituting some 236 000 workers. Again, the significant poverty reduction effects of instituting a wage at this level would need to be balanced with the real possibility of serious disemployment consequences at this minimum.

The urban results reveal similar trends. Hence, while at the lowest minimum of R500,00, about 38% of the urban labour force would be affected, if this increases to 64% when a minimum of R700,00 per month is considered. What this means is that a R200,00 increase in the proposed minimum for urban domestic workers would increase the number of workers affected by 26 percentage points. Hence, a considerably larger share of urban domestic workers will be impacted on by the change in the minima by a monthly figure of R200,00. As with rural domestic workers, the same trade-off applies: namely that poverty reduction effects of setting a minima, would need to be balanced against the very real possibility of employment losses in this sector, for any given minimum that is set.

## 1.2 Poverty alleviation impact generated through an earnings level of R400,00 per month

Given the discussion above, one can conclude that the imposition of a minimum wage will have an effect on all rural domestic workers, earning a monthly wage below R400,00. Consequently, because actual wages vary across a range, the percentage increase in domestic wages that are required to meet the minimum wage of R400,00 will differ accordingly. This difference is highlighted for wages recorded for actual wages at each percentile of the current wage scale that falls below R400,00.

**Table 19** also shows the number of rural domestic workers below each percentile who are affected by the impact of a minimum wage of R400,00. The net number of workers shown to be affected by the impact of the minimum wage is represented in the extreme right-hand corner of **Table 19** and is derived by subtracting the difference between the accumulated amount for the quartile and the accumulated amount of the preceding quartile.



**Table 19: Wage increase at R400,00 minimum wage for rural domestic workers earning less than R400,00**

Percentile	Wage at Percentile	% Increase as result of minimum wage	Number of workers affected	Net Number
1%	27.27	1 367	960	
5%	68.19	487	11 874	10 914
10%	88.64	351	17 365	5 491
25%	136.37	193	51 61†	34 246
50%	208.65	92	91 553	39 942
75%	289.10	38	136 994	45 441
90%	340.93	17	165 028	28034
95%	368.20	9	174 178	9 150
99%	392.75	2	181 200	7 022

Ultimately then, Table 19 suggests that even at the lowest proposed minima for urban and rural domestic workers, a fairly significant number of these workers currently earn below these wage levels. The implication is that a wage determination aimed at these workers, and segregated according to location, would on the one hand offer the advantage of significantly reducing the levels of indigence amongst these employees. On the other hand however, the fact that a substantial cohort of workers would implicitly be affected, means that one can expect that the employment losses will not be marginal.

However it should be cautioned that the analysis is based on the assumption that the minimum wage would be R400,00 per month. Thus implying that the choice is between having a job that pays R400,00 per month and not having a job if the employer cannot afford to pay the prescribed rate. The proposal regarding the way in which wages is set suggests that domestic workers will be paid according to the number of hours worked. This would mean that domestic workers would keep their jobs, earn less but working fewer hours.

The following section looks at employment losses, and attempts to estimate what the possible short- and long-run employment effects would be of the above set of proposed minima.



## 2. Employment Creation

The South African labour market, like others, can be divided into a **formal** and an **informal** sector. The formal sector is further divided into **primary** and **secondary** labour markets. Higher wages and skills as well as higher levels of organisation characterised the primary labour market. Employees generally have satisfactory scope for upward mobility. The secondary labour market and informal sector are characterised by lower wage and skill levels. Domestic workers are part of the informal sector. Regulation and organisation are less and employees have limited prospects for upward mobility. At present, domestic work provides employment opportunities for a large number of women who would experience difficulty finding work elsewhere. Therefore the key challenge is not necessarily to create employment in this sector, but rather to sustain the present employment levels and improve the quality of the jobs.

While employment in formal sector jobs has declined over the past few years, informal sector employment has grown. In particular, the number of domestic workers in employment increased from 703 000 in 1995 to 799 000 in 1999.<sup>20</sup> This growth was achieved despite the fact that this was a period when new labour laws were introduced in respect of domestic workers. The expected job losses did not materialise. However, setting a minimum wage for domestic workers brings another dimension to the regulation of the sector.

The prediction of possible employment losses or gains in the domestic worker sector is difficult. A number of factors contribute to the difficulty of making accurate predictions:

- **Dependence:** The extent to which employers and domestic workers are dependent on each other for generating their livelihood is unclear. Some employers indicated that they would not be able to continue their own outside work without the assistance of the domestic workers. Others said that they employ domestic workers for their own comfort.
- **Apathy:** There was little employer participation in the consultation process. It is possible that those who participated were more likely to represent the portion of employers who were concerned about compliance and the social well being of the domestic worker.
- **Inadequate research and statistics:** There is little research and statistical information available.

The first point, of dependence, points to an important way in which the domestic worker sector differs from other sectors. In many other sectors, employers can respond to wage cuts by decreasing the number of workers employed and trying to increase the productivity of the remaining workers to achieve the same output. Because domestic

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<sup>20</sup> OHS1995 and OHS1999

workers are usually employed singly, this is not an option for employers of domestic workers. The choice is rather between employing a domestic worker to do the work, household members doing the work themselves, or contracting with other commercial service providers such as creches, laundries, caterers, fast food outlets and contract cleaners. Whether the second is a viable option will depend, among other things, on the composition of the household in terms of age and gender, and on whether household members' other activities allow them to perform the domestic work tasks as well. For example, those with children needing care, will not be able to provide this care themselves if they are employed full-time. In many cases the third option will prove more expensive than retaining a domestic worker, even at an increased wage.

### 3. Simulation of the impact of minimum wages on employment

In an attempt to gain some insights into the possible impact of increased wages on employment levels, a model was devised to determine the short run employment effects of wage adjustments in the domestic work sector, based on elasticities<sup>21</sup> for the formal sector calculated by the World Bank.

The simulation exercise provides a rough calculation of the *accumulated* job losses that may occur at specific points in the wage distribution. These accumulated job losses will affect those workers who are currently earning below the minimum wage.

#### 3.1 Short-run employment effects

**Table 20** summarises the results derived, when examining the *short-run* employment effects of a minimum wage. (Short-run means a period of less than a year.)

**Table 20** considers eight possible minimum wage settings – three for rural domestic workers and five for urban domestic workers. The minima considered are R400,00, R450,00, R500,00, R550,00, R600,00, R650,00 and R700,00 with the R500,00 level tested for both urban and rural employees. Given that specific minimum wage proposals are examined, rather than percentage increases, the impact on employment levels is harder to simulate. Nonetheless, the **Table** firstly presents the number of domestic workers earning below the assumed minimum wage, for both urban and rural categories, and repeats the figures presented in the previous tables. The first stage in the simulation exercise is to compute the current total wage bill for the workers earning below a stipulated minimum in either of the locations.

<sup>21</sup> In both the short-run and long-run simulations we use the employment elasticities calculated for the South African economy by the World Bank (Fallon & Lucas, 1998). Fallon & Lucas (1998) calculated elasticities for all formal sectors of the economy barring agriculture, covering black employees. The aggregate elasticities for the period 1961-1993 were an average long-run wage elasticity of -0.71 and an average short-run (impact) elasticity of -0.156<sup>21</sup>. The former, -0.71, is probably the most widely quoted figure and has been corroborated by other evidence (Bowles & Heintz, 1996). Noticeably, other more recent studies have yielded different, and in some cases, lower wage elasticities (Fields, Leibbrandt & Wakeford, 1999).

One weakness of this method is that an individual employer is not affected by the total wage bill, but rather only by the increase in their (usually single) worker's wages. Disregarding this weakness for the moment, the table shows, for example, that using a R450,00 minimum wage for rural domestic workers; the result will be an 83% increase in the total wage bill. Clearly, in each of the rural and urban labour market simulations, the percentage change in the wage bill increases, with each higher minimum that is applied.

**Table 20: Simulated short-run employment effects of minimum wage settings**

	No. of workers Below minimum	% Increase in Wage Bill	Short-run Elasticity	Elasticity Factor	Job Losses	% of Total Empl.
<b>Rural</b>						
<b>400</b>	187 595	82	0.156	12	24 036	6
<b>450</b>	216 504	83	0.156	12	28 052	7
<b>500</b>	236 933	88	0.156	13	32 621	8
<b>Urban</b>						
<b>500</b>	112 494	71	0.156	11	12 447	4
<b>550</b>	133 150	66	0.156	10	13 759	5
<b>600</b>	159 872	61	0.156	9	15 163	5
<b>650</b>	175 340	65	0.156	10	17 708	6
<b>700</b>	190 432	68	0.156	11	20 167	7

The second stage of the simulation is to apply the wage bill increase to the employment elasticity estimates that are available. Examining the short-run effects in the first instance, and hence using the point elasticity of  $-0.156$ , it is possible to apply it to the percentage increase in the wage bill, and thereby estimate the possible disemployment effects of the different minimum wage scenarios.

What is evident from the results is that for rural domestic workers, an 82% rise in the wage bill represents, through the short-run elasticity of  $-0.156$ , a 13% reduction in the existing employment level – thus affecting the 187 595 workers earning below the minimum. Ultimately, the results suggest that for rural domestic workers, a R400,00 minimum wage could result in job losses of about 24 000 employees. This constitutes 6% of the total rural domestic work force. For each of the possible minima - R400,00, R450,00 and R500,00 per month – the possible disemployment effects range from 24 000 to approximately 33 000 employees, with the proportion of the rural domestic work force that it could affect, ranging from about 6% to 8%.

In terms of urban domestic workers, the disemployment effects are smaller. A R500,00 minimum in this case, would result in about 12 000 domestic workers losing their jobs. This constitutes about 4% of the total urban domestic work force. As a whole, the different minima would result in job losses no higher than about 20 000 workers, which sets it at the highest minimum of R700,00 per month. At this wage, about 7% of the urban domestic worker population would be affected.

One of the weaknesses in this analysis is that it is based on monthly wages, while the proposal below is to set hourly rather than monthly wages. In the face of hourly wage increases, employers would have the choice to offsetting wages against hours of work. This could lead to no or fewer job losses than the model implies.

### 3.2 Long-run employment effects

It is important to extend the analysis of the disemployment effects that result from the minimum wage to the long-run. (Long-run means a period of more than a year.) One would expect here, as employers adjust to the new minimum and they are able to make alterations in the manner that they had been previously utilising labour that the disemployment effects would change. Econometrically it is found that the long-run elasticities derived are often larger than the short-run estimates. As a consequence, in Table 21 the formal sector long-run estimate of Fallon & Lucas (1998) of  $-0.71$  is applied. It is evident that, despite working with the same percentage increases in the wage bill, the long-run elasticity estimate ensures that the disemployment effects are significantly magnified. For example, while a 13% reduction in employment occurred in the short-run scenario for domestic workers at the minimum of R400,00, the disemployment effect in the long-run, would stand at 58% of rural domestic workers who currently earn less than R400,00 per month. In addition, instead of 6% of the workforce being affected, the figure in the long-run would be 26%.

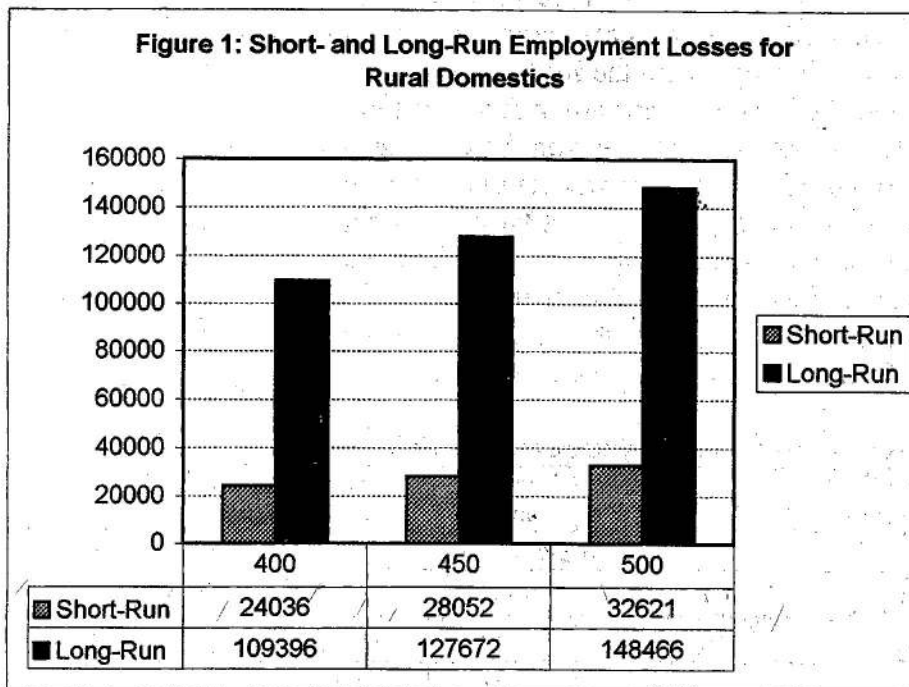
**Table 21: Simulated long-run employment effects of minimum wage settings**

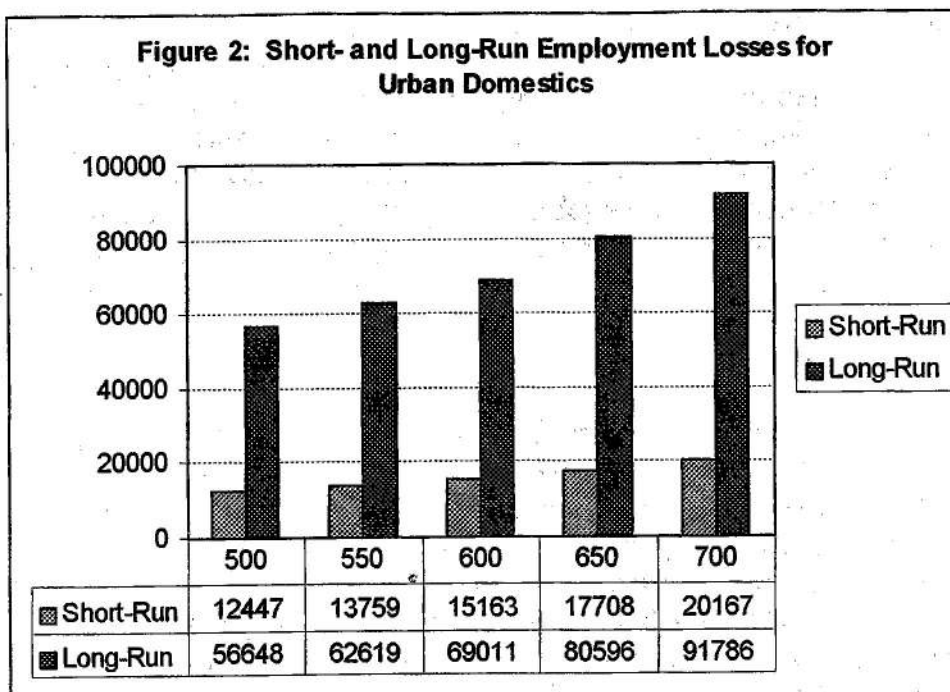
	No. of workers Below minimum	% Increase in wage Bill	Long- run elasticity	Elasticity factor	Job losses	% of Total empl.
<b>Rural</b>						
<b>400</b>	187 595	82	0.71	58.31	109 396	26
<b>450</b>	216 504	83	0.71	58.97	127 672	31
<b>500</b>	236 933	88	0.71	62.66	148 466	36
<b>Urban</b>						
<b>500</b>	112 494	71	0.71	50.36	56 648	19
<b>550</b>	133 150	66	0.71	47.03	62 619	21
<b>600</b>	159 872	61	0.71	43.17	69 011	23
<b>650</b>	175 340	65	0.71	45.97	80 596	27
<b>700</b>	190 432	68	0.71	48.20	91 786	31

In terms of the rural domestic worker results, it is evident that between 109 000 and 149 000 domestic workers could lose their jobs over the long-run at a minimum wage which ranges from R400,00 to R500,00 per month. This constitutes, between 26% and 36% of the total rural domestic workforce. This means that in the long-run, even at the lowest minimum, we can expect that over a quarter of the rural workforce could lose their jobs. This is a serious disemployment effect, and one that cannot be ignored, particularly given that it is the rural labour market wherein these job losses will take place.



In terms of the urban domestic work force, the long-run effects again are smaller than the rural outcomes. However, the absolute number of workers potentially affected in the long-run through the wage determination, remains large. Hence, from a minimum of R500,00 per month to the ceiling of R700,00 per month, between 56 000 and 92 000 urban domestic workers could lose their jobs. This constitutes between 19% and 31% of the total urban domestic labour force. Again then, even at the lowest proposed minimum close to 20% of the entire domestic work force could be affected. The relative short- and long-run results from these simulations are provided in the graphs below, to depict more succinctly the job losses that could be incurred from the wage determination.





The above simulation exercise suffers from a number of drawbacks. **Firstly** it only accounts for the first-round disemployment effects of a rise in the wages of individuals. It is, in essence, a very confined comparative static exercise. Hence, the possible poverty-reducing impact that may arise from additional resources provided to individuals is not accounted for. **Secondly**, and in relation to the first drawback, is that no indirect effects of a wage hike are accounted for. These effects operate in particular on the demand-side where higher wages change the total cost structures of firms and employers, and this in turn may affect productive activity and income generation elsewhere in the economy. **Thirdly**, the simulation operates only at the individual-level and does not reflect on the impact on household poverty. **Lastly**, as noted above, the elasticities used in the simulations were developed for the formal sector rather than for an informal sector occupation such as domestic work. In addition, other economists have come up with lower elasticities even for the formal sector.

Nevertheless, the lessons from the above long-run results is that sectoral determinations that set wages too high run the very serious risk of large and significant job losses. There remain several important considerations that overlay these probable employment losses, when considering the promulgation of minimum wages for domestic workers:

**a) Scarcity of jobs in rural areas**

Rural areas are by their very nature areas of fairly low levels of economic activity, and their national contribution to the GDP is by and large limited to agrarian production. As such then, these areas are not dynamic nodes of job creation. Thus, job opportunities in these areas are scarce and are likely to remain so in the foreseeable future. This has serious implications for those workers in rural areas who might lose their jobs.



**b) *Characteristics of domestic workers***

The human capital characteristics of the majority of domestic workers make them extremely vulnerable following a retrenchment. Most domestic workers, for various reasons, possess educational qualifications and skills that are not easily mobile. It is often difficult to find an alternative matching job for a domestic worker in another sector, once he or she is laid off. This lack of mobility makes this particular segment of workers particularly vulnerable to the disemployment effects of a minimum wage.

**c) *Household dimension***

It is crucial that the household dimension to this issue is appreciated. In other words, one needs to consider not only the impact of the minimum wage at the individual level, but also the household level. This means that in terms of the poverty reduction effects of a minimum wage, the dependents living with domestic workers would also be positively affected. Put differently, the poverty reduction effects of a minimum wage for domestics would be magnified. Conversely, though, this means that the disemployment effects of a minimum wage would also have a deleterious impact at the household level for families of domestic workers in that dependents would also suffer the consequences of the retrenchments that may follow the wage determination.

The above has tried then to illustrate that a series of important caveats need to be raised, when considering the domestic worker labour market. However, the possible disemployment effects must be balanced against the need to provide a signal to employers that rampant exploitative behaviour toward domestic workers will be made illegal.

**4. *Affordability of a minimum wage***

Determining the affordability of employing a domestic worker is complex. Households are not business units that generate profits. They cannot 'close down' if they go bankrupt. Households are also diverse in terms of income, composition and other characteristics. Affordability is closely related to household income and a range of other factors. COSATU claimed in their submission to the Department that middle class white households generally set aside about 2-2,5% of their income for domestic labour, while the equivalent figure for the lowest income group across population groups is about 0,24%.

Affordability is also complicated by the fact that the cost depends on how much of the service the household purchases. This report proposes a minimum wage based on an hourly rate. There may well be employers who will genuinely not be able to afford the prescribed minimum wages if they continue to employ the domestic worker for the same number of hours. However, this does not mean that domestic workers need lose their jobs. The employers can instead adjust the total cost by decreasing the number of hours worked.

## **5. Feasibility of setting a minimum wage**

In evaluating the feasibility of setting a minimum wage for domestic workers the Department of Labour considered a number of factors, namely,

- the needs of domestic workers and employers
- the impact of minimum wages on poverty alleviation
- the impact of minimum wages on employment creation
- the present wage levels as reported by domestic workers and employers.

Given these factors one can conclude that during the last five years, employment levels have increased despite the implementations of new labour laws. This clearly points to the demand for domestic workers. However in assessing the wages paid by employers, it was established that it is low and that it constitutes a combination of cash and benefits.

Setting a minimum wage would not eradicate poverty but would greatly assist in improving the livelihood of domestic workers.

Rural domestic workers are more likely to be affected negatively should minimum wages be set that is too high. Although the simulation exercises suffered some drawbacks, they indicated that job losses could occur. However the number of job losses can be minimised by setting an appropriately low minimum wage, and setting it on an hourly basis. Setting a minimum wage for domestic workers is therefore feasible and appropriate if location differentials are taken into consideration in determining the actual levels.

## CHAPTER SEVEN

### RECOMMENDATIONS

#### 1. Wages

Before recommending a minimum wage for the domestic worker sector, we need to take several steps. Firstly, we need to determine who will be covered by the determination and demarcate the country into different areas if we are going to have several sets of wages. Secondly, we need to fix an appropriate wage level to suit the profile of each of the demarcated areas.

##### 1.1 Determining the scope and area application of the sectoral determination

###### a) *Who will be covered by the sectoral determination?*

It is the intention of the Department of Labour to protect all categories of domestic workers as discussed earlier in the report.

*It is therefore recommended that the sectoral determination apply to all employers and employees in the domestic worker sector in the Republic of South Africa, including those employed by employment agencies and those who operate as independent contractors but deserve protection as workers.*

###### b) *Demarcation of the areas*

Demarcation of areas for the purpose of setting minimum wages was historically based on magisterial districts. The main reason for this approach was that non-compliance with labour laws was a criminal offence. Prosecution was effected through the criminal court system and conducted in the area where the contravention took place. Labour laws have now been decriminalised. Demarcation in terms of magisterial districts thus no longer seems appropriate.

Data gathered through the various processes of this investigation indicated that there is a strong link between the profile of domestic workers, where they work and that of other persons living in a particular region. Stated crudely, domestic workers in poorer provinces are likely to earn lower wages than those living in richer provinces. The differences are quite large in relative terms. The same principal applies in relation to whether a domestic worker is in an urban or rural area. For this reason, it seems that a national wage might not be feasible, at least at this stage, and that demarcation could be based on a provincial and/or urban-rural divide. Since there is a call for simplification of the wage schedule an urban-rural divide seems to be the appropriate route to follow. The

wage schedule must thus be constructed in such a way that it provides for different wage levels for different locations.

The National Demarcation Board completed the demarcation of new municipal boundaries in preparation for the local government elections of late 2000. The demarcation distinguished between three categories, namely metropolitan, local and district councils. The metropolitan councils are found in the urbanised areas in Gauteng, Western Cape and KwaZulu-Natal. Cities and larger towns in other provinces are demarcated into local councils, whilst district councils cover the rural areas. Areas are classified below as urban, urban-rural and rural, respectively, in relation to the proportion of the council that is comprised of urban areas. These three divisions, in effect, correspond in broad terms to the richest, middle-income and poorest types of areas within the country.

The formula for the classification of the areas as applied by the Demarcation Board is as follows:

- **Urban** means those areas where the urban portion is 41% and higher
- **Urban-rural** means areas where the urban portion is between 41% and 60%
- **Rural** means areas where the urban portion is 40% and less.

It is clear that the Demarcation Board's approach in deciding on municipal boundaries is well suited for application to the domestic worker sector. It takes cognisance of the urban-rural differentials and the ability of these areas to sustain itself.

*It is recommended that the sector be demarcated in terms of municipal council boundaries. The sector should be demarcated in three areas representing an urban, urban-rural and rural division:*

**Area A:** *municipal council areas where the urban portion is 61% and higher*

**Area B:** *municipal council areas where the urban portion is between 41% to 60%*

**Area C:** *municipal council areas where the urban portion is 40% and less.*

**Table 22** contains the names of the metropolitan and local councils of Area A and B. Area C covers the areas not mentioned in A and B.

**Table 22: Names of the metropolitan and local councils for Area A and B**

<b>AREA A</b>
Metropolitan and the local councils of Ashburton TLC, Baviaans, Beaufort West, Blue Crane Route, Breede River/Winelands, Breede Valley, Buffalo City, Camdeboo, Cape Agulhas, Cedarville TLC, Christiana/Bloemhof, City of Cape Town, City of Johannesburg, Dan-Lime, Delmas, Dihlabeng, Dipaleseng, Drakenstein, Dundee TLC, Durban Metropolitan Unicity, Emalahleni, Emfuleni, Ennambithi, Gammagara, Gariep, GAROP, George, Glencoe TLC, Greater East Rand Metro, Hantam, Highveld East, Hilton TLC, Howick TLC, Ikwezi, Indlovu Regional Council, Inkwanca, Inxuba Yethembamo, Kimberley, Klerksdorp, Knysna, Kopanong, Kouga, Lekwa, Lesedi, Lukanji, Mafube, Maguassi Hills, Makana, Malethswai, Mangaung, Mantsopa, Masilonyana, Matatiele TLC, Matjhabeng, Metsimaholo, Middelburg, Midvaal, Mier, Mogale City, Mohokare, Moqhaka, Mossel Bay, Msukaligwa, Mzinyathi Regional Council, Nala, Naledi, Ndlambe, Nelson Mandela, Newcastle, Ngwathe, Nketoana, Nokeng tsa Taamane, Nxuba, Oranje-Karoo, Oudtshoorn, Overstrand, Plettenberg Bay, PMB/Msunduzi TLC, Potchefstroom, Priemaday, Randfontein, Re A Ipela, Renosterberg, Saldanha Bay, Schweizer-Reneke, Stellenbosch, Thusanang, Towerberg, Tshwane Metropolitan, Umtshezi, Warrenton, and Westonaria.
<b>AREA B</b>
Metropolitan and local councils of Ba-Phalaborwa, Bela Bela, Bergvliet, Boesmanland, Camperdown TLC, Cederberg, Dolphin Coast/ Ballito TLC, Frasuwil, Hibberdene TLC, Highlands, Ilembe Regional Council, Kamiesberg, Kareeberg, Kokstad TLC, KwaDukuza/ Stanger TLC, Laingsburg, Langeberg, Letsemeng, Lichtenburg, Louwsburg TLC, Matzikama, Mkhondo, Modimolle, Musina, Nkomazi, NkwaziZinkwazi Beach TLC, Pennington TLC, Phumelela, Polokwane, Prince Albert, Richtersveld, Rustenburg, Sakhisizwe, Scottburgh/ Umzinto North TLC, Seme, Sunday's River Valley, Swartland, Swellendam, Theewaterskloof, Tokologo, Tswelopele, Ugu Regional Council, Umhlathuze, Umjindi, Ventersdorp, Vryheid TLC, Witzenberg, and Zululand Regional Council.
<b>AREA C</b>
Areas in the rest of South Africa not mentioned in Area A and B

## 1.2 Determination of wage levels

### a) *Way in which minimum wages should be set*

In developing a wage schedule five options were considered. These options were:

- (aa) one blanket minimum wages that would apply to all employers and employees irrespective of their geographical location
- (ab) different minimum wages that are determined on an hourly basis for different geographical locations
- (ac) an hourly minimum wage that is skills-activities linked. Wages would be determined on a sliding scale depending on the skills-activities and workload required. Six skills/-activities were identified, namely, cleaning, cooking, child minding, nursing, chauffeuring and gardening. The wage categories could be determined by grouping skills-activities e.g. category,



A which includes cleaners, cooks, gardeners and chauffeurs, and category B that includes child minders and persons looking after the old and the frail. Higher rates should be paid to category B workers. The proposed rate would represent a given percentage, say 10%, increase on the wage set for category A workers

- (ad) a minimum wage that is determined by the income of the employing household. It would be set as a percentage of that income
- (ae) determination of a wage band indicating a minimum level and then allow employers who are paying significantly below the minimum level a time, in which to phase in smaller increases over a period of years.

The above options were presented for discussion at the hearings. The majority of the employers who attended the hearings favoured option (ab) and domestic workers option (ac).

Options (aa), (ab) (ac) and (ae) were disregarded for the following reasons:

- (i) Setting a national minimum wage for domestic workers should be the ultimate goal. It is something that could be achieved in time. However, setting a national minimum wage for domestic workers at this point in time would not sufficiently provide for socio-economic difference in indifferent geographical areas. Unemployment could be exacerbated by the immediate imposition of a single national minimum wage.
- (ii) Determining a skill or activity-linked minimum wage, would be premature in that a standardised evaluation mechanism does not exist to determine a fair monetary value for each skill. The Services SETA is currently developing a skills training programme and standards for domestic workers. This might allow for the determination of a skills-based wage in time to come. Problems with monitoring and enforcement are foreseen since the divide is not absolute.
- (iii) Household income as the **only** measure to determine wage levels is not appropriate since it is not the only factor that influences affordability. It also does not seem appropriate to penalise workers for the income levels of their employers.

Option (ab) seems to be an appropriate and affordable way to devise a wage schedule. Domestic workers will be paid according to the number of hours worked. Employers and domestic workers could come to a cost effective agreement on the number of hours such a service would require. Employers will have an opportunity to off-set hours against wages. For example if the minimum wage is set at R3,07 per hour, a domestic worker who is working 45 hours per week should be paid R138,46 per week. If a domestic worker is working 30 hours per week he or she must be paid R92,10 per week. Different wage levels will apply in different locations as already discussed.

*It is recommended that option (ab) be implemented, thus prescribing different wages for different locations. The basis of contract should be on an hourly basis and wages should be phased in over a period of time.*

**b) *Factors considered in determining the wage levels***

In determining the appropriate minimum wage levels various benchmarks were taken into consideration and discussed during the consultation process. These benchmarks include the following:

- Poverty lines as contained in the 1998 Poverty and Inequality Report of R391,00 per month
- national state pension grant of R570,00
- October Household Survey 1995 inflated median wages of R409,00 per month for rural workers and R588,00 per month for urban areas
- COSATU demands of R800,00 and R1 200,00 per month
- employers and domestic workers comments and actual levels reported at the hearings
- information gathered through the various surveys and other research.

The investigation revealed that a significant number of domestic workers would be affected by the implementation of a minimum wage. Although poverty will not be eradicated, it would improve the livelihood of the workers. However if minimum wages are set too high, significant job losses might occur. It is especially rural domestic workers that would feel the impact. The levels at which the wages would be pegged should therefore take cognizance of the trade off between poverty alleviation and disemployment effects. Based on the analyses of the impact of certain wage levels on job losses it is clear that wage levels in excess of R3,07 and R2,05 per hour for urban and rural domestic workers, respectively would significantly increase the possible disemployment effects. A minimum wage of R2,56 per hour is advised for the domestic workers who live in an urban-rural area. These rates should apply during the first 12-months of application.

**c) *Wage increases and application period of the sectoral determination***

The setting of minimum wages over a longer period than one year is favoured in that it allows for proper costing and budgeting by employers and certainty for employees. Using the Consumer Price Index (CPI) as a benchmark to determine wage increases in the sector seem appropriate since employers in other low paying sectors such as security, contract cleaning and civil engineering are also applying the same principle in their costing processes. Wage increases for 2001 to 2003 in these sectors averaged 7% to 8% per year. The CPI increases for 1999 and 2000 were 5,2 and 5,4 percent respectively. Core inflation rates for 1998 and 1999 were 7,1 and 6,9 respectively. Increases of 7% per year would seem to be realistic and appropriate for a sector, which is already paying very low rates. The wage increases should apply across the board i.e. employee who are

receiving wages which are in excess of the prescribed rates should also be entitled to an annual increase.

*It is therefore recommended that the wages be prescribed for a three-year period. Across the board wage increases of 7% per year should be granted in the second and third year of application.*

**d) Recommended minimum wages for the domestic worker sector**

**FIRST 12 MONTHS AFTER PROMULGATION**

Area A: *municipal council areas where the urban portion is 61% and higher:  
R3,07 per hour*

Area B: *municipal council areas where the urban portion is between 41% to 60%:  
R2,56 per hour*

Area C: *municipal council areas where the urban portion is 40% and less:  
R2,05 per hour.*

**SECOND 12 MONTHS AFTER PROMULGATION**

Area A: *minimum wage of R3,28 per hour*

Area B: *minimum wage of R2,73 per hour*

Area C: *minimum wage of R2,19 per hour.*

**THIRD 12 MONTHS AFTER PROMULGATION**

Area A: *minimum wage of R3,50 per hour*

Area B: *minimum wage of R2,92 per hour*

Area C: *minimum wage of R2,34 per hour.*

**e) Four-hour proviso**

Since domestic worker's wages are calculated on an hourly basis, wage levels will fluctuate depending on the number of hours worked per day, week or month. A proviso should be included to ensure that domestic workers are paid a guaranteed minimum.

*It is therefore recommended that if an employee works for less than four hours per day, he/or she shall be deemed to have worked for four hours on that day and be paid for at least four hours.*

**f) Payment in kind**

In terms of remuneration in kind, the majority of domestic workers get additional benefits such as food, accommodation, clothes, etc, free of charge. Although these in kind benefits certainly supplement the wage, the determination of the monetary value of benefits is complex. Although many domestic workers may not pay directly for accommodation, employers pay rates and taxes as well as water and electricity for all accommodation. It would therefore not be "unreasonable" to expect some compensation from domestic workers in lieu of accommodation. However, the quality of the accommodation should be taken into consideration.

*It is recommended that no deductions in this respect should be allowed except in respect of accommodation, as discussed earlier in the report. However, employers will not be expected to increase wages to accommodate payment in kind when calculating overtime, Sunday time, etc as presently provided for in transitional arrangements in the Basic Conditions of Employment Act, 1997.*

**g) Phasing in of the sectoral determination**

The data gathered on wages revealed that a large number of employers are paying wages that are significantly below the recommended levels. It would therefore be necessary to allow employers time to prepare for the implementation of the minimum wages.

*It is recommended that the minimum wages be phased in over a short period of time i.e. that employers should not be required to pay the minimum wage for the first three months after the promulgation of the determination.*

**1.3 Wage tables**

Table 23, 24 and 25 contain the proposed minimum wages for domestic workers. Three different rates have been prescribed for Area A, B and C respectively. For instance, employers who live within the metropolitan and local council boundaries as mentioned in Area A will have to pay a minimum wage of R3,07 per hour during the first 12 months after the promulgation of the determination. Employers who live within the metropolitan and local council boundaries as mentioned in Area B will have to pay R2,56 per hour and employers who live in areas not mentioned in Area A or B, R2,05 per hour during the same period.

The daily, weekly and monthly rates for fulltime domestic workers have been included in the schedule for ease of reference. These rates will apply to domestic workers who work 45 hours per week and nine hours per day.

**TABLE 23: Minimum wages for domestic workers in area A\***

<b>AREA A</b>					
Metropolitan and local councils of Ashburton TLC, Baviaans, Beaufort West, Blue Crane Route, Breede River/ Winelands, Breede Valley, Buffalo City, Camdeboo, Cape Agulhas, Cedarville TLC, Christiana/Bloemhof, City of Cape Town, City of Johannesburg, Dan-Lime, Delmas, Dihlabeng, Dipaleseng, Drakenstein, Dundee TLC, Durban Metropolitan Unicity, Emalahleni, Emfuleni, Emnambithi, Gammagara, Gariiep, GAROP, George, Glencoe TLC, Greater East Rand Metro, Hantam, Highveld East, Hilton TLC, Howick TLC, Ikwezi, Indlovu Regional Council, Inkwanca, Inxuba Yethembamo, Kimberley, Klerksdorp, Knysna, Kopanong, Kouga, Lekwa, Lesedi, Lukanji, Mafube, Maguassi Hills, Makana, Malethswai, Mangaung, Mantsopa, Masilonyana, Matatiele TLC, Matjhabeng, Metsimaholo, Middelburg, Midvaal, Mier, Mogale City, Mohokare, Moqhaka, Mossel Bay, Msukaligwa, Mzinyathi Regional Council, Nala, Naledi, Ndlambe, Nelson Mandela, Newcastle, Ngwathe, Nketoana, Nokeng tsa Taemane, Nxuba, Oranje-Karoo, Oudtshoorn, Overstrand, Plettenberg Bay, PMB/Msunduzi TLC, Potchefstroom, Priemaday, Randfontein, Re A Ipela, Renosterberg, Saldanha Bay, Schweizer-Reneke, Stellenbosch, Thusanang, Towerberg, Tshwane Metropolitan, Umtshezi, Warrenton, and Westonaria.					
<b>Applicable rates for the first twelve months after the promulgation date</b>		<b>Applicable rates for the second twelve months after the promulgation date</b>		<b>Applicable rates for the third twelve month after the promulgation date and thereafter</b>	
Hourly rate (R)	3,07	Hourly rate (R)	3,28	Hourly rate (R)	3,50
Daily rate (R)	27,63	Daily rate (R)	29,56	Daily rate (R)	31,62
Weekly rate Ⓔ	138,46	Weekly rate Ⓔ	148,15	Weekly rate Ⓔ	158,52
Monthly rate (R)	600,00	Monthly rate (R)	642,00	Monthly rate (R)	686,94

\* Minimum wage are payable after three months from the date of publication of this determination.



**TABLE 24: Minimum wages for domestic workers in area B\***

<b>AREA B</b>					
Metropolitan and local councils of Ba-Phalaborwa, Bela Bela, Bergrivier, Boesmanland, Camperdown TLC, Cederberg, Dolphin Coast/ Ballito TLC, Frasuwil, Hibbercene TLC, Highlands, Ilembe Regional Council, Kamiesberg, Kareeberg, Kokstad TLC, KwaDukuza/ Stanger TLC, Laingsburg, Langeberg, Letsemeng, Lichtenburg, Louwsburg TLC, Matzikama, Mkhondo, Modimolle, Musina, Nkomazi, NkwaziZinkwazi Beach TLC, Pennington TLC, Phumelela, Polokwane, Prince Albert, Richtersveld, Rustenburg, Sakhisizwe, Scottburgh/ Umzinto North TLC, Seme, Sunday's river Valley, Swartland, Swellendam, Theewaterskloof, Tokologo, Tswelopele, Ugu Regional Council, Umhlathuze, Umjindi, Ventersdorp, Vryheid TLC, Witzenberg, and Zululand Regional Council.					
Applicable rates for the first twelve months after the promulgation date		Applicable rates for the second twelve months after the promulgation date		Applicable rates for the third twelve month after the promulgation date and thereafter	
Hourly rate (R)	2,56	Hourly rate (R)	2,73	Hourly rate (R)	2,92
Daily rate (R)	23,04	Daily rate (R)	24,65	Daily rate (R)	26,37
Weekly rate (R)	115,38	Weekly rate (R)	123,45	Weekly rate (R)	132,09
Monthly rate (R)	500,00	Monthly rate (R)	535,00	Monthly rate (R)	572,45

\* Minimum wage are payable after three months from the date of publication of this determination.

**TABLE 25: Minimum wages for domestic workers in area C\***

<b>AREA C</b>					
<b>Areas in the rest of South Africa not mentioned in Area A and B</b>					
<b>Applicable rates for the first twelve months after the promulgation date</b>		<b>Applicable rates for the second twelve months after the promulgation date</b>		<b>Applicable rates for the third twelve month after the promulgation date and thereafter</b>	
Hourly rate (R)	2,05	Hourly rate (R)	2,19	Hourly rate (R)	2,34
Daily rate (R)	18,45	Daily rate (R)	19,74	Daily rate (R)	21,12
Weekly rate (R)	92,31	Weekly rate (R)	98,77	Weekly rate (R)	105,68
Monthly rate (R)	400,00	Monthly rate (R)	428,00	Monthly rate (R)	457,96

\* Minimum wage are payable after three months from the date of publication of this determination.