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# GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

## DEPARTMENT OF LABOUR DEPARTEMENT VAN ARBEID

No. R. 234

21 February 2003

LABOUR RELATIONS ACT, 1995

### NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: EXTENSION OF COUNTRY AREAS COLLECTIVE AGREEMENT FOR THE WESTERN CAPE REGION TO NON-PARTIES

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the National Bargaining Council for the Clothing Manufacturing Industry and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry, with effect from 3 March 2003, and for the period ending 30 June 2003.

**M. M. S. MDLADLANA**

Minister of Labour

No. R. 234

21 Februarie 2003

WET OP ARBEIDSVERHOUDINGE, 1995

### NASIONALE BEDINGINGSRAAD VIR DIE KLERASIEVERVAARDIGINGSNYWERHEID: UITBREIDING VAN KOLLEK- TIEWE OOREENKOMS VIR DIE PLATTELANDSE GEBIEDE VAN DIE WES-KAAP STREEK NA NIE-PARTYE

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Nasionale Bedingingsraad vir die Klerasievervaardigingsnywerheid aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 3 Maart 2003, en vir die tydperk wat op 30 Junie 2003 eindig.

**M. M. S. MDLADLANA**

Minister van Arbeid.

### SCHEDULE

#### NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY COUNTRY AREAS COLLECTIVE AGREEMENT FOR THE WESTERN CAPE REGION

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

#### Cape Clothing Association

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

#### Southern African Clothing and Textile Workers' Union

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

being parties to the National Bargaining Council for the Clothing Manufacturing Industry.

#### 1. SCOPE OF APPLICATION OF AGREEMENT

- (1) The terms of this Agreement shall be observed in the Clothing Industry—
  - (a) by the employers and the employees who are members of the employers' organisations and the trade union, respectively;
  - (b) in the Magisterial Districts of George and Worcester.
- (2) Notwithstanding the provisions of subclause (1), the terms of this Agreement shall—
  - (a) apply only in respect of employees for whom wages are prescribed in this Agreement;
  - (b) not apply to employees and working directors whose wages are more than R22 256 per annum;
  - (c) not apply to employers and employees engaged or employed in the Knitting Division.

(3) Clauses 1 (1) (a), 2, 11 (4) (b), 14 (2), 19B, 23, 26 (13) (a) to (13) (g) (v) and 37 (5) (b) and (d) of this Agreement shall not apply to employers and employees who are not members of the employers' organisation and trade union, respectively.

## 2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 (2) of the Act, and shall remain in force until 30 June 2003.

## 3. DEFINITIONS

Any expressions used in this Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, any reference to an Act shall include any amendment to such Act, and, unless the contrary intention appears, words importing the masculine gender shall include the feminine and the singular shall include the plural and vice versa; further, unless inconsistent with the context—

**"Act"** means the Labour Relations Act, 1995;

**"blocker"** means an employee who blocks men's and boys' hats or caps;

**"boiler attendant"** means an employee engaged in firing a boiler and maintaining the water level and steam pressure;

**"casual employee"** means an employee who is employed by an employer on not more than three days in any week and who is engaged in one or more of the following duties or capacities:

- (a) general gardening work;
- (b) loading or unloading;
- (c) clearing bush;
- (d) washing vehicles or windows;

**"clerk"** means an employee who is engaged in—

- (a) writing, typing and filing;
- (b) operating a calculating or a punch-card machine;
- (c) any other form of clerical work;

and includes a cashier, despatch clerk, mannequin, storeman, telephone switchboard operator and work-study clerk but does not include any other class of employee elsewhere defined in this clause, notwithstanding the fact that clerical work may form part of such employee's work;

**"clicker"** means an employee who cuts parts of garments from dies using a mechanical or hydraulic press;

**"Clothing Industry" or "Industry"**, which consists of the clothing, knitting, and shirt sections, includes—

- (a) the making of all classes of men's and boys' tweed and linen hats and caps and all classes of outer and undergarments (including knitted garments) for day or night wear, including shirts, collars, ties, socks, scarves, cloth belts and parts of garments, pyjamas and other nightwear;
- (b) the making of all classes of garments, including quantity production tailoring made to the order of any government department or provincial administration, Transnet, or local authorities, but does not include the making of millinery or the making of ladies or girls' coats and costumes or any other outer-garments made to the measurement of individual persons; and
- (c) the making of ladies' and/or men's gloves;

**"Clothing Section"** means—

- (a) that section of the Clothing Industry in which are made all classes of men's and boys' tweed and linen hats and caps and all classes of outer and undergarments;
- (b) the making of all classes of garments, including quantity production tailoring made to the order of any government department, state or provincial administration, Transnet or local authorities, but does not include shirts, collars, ties, pyjamas and other nightwear, millinery and the making of ladies' or girls' coats and costumes or any other outergarments made to the measurement of individual persons; and
- (c) the making of ladies' and/or men's gloves;

**"clothing machine mechanic"** means an employee who is engaged in servicing, repairing or adjusting machinery, equipment or installations in any establishment;

**"clothing technician"** means an employee who is employed for the purpose of being trained in all facets of the Industry, who is registered as such with the Regional Chamber and who may perform any of the duties of the different classes of employees for whom wages are specified in clause 4 of this Agreement;

**"conveyor"** means any type of moving mechanical apparatus which feeds work to employees at a predetermined rate or a predetermined interval;

**"Council"** means the National Bargaining Council for the Clothing Manufacturing Industry, registered in terms of section 29 of the Labour Relations Act, 1995;



**"cutter"** means an employee, other than an interlining cutter, trimmer, leather cutter or tie cutter who is engaged in cutting material with any power-driven cutting machine, knife or shears, but excluding any cutting operations referred to in the definitions of Grade A and B employees, and Grade C employees;

**"day worker"** means an employee who is not a shift worker;

**"dealer"** or **"general dealer"** means a person or persons who hold a licence under item 3 of the First Schedule to the Registration and Licensing of Business Ordinance;

**"dependant"** means, for the purposes of the Clothing Industry Health Care Fund, any of the following persons:

- (a) The declared spouse of the contributor living at the same address;
- (b) the unmarried children under the age of 18 of the contributor, including natural offspring, stepchildren or adopted children;
- (c) the unmarried children of the contributor, including natural offspring, stepchildren or adopted children, over the age of 18 but under the age of 25, who are at school or who are full-time students at a tertiary institution or who are physically or mentally disabled;

whose admittance to membership of the Fund is at the sole discretion of the Health Care Fund Management Committee;

**"despatch packer"** means an employee who is wholly or mainly engaged in making up parcels or bales in readiness for transport or delivery;

**"establishment"** means any place in which the Clothing Industry is carried on;

**"experience"** means—

- (a) category (1)—in relation to clerks and factory clerks, the total period or periods of employment which such employees have had as clerks and factory clerks, as the case may be, irrespective of the trade in which such experience was gained;
- (b) category (2)—in relation to employees other than clerks, factory clerks, clothing-machine mechanics, motor-vehicle drivers, boiler attendants, despatch packers, travellers' drivers, watchmen or caretakers, labourers and general workers, the total period or periods of employment of employees in the Clothing Industry in any capacity other than that of clerks, factory clerks, clothing-machine mechanics, motor-vehicle drivers, boiler attendants, despatch packers, travellers' drivers, watchmen or caretakers, labourers and general workers;
- (c) category (3)—in relation to clothing-machine mechanics, the total period or periods of employment which such employees have had as clothing machine mechanics;
- (d) category (4)—in relation to supervisors, quality controllers and instructors, the total period or periods of employment which such employees have had as supervisors, quality controllers and instructors;

Provided that where any employee with less than one year's experience has not been re-employed in the Industry within a period of five years from the date on which he was last employed in the industry, any experience gained shall be ignored for the purpose of calculating the minimum wage at which he may commence service;

**"factory clerk"** means an employee who is engaged in one or more of the following duties or capacities:

- (a) calculating piece-work or bonus payments from production schedules;
- (b) checking attendance records or recording particulars of employees at work or absent from work; preparing wage cards or envelopes for subsequent use by another employee;
- (c) checking or recording for production control;
- (d) copying invoices or other documents by machine or hand;
- (e) issuing machine parts, tools, oil and other equipment from a workshop store and/or recording same;
- (f) issuing material, lining, canvas, trimming, buttons, cotton and zips to the different departments of an establishment and/or recording same;
- (g) issuing trimming, lining cotton and zips to employees of an establishment from a sub-store and/or recording same;
- (h) receiving into stock, goods, material, trimming, tools and other equipment and checking goods received against specifications of goods ordered such as quantity, size and quality;
- (i) recording particulars of materials or general stores consumed or to be consumed or keeping stock records;
- (j) recording particulars of waste;

Provided that a calculator may be used in carrying out one or more of the above duties;

**"general worker"** means an employee engaged in one or more of the following duties or capacities:

- (a) carrying, moving or stacking articles;
- (b) delivering letters, messages or goods outside the factory premises on foot or by means of bicycle, tricycle or hand-propelled vehicle;
- (c) folding and/or inserting mail, affixing postage stamps or labels for posting;

- (d) making tea or similar beverages, snacks or sandwiches and washing cups, saucers and kitchen utensils;
- (e) marking, branding, stencilling or affixing labels on boxes, bales or other containers by hand;
- (f) opening or closing doors, unpacking boxes, packages, bales or other containers;
- (g) operating a duplicating and/or addressograph and/or franking machine;

“**Grade A employee**”, for the purposes hereof, means an employee who is engaged in one or more of the duties or capacities defined below:

- (a) “**belt shaper**” means an employee who is engaged in—
  - (i) cutting belt blanks from any type of material;
  - (ii) trimming and shaping belt blanks after glueing;
- (b) “**colour weigher**” means an employee who prepares chemicals, colouring materials and dyes according to given formulae for subsequent use in various processes;
- (c) “**embroidery artist**” means an employee who designs embroidery patterns;
- (d) “**fitter up**” means an employee who takes the outside of garments together with the cut-out linings (called trimmings) and adjusts the outsides and insides together accurately so that the parts may go forward to the machine to be put together correctly;
- (e) “**handyman**” means an employee who makes minor repairs or effects renovations to buildings, fixtures and fittings and who covers ironing and pressing machines or tables with any type of material;
- (f) “**presser**” means an employee who is engaged in the pressing of finished garments by machine, but who is not engaged in the ironing of garments;
- (g) “**pleating-machine setter**” means an employee who sets an automatic pleating machine;
- (h) “**shaper**” means an employee who shapes designs of lapels and collars of coats preparatory to underbasting; and includes those screen printing operations defined below;
- (i) “**negative maker**” means an employee who prepares photographic negatives, separates colours in a design, paints onto clear film sheet in repeat with exact reference marks, as part of the preparation of screens for screen printing;
- (j) “**screen maker (engraver)**” means an employee who engraves and cures screens;
- (k) “**screen printer**” means an employee who is engaged in—
  - (i) carrying out checks for faults;
  - (ii) checking the base fabrics to ensure correct face and quality;
  - (iii) examining screens from wash bays to ensure that they are in a satisfactory condition;
  - (iv) operating a screen-printing machine;
  - (v) positioning colour in correct sequence to ensure that colour combination matches the master feeler and colour card;
  - (vi) selecting squeegees to give the penetration and definition required for a quality print, bearing in mind the texture of the fabric;
  - (vii) setting up screens in sequence of colour to be printed on fabric;
  - (viii) squaring off and testing that screens fit according to the master feeler;
  - (ix) supervising the handling of screens to and from wash bays;
  - (x) supervising the operations of the colour thrower;

“**Grade B employee**”, for the purposes hereof, means an employee who is engaged in one or more of the duties or capacities defined below:

- (a) “**assistant colour weigher**” means an employee who assists a colour weigher;
- (b) “**baster**”, including outbaster, means an employee who is engaged in handsewing in setting a coat or parts of a coat into position preparatory to other operations and/or underbasting, i.e., handsewing linings of coats into position preparatory to sewing to edge seams;
- (c) “**bowmaker**” means an employee who makes bows for dresses;
- (d) “**bra moulder**” means an employee who operates a bra-moulding machine and performs one or more of the following operations:
  - (i) Selects, inserts or fits appropriate bra-cup mould into machine;
  - (ii) sets heat and dwell time;
  - (iii) sets depth of mould;
  - (iv) places material in position;
- (e) “**bra shaper**” means an employee who shapes moulded bra cups singly or in quantity;

- (f) **"cap framer"** means an employee who puts stiffener, wire and pad or lining into cap;
- (g) **"chaser"** means an employee who searches and locates garments or orders in an establishment and who may organise orders through the establishment;
- (h) **"conveyor-feeder"** means an employee who is responsible for feeding prepared parts of garments onto a conveyor for further operations and who may be assisted by one or more sorters;
- (i) **"cook"** means an employee who is engaged in preparing meals and cooking;
- (j) cutting individual ties by hand;
- (k) **"design room assistant"** means an employee who assists employees in the design room in one or more of the following duties or capacities:
  - (i) Fetching or taking patterns, garments, parts of garments, cotton, cloth or trimmings to and from the different departments in the establishment;
  - (ii) cutting out patterns after they have been marked out by pattern makers or pattern graders;
  - (iii) stamping identification details such as size, style and season on cut-out patterns.
- (l) **"embroidery machinist"** means an employee who operates an embroidery machine and who threads up, adjusts tension and checks and/or examines work under needles;
- (m) embroidering and/or beading by hand.
- (n) **"factory shop assistant"** means an employee who serves and assists customers and who may select, wrap and receive payment for goods sold;
- (o) **"finisher"** means an employee who performs one or more of the following operations by hand:
  - (i) Putting pads or wadding into shoulders of coats;
  - (ii) fastening or "serging" sleeve-heads;
  - (iii) wadding sleeve-heads;
  - (iv) felling silk facing already basted in position;
  - (v) making buttonholes by hand;
  - (vi) felling sleeve-head linings, holding in such position with fingers;
- (p) **"hand-patent turner"** means an employee who is engaged in turning out or turning over the edge of collars, bands, cuffs, tabs or pockets with the use of a hand-iron;
- (q) **"ironer"** means an employee who is engaged in—
  - (i) ironing and folding garments;
  - (ii) ironing and folding and pinning garments;
  - (iii) ironing jackets and fly linings;
  - (iv) steaming garments on dummy;
  - (v) ironing embroidered T-shirts by means of a domestic-type ironing machine;
- (r) **"laboratory assistant"** means an employee who prepares samples and who may make initial and routine tests and record the results thereof;
- (s) **"lace cutter"** means an employee who is engaged in laying up and cutting lace according to a pattern;
- (t) **"lace machinist"** means an employee who operates an automatic lace-sewing machine;
- (u) **"machinist"** means an employee who performs by sewing machine any operation in the making of clothing;
- (v) **"matcher"** means an employee who matches and marks pocket flaps and patches according to fabric pattern;
- (w) **"measurer and marker"** means an employee who measures and marks trouser waists;
- (x) **"measurer and trimmer"** means an employee who measures and trims linings of coats and jackets;
- (y) **"fabric inspector"** means an employee who measures fabric and operates an inspection machine;
- (z) **"order checker"** means an employee who checks assembled orders;
- (aa) **"passer"** means an employee who examines the finished garments or parts thereof for flaws;
- (ab) **"pattern copier"** means an employee who copies master patterns, excluding the construction thereof, in pleating process;
- (ac) powdering lays from perforated master lays and perforating lays with a tracing wheel;
- (ad) **"re-cutter"** means an employee who is engaged in—
  - (i) cutting repairs and/or replacements, including time spent in searching for and matching up cloth;
  - (ii) re-cutting dress fronts after embroidery;
- (ae) **"shrinking press operator"** means an employee who operates a shrinking press to keep the same pattern;

- (af) **"steambox operator"** means an employee who is engaged in putting prepared formers in a steambox and taking them out again in a hand or loom-pleating process; and includes those screen printing operations defined below;
  - (ag) **"assistant screen maker (engraver)"** means an employee who assists a screen maker (engraver);
  - (ah) **"assistant screen printer"** means an employee who assists a screen printer and who may screen print by hand;
  - (ai) **"dark room assistant"** means an employee who makes photographic positives of clear sheets of design colours and masks positives for repeat;
  - (aj) **"mixing and filtering operator"** means an employee who is engaged in—
    - (i) cleaning and preparing drums returned from printing machines;
    - (ii) cleaning mixing equipment;
    - (iii) ensuring thorough mixing and blending of dyes and auxiliaries;
    - (iv) filtering mixed dyes;
    - (v) handling drums from mixers to filter machines;
    - (vi) operating a high-speed stirrer;
    - (vii) operating a tub washer;
    - (viii) removing solid or foreign articles from print paste;
    - (ix) supplying clean drums to colour weighers;
    - (x) transferring identifying labels to drums of dye;
  - (ak) **"oven-curing operator"** means an employee who is engaged in drying and curing parts of garments after the printing operation;
  - (al) **"screen controller"** means an employee who is engaged in—
    - (i) applying masking tape set for automatic printing machines;
    - (ii) checking for faults and rectifying same;
    - (iii) clearing blockages by means of a high-pressure gun;
    - (iv) painting in any open motif pinholes;
    - (v) painting in masking and making trial print proof;
    - (vi) placing screens in the rack ready for use;
    - (vii) putting end rings into rotary screens;
    - (viii) retouching screens;
  - (am) **"screen preparer"** means an employee who is engaged in—
    - (i) coating screens;
    - (ii) fitting gauze to frames;
    - (iii) operating a stretching machine;
    - (iv) placing screens in conditioning chamber;
    - (v) preparing and checking screen frames;
    - (vi) removing grease from screens;
  - (an) **"squeegee preparer"** means an employee who makes and prepares squeegees, and includes an employee not elsewhere specified in this Agreement;
- "Grade C employee"**, for the purposes hereof, means an employee who is engaged in one or more of the duties or capacities defined below:
- (a) **"belt operator"** means an employee who is engaged in—
    - (i) bending belt buckles;
    - (ii) covering buckles by hand or machine;
    - (iii) ironing belts;
    - (iv) pressing buckle prongs onto buckles;
    - (v) punching holes for buckles and prongs;
    - (vi) riveting belt buckles;
    - (vii) stapling buckles onto belts;
    - (viii) trimming and cleaning belts after machining;
  - (b) **"bias-binding cutter"** means an employee who is engaged in cutting bias binding;



- (c) **"bobbin winder"** means an employee who is engaged in winding bobbins;
- (d) **"box assembler"** means an employee who is engaged in folding cardboard into containers for garments;
- (e) **"bra fuser"** means an employee who is engaged in—
  - (i) spraying and fusing together two bra-cup fibre fillers;
  - (ii) spraying fusing material on to bra-cup fibre filler and fusing;
- (f) **"bra marker"** means an employee who places a moulded bra cup on a form and pattern over a cup and marks the bra cup;
- (g) **"button coverer"** means an employee who is engaged in covering buttons by hand or machine;
- (h) **"cap fastener"** means an employee who is engaged in putting fasteners on caps;
- (i) **"cleaner"** means an employee who is engaged in cutting or trimming off loose ends of cotton or cloth left on garments or parts of garments or embroidery by previous operators;
- (j) **"collar/cuff trimmer"** means an employee who is engaged in trimming collars, cuffs, flaps and pockets by knife, scissors, guillotine or contour machine;
- (k) **"crimper"** means an employee who is engaged in crimping the seams of collars and cuffs prior to machining;
- (l) **"embroidery cleaner"** means an employee who cuts off threads from embroidery;
- (m) **"embroidery framer"** means an employee who inserts fabric into frames and removes embroidery from frames and who loads or unloads frames onto and from a machine;
- (n) **"embroidery marker"** means an employee who marks embroidery designs on fabric;
- (o) eyelet punching and letting;
- (p) fitting garments on models but excluding marking, measuring or cutting off of material;
- (q) **"folder"** means an employee who is engaged in folding and/or buttoning up garments, placing a shirt on a frame, inserting neck stiffener and folding the shirt;
- (r) **"foundation-garment operator"** means an employee who is engaged in—
  - (i) assembling inner and outer bra cups by hand;
  - (ii) assembling suspenders or shoulder straps by hand;
  - (iii) cutting and capping steels, bones or wires;
  - (iv) cutting individual girdle blanks;
  - (v) cutting lace, elastic, ribbon or shoulder straps into required lengths (excluding cutting from lays or according to pattern);
  - (vi) folding and rolling bias binding by means of automatic machine;
  - (vii) inserting bones or wires by hand;
  - (viii) ironing girdle or corset panels;
  - (ix) ironing partly-assembled bra cups;
  - (x) pasting, sticking or pinning panels on girdle blanks;
  - (xi) riveting hooks and eyes and swedging buckles and press studs;
- (s) **"fuser"** means an employee who is engaged in—
  - (i) feeding parts into an automatic fusing press;
  - (ii) ironing on fusible interlining with a hand-iron;
  - (iii) loading and unloading racks;
  - (iv) operating a semi-automatic fusing machine or press;
  - (v) positioning and spot-fusing fusible interlining with a special machine;
- (t) **"label printer"** means an employee who is engaged in printing or writing labels;
- (u) **"lace burner"** means an employee who separates lace into two sections by means of a hot needle;
- (v) **"line feeder"** means an employee who is engaged in feeding and/or collecting work, garments, parts of garments, cotton, trimmings, cartons, boxes and labels on the line or in a department of an establishment;
- (w) **"marker"** means an employee who is engaged in marking the position of pockets, flaps, vents, buttons or buttonholes and cuts the mouth of pockets;
- (x) **"mitre trimmer"** means an employee who is engaged in marking and trimming mitres on chokers or cravats;
- (y) **"packer"** means an employee who is engaged in—
  - (i) attaching belts to skirts or trousers;

- (ii) assembling garments into bundles or orders prior to their being sent to the despatch department;
- (iii) attaching swing or identification tickets to garments;
- (iv) bagging garments;
- (v) packing garments into boxes or other suitable wrapping;
- (vi) sorting garments;
- (z) **"parts examiner"** means an employee who is engaged in examining cut and/or uncut parts of lays;
- (aa) **"parts ironer"** means an employee who is engaged in—
  - (i) ironing crease lines on cuffs and fronts of shirts;
  - (ii) ironing cuffs and collars by means of a small pressing machine;
  - (iii) ironing loose collars;
  - (iv) ironing seams of ties, including bow ties;
  - (v) re-ironing garments which have already been folded and ironed;
- (ab) **"plain sewer"** means an employee who is engaged in performing the following operations by hand—
  - (i) fastening catches in tops of trousers;
  - (ii) fastening facings inside already basted in position;
  - (iii) fastening edge stays;
  - (iv) fastening permanent turn-ups;
  - (v) felling bindings;
  - (vi) felling bottoms;
  - (vii) felling bottoms of linings or seams of same already basted in position;
  - (viii) felling crutch linings in trousers;
  - (ix) felling necks or armholes of vests;
  - (x) felling waistband linings or parts thereof;
  - (xi) making and sewing on hangers;
  - (xii) making canvases;
  - (xiii) paddling collars or lapels;
  - (xiv) putting on bridles by hand;
  - (xv) sewing on buttons by hand;
  - (xvi) sewing on hooks and eyes;
  - (xvii) sewing operations on ties;
  - (xviii) sewing shoulder pads into dresses and/or unlined coats;and includes various odds and ends of sewing;
- (ac) **"pinner"** means an employee who is engaged in—
  - (i) making and pinning underwear bows;
  - (ii) pinning garments;
  - (iii) pinning underwear motifs and trimmings;
- (ad) **"pleater"** means an employee who is engaged in—
  - (i) guiding material with paper through an automatic pleating machine;
  - (ii) putting material between two paper looms (formers) and preparing for steambox in hand or loom-pleating process;
  - (iii) taking material out of looms in hand or loom-pleating process;
- (ae) **"press stud machine operator"** means an employee who is engaged in operating a semi-automatic press stud machine; putting hooks and bars on top of the flies of trousers and extending flaps of trousers;
- (af) **"scalloper"** means an employee who is engaged in cutting cloth from scallops;
- (ag) **"skiver"** means an employee who is engaged in operating a skiving machine which reduces the thickness of leather;
- (ah) **"sloper"** means an employee who is engaged in marking and trimming the shape of necks of garments;
- (ai) **"sorter"** means an employee who is engaged in—
  - (i) sorting and bagging dye-lots prior to dyeing;
  - (ii) sorting out for various operations;but excludes sorting parts from the cut lay;

- (aj) **"spotter"** means an employee who removes spots and stains;
  - (ak) **"stamper"** means an employee who stamps sizes and/or identifying work numbers on garments or parts of garments;
  - (al) **"stapler"** means an employee who is engaged in stapling or pinning parts of garments together;
  - (am) **"steam press operator"** means an employee who is engaged in passing garments through a steam press and receiving out at the other end;
  - (an) **"swatch cutter"** means an employee who is engaged in cutting traveller's swatches;
  - (ao) **"tablehand"** means an employee who is engaged in—
    - (i) cleaning off any excess rubber solution;
    - (ii) painting seams of oilskins and waterproof hats;
    - (iii) smearing rubber solution on seams or edges and rolling them over with a small hand roller;
  - (ap) **"ticket sewer"** means an employee who is engaged in stitching tickets on garments by machine;
  - (aq) **"transferer"** means an employee who is engaged in transferring or stencilling garments, parts of garments or panels by hand or machine;
  - (ar) **"turner"** means an employee who is engaged in—
    - (i) machine patent turning, i.e., operating any form of automatic or semi-automatic machine which turns out or turns over the edges of points of collars, bands, cuffs, tabs, pockets, or loops, including the semi-automatic machine making collar tabs;
    - (ii) turning garments by hand, trimming and turning garments or parts of garments;
  - (as) underpressing men's and boys' melton and linen caps;
  - (at) **"welder"** means an employee who is engaged in operating an electric fabric welding machine;
  - (au) zip machine operator;
- "head cutter"** means a qualified cutter as defined in this Agreement who is in charge of and actively supervises the cutting department of an establishment;
- "hourly rate"** or **"hourly wage"** means the weekly wage prescribed in clause 4 (1) read with clause 4 (10), divided by—
- 60 in the case of a watchman or caretaker;
  - 46 in the case of a boiler attendant;
  - 42,5 in the case of all other employees;
- "incapacity"** means inability of an employee to work owing to any sickness or injury, other than sickness or injury caused by the employee's own misconduct: Provided that any such inability to work caused by an accident or a scheduled disease for which compensation is payable under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), shall be regarded as incapacity only during any period in respect of which no disablement payment is payable in terms of that Act;
- "instructor"** means an employee who is responsible for training employees in any establishment or who in any manner whatsoever assists an employer in or about a factory in carrying out training programmes to improve the productivity of his employees;
- "interlining cutter"** in the shirt section means an employee who is employed solely in cutting linings for shirts, collars, pyjamas and other nightwear;
- "Knitting Division"** means that Division of the knitting section in which employers and their employees are associated for the knitting of garments and includes—
- (i) the making up of fully-fashioned garments;
  - (ii) the making up of semi-fashioned garments;
  - (iii) the making up of men's, ladies' and children's socks, but excludes the making up of knitted garments from uniform width knitted fabric in the piece;
- "Knitting Section"** means that section in which employers and their employees are associated for the knitting of hosiery and/or garments knitted on circular, flat or fully fashioned machinery, and includes the making up of garments from knitted fabric in the establishment in which the said fabric was knitted;
- "labourer"** means an employee who is engaged in one or more of the following duties or capacities:
- (a) Binding, wiring, or strapping boxes or bales or other containers;
  - (b) cleaning and/or washing premises, plant, machinery, vehicles, tools and/or other articles;
  - (c) fitting and mending machine belts, cleaning, oiling and greasing machines, moving tools, equipment and machines, changing needles, cleaning cotton and/or cloth from underneath throat plate;
  - (d) general gardening work;
  - (e) loading or unloading vehicles, trailers or international standard containers;

- "lay maker"** means an employee, other than an interlining cutter, trimmer or tie cutter, who positions patterns for a lay;
- "layer up"** means an employee who is engaged in laying up material, which may include slitting the ends and sides and/or who sorts parts from the cut lay;
- "learner"** means an employee whose period or periods of employment do not entitle him to be paid the qualified wage specified in clause (4) (1) for an employee of his class;
- "leather cutter"** means an employee, other than a laymaker, who is engaged in cutting parts of leather garments;
- "Main Collective Agreement"** means the Main Collective Agreement for the Western Cape Region of the Council which prescribes wages for employees employed in the Industry, other than those employed in the Magisterial Districts of George and Worcester and those employed in the Knitting Division;
- "monthly wage"** means the weekly wage multiplied by four and a third;
- "motor vehicle driver"** means an employee who is engaged in driving a motor vehicle, and for the purposes of this definition, driving a motor vehicle includes all periods of driving and any time spent by the driver on work connected with the vehicle or the load and all periods during which he is obliged to remain at his post in readiness to drive;
- "patent machine"** means a button, buttonhole, padding or felling machine;
- "paternity"** means any event connected to the birth or adoption of a child parented by an eligible employee;
- "pattern grader"** means an employee who grades patterns to various sizes and makes ancillary patterns to a master pattern and includes an employee who is engaged in making master patterns for the pleating process and in making copies for the master pattern;
- "pattern maker"** means an employee who is engaged in designing and/or making master patterns;
- "piece-work"** means any system by which earnings are calculated upon the quantity or output of work performed;
- "qualified"** means that an employee has completed his period of learnership as prescribed in this Agreement;
- "quality controller"** means an employee, other than a passer, who carries responsibility for quality control in a factory or any department of a factory, i.e., ensuring that the quality of any garment or part of any garment, whether in a finished or unfinished state, meets the standard of quality determined by the employer;
- "Regional Chamber"** for the purposes of this Agreement, means the Cape Chamber (Western Cape Sub-Regional Chamber) of the Council;
- "set leader"** means an employee who is responsible for the work executed by the employees composing a set or team under his charge and who takes an active part in the operation of a set;
- "set of workers"** (sometimes referred to as a "set") means a team of employees numbering three or more, who are engaged in performing sectional operations in the making up of garments, usually under the direction of a leader;
- "shift worker"** means an employee who works shifts in or in connection with an activity with respect to which work is performed in two or more shifts per day;
- "shirt section"** means that section of the Clothing Industry in which are made shirts, collars, ties and pyjamas and other nightwear;
- "shop steward"** means an employee at any establishment who has been duly elected to be a shop steward in terms of the constitution of the trade union and who has been recognised by the employer as a shop steward;
- "short time"** means a temporary reduction in the number of ordinary weekly hours of work in an establishment owing to slackness of work or other exigencies of trade;
- "storeman"** means an employee who is in general charge of stores and/or finished products and who is responsible for receiving, storing, packing or unpacking goods in a store or a warehouse and/or delivering goods from a store or warehouse to the consuming departments in an establishment or for despatch;
- "supervisor"** means an employee who carries the responsibility for the correct and efficient execution of the work entrusted to the care of such employee in a factory or a department of a factory;
- "task-work"** means the setting by an employer (or his representative) to an employee of a stated number of garments or parts of garments to be completed by such employee within a specified time;
- "tie-cutter"** means an employee who is engaged in marking-in and/or cutting ties by hand or machine;
- "tracer"** means an employee who traces master lays or traces around patterns which have already been positioned by the lay-maker;
- "trade union funds"**, without limiting the generality of its meaning, includes trade union subscriptions and levies;
- "traveller's driver"** means an employee who accompanies the traveller on his journey and assists the traveller in driving and in packing, unpacking and displaying samples;
- "trimmer"** in the Clothing Section, means an employee who is employed in marking-in and/or cutting linings and/or interlinings;
- "underpresser"** means an employee, other than a presser, who is employed in pressing processes, including the pressing of pockets and seams of crutch linings of completed trousers, but excluding ironing processes;



**"unladen mass"** means the mass of any motor vehicle or trailer as recorded in a licence or certificate issued in respect of such motor vehicle or trailer by any authority empowered by law to issue licences in respect of motor vehicles;

**"wage"** means the amount of money payable to an employee in terms of clause 4 (1), read with clause 4 (10), in respect of his ordinary hours of work as specified in clause 9:

Provided that—

- (i) if an employer regularly pays an employee in respect of such ordinary hours of work, an amount higher than that specified in clause 4 (1), read with clause 4 (10), it means such higher amount;
- (ii) the first proviso shall not be construed so as to refer to, or include, such remuneration as an employee who is employed on any basis provided for in clause 7 received over and above the amount which he would have received had he not been employed on such basis;

**"watchman or caretaker"** means an employee who is engaged in guarding premises, buildings or other property.

In classifying an employee for the purposes of this Agreement, he shall be deemed to be in that class in which he is wholly or mainly engaged.

#### 4. WAGES

(1) Subject to the provisions of this Agreement, the minimum wages that shall be paid to and accepted by the under-mentioned classes of employees shall be as follows:

	Wage per week
<b>Part A—Cutting Department</b>	
Head Cutter .....	R424,50
Pattern Maker:	
(a) Qualified .....	R424,50
(b) Learner:	
First year:	
First six months of experience .....	R234,50
Second six months of experience .....	R259,50
Second year:	
First six months of experience .....	R285,50
Second six months of experience .....	R311,50
Third year:	
First six months of experience .....	R340,00
Thereafter, the wage specified in (a), i.e. ....	R424,50
Pattern Grader:	
(a) Qualified .....	R341,00
(b) Learner:	
First year:	
First six months of experience .....	R218,00
Second six months of experience .....	R234,50
Second year:	
First six months of experience .....	R250,00
Second six months of experience .....	R267,00
Third year:	
First six months of experience .....	R285,50
Second six months of experience .....	R303,50
Thereafter, the wage specified in (a), i.e. ....	R341,00
Cutter, lay maker:	
(a) Qualified .....	R328,50
(b) Learner:	
First year:	
First six months of experience .....	R195,00
Second six months of experience .....	R216,50
Second year:	
First six months of experience .....	R238,00
Second six months of experience .....	R261,00
Third year:	
First six months of experience .....	R287,00
Second six months of experience .....	R328,50

	Wage per week
Interlining cutter, trimmer, leather cutter and tie cutter:	
(a) Qualified .....	R235,50
(b) Learner:	
First year:	
First six months of experience .....	R174,00
Second six months of experience .....	R184,00
Second year:	
First six months of experience .....	R194,50
Second six months of experience .....	R205,00
Third year:	
First six months of experience .....	R215,50
Thereafter, the wage specified in (a), i.e. ....	R235,50
(c) If advanced to learner cutter:	
First six months from date of advancement.....	R255,50
Second six months from date of advancement .....	R287,00
Thereafter, the wage specified for a qualified cutter, i.e., .....	R328,50
Layer up:	
(a) Qualified .....	R199,50
First year:	
First six months of experience .....	R168,00
Second six months of experience .....	R174,00
Second year:	
First six months of experience .....	R181,50
Thereafter, the wage specified in (a), i.e., .....	R199,50
(b) If advanced to learner cutter:	
First six months from date of advancement.....	R199,50
Second six months from date of advancement .....	R238,00
Third six months from date of advancement .....	R261,00
Fourth six months from date of advancement .....	R287,00
Thereafter, the wage specified for a qualified cutter, i.e., .....	R328,50
Clicker:	
(a) Qualified .....	R243,00
(b) Learner:	
First year of experience .....	R179,00
Second year of experience .....	R205,00
Thereafter, the wage specified in (a), i.e., .....	R243,00
Tracer:	
(a) Qualified .....	R227,50
(b) Learner:	
First year:	
First six months of experience .....	R179,00
Second six months of experience .....	R192,00
Second year:	
First six months of experience .....	R204,00
Thereafter, the wage specified in (a), i.e., .....	R227,50

**Part B—Factory Operatives**

Clothing machine mechanic:	
(a) Qualified .....	R424,50
(b) Learner:	
First year:	
First six months of experience .....	R234,50
Second six months of experience .....	R259,50
Second year:	
First six months of experience .....	R285,50
Second six months of experience .....	R311,50
Third year:	
First six months of experience .....	R340,00
Second six months of experience .....	R368,50
Thereafter, the wage specified in (a), i.e., .....	R424,50

	Wage per week
Grade A employee:	
(a) Qualified .....	R259,50
(b) Learner:	
First year:	
First six months of experience .....	R180,00
Second six months of experience .....	R194,00
Second year:	
First six months of experience .....	R207,00
Second six months of experience .....	R220,50
Third year:	
First six months of experience .....	R235,50
Thereafter, the wage specified in (a), i.e., .....	R259,50
Grade B employee:	
(a) Qualified .....	R218,00
(b) Learner:	
First year:	
First six months of experience .....	R176,50
Second six months of experience .....	R186,50
Second year:	
First six months of experience .....	R196,50
Thereafter, the wage specified in (a), i.e., .....	R218,00
(c) If advanced to Grade A employee:	
First six months from date of advancement .....	R218,00
Second six months from date of advancement .....	R220,50
Third six months from date of advancement .....	R235,50
Thereafter, the wage specified for a qualified Grade A employee, i.e., .....	R259,50
Grade C employee:	
(a) Qualified .....	R194,00
(b) Learner:	
First year:	
First six months of experience .....	R172,50
Second six months of experience .....	R178,50
Thereafter, the wage specified in (a), i.e., .....	R194,00
(c) If advanced to Grade B employee:	
First six months from date of advancement .....	R194,00
Second six months from date of advancement .....	R196,50
Thereafter, the wage specified for a qualified Grade B employee, i.e., .....	R218,00
Underpresser, blocker:	
(a) Qualified .....	R196,50
(b) Learner:	
First year:	
First six months of experience .....	R168,00
Second six months of experience .....	R174,00
Second year:	
First six months of experience .....	R181,50
Second six months of experience .....	R196,50
(c) If advanced to learner presser:	
First six months from date of advancement .....	R196,50
Second six months from date of advancement .....	R235,50
Thereafter, the wage specified for a qualified Grade A employee, i.e., .....	R259,50

**Part C—Clerical employees**

Clerk:	
(a) Qualified .....	R287,00
(b) Learner:	
First year of experience .....	R208,50
Second year of experience .....	R229,00

	Wage per week
Third year:	
First six months of experience .....	R250,50
Thereafter, the wage specified in (a), i.e., .....	R287,00
Factory Clerk:	
(a) Qualified .....	R212,50
(b) Learner:	
First year of experience .....	R167,50
Second year of experience .....	R179,50
Third year:	
First six months of experience .....	R193,50
Thereafter, the wage specified in (a), i.e., .....	R212,50

#### Part D—General

Boiler attendant .....	R200,50
Despatch packer .....	R207,50
General worker .....	R193,50
Labourer .....	R196,50
Motor vehicle driver of a vehicle, the unladen mass of which, together with the unladen mass of any trailer or trailers drawn by such vehicle is as follows:	
(a) Under 2 720 kg .....	R218,50
(b) 2 720 kg and over .....	R250,00
Supervisor, quality controller and instructor .....	R267,00
Traveller's driver .....	R218,50
Watchman or caretaker, whose ordinary hours of work are—	
(a) less than 60 hours per week .....	R226,50
(b) 60 hours per week .....	R238,00

(2) **Set leaders:** In addition to the wages computed in terms of subclause (1) of this clause, any employee when called upon to perform the duties of a set leader shall receive and be paid an additional R2,60 per week whilst so employed.

(3) **Basis of contract:** For the purposes of this clause the contract of employment of an employee, other than a casual employee, shall be on a weekly basis, and an employee shall be paid in respect of a week not less than the full weekly wage prescribed in subclause (1), read with subclause (6) and subclause (10), for an employee of his class, whether he has in that week worked the maximum number of ordinary hours of work applicable to him in terms of clause 9, or less, and subject to the provisions of clause 30, each contract of service shall be deemed to have been continuous from the time the employee entered the employer's service until the time such service is legally terminated.

(4) **Incremental dates:** An employer shall pay increases due to his employees during each calendar year on the following basis:

- All employees who qualify for an increase during the period 1 January to 31 March of the calendar year shall be granted such increases with effect from the pay week in which 15 February of such year falls. When an employee is not in employment during the said pay week he shall become entitled to the increase with effect from the date he is employed.
- Likewise and in the same manner, all increases which become due during the periods 1 April to 30 June, 1 July to 30 September and 1 October to 31 December of each calendar year shall be granted to employees with effect from the pay week in which 15 May, 15 August and 15 November fall, within the respective periods.
- In calculating whether an employee qualifies for an increment, all periods of absence from work shall be counted, except any absence without pay for a continuous period in excess of four consecutive pay weeks and in respect whereof full particulars of the name of the employee and the period of absence have been advised to the Regional Chamber within 14 days of the employee's resuming work.

(5) Except with the approval of the Regional Chamber, or unless otherwise provided for herein, an employee transferred from, one occupation to another for which wages are prescribed in this Agreement, either with the same employer or if commencing service with another employer, shall be paid the wages prescribed in respect of the experience such an employee has had in the Industry, irrespective of the occupation in which such experience has been obtained.

(6) **Differential rates:** An employer who requires or permits a member of one class of his employees to perform for longer than one hour in the aggregate on any day, either in addition to his own work or in substitution therefor, work of another class for which either—

- a wage higher than that of his own class; or
- a rising scale of wages terminating in a wage higher than that of his own class;



is prescribed in subclause (1) shall pay such employee in respect of that day—

- (i) in the case referred to in paragraph (a), not less than one-fifth of the higher weekly wage prescribed in subclause (1); and
- (ii) in the case referred to in paragraph (b), not less than one-fifth of the highest weekly wage prescribed in subclause (1) for the higher class:

Provided that where the difference between classes is, in terms of subclause (1), based on experience, the provisions of this subclause shall not apply.

(7) Subject to the provisions of clauses 5 (4) and 12, an employee, other than a casual employee, shall be paid the full weekly wage prescribed in subclause (1), read with subclause (10), for an employee of his class, whether he has worked full time or less.

(8) **Casual employee:** A casual employee shall be paid in respect of every day or part of a day of employment not less than one-fifth of the weekly wage prescribed for a labourer in subclause (1), read with subclause (10).

(9) **Shift allowance:** In addition to the wage specified in subclause (1), read with subclause (10), a shift worker shall, in respect of his shift hours worked in any week, be paid an additional 12,5% on such wage.

(10) **Annual bonus:** Each employee shall be paid an annual bonus on the day of his employer's annual closure in December of each year, equivalent to 1,5% of his annual basic prescribed wage (excluding overtime earnings and production bonuses) calculated from 1 January to 31 December. A pro rata share thereof shall be paid to an employee who leaves employment before 31 December.

The bonus is inclusive of and not additional to any annual bonus paid by an employer, and a shop steward may not be prejudiced in respect of annual bonus earnings for time off authorised by his employer in order to attend to union business.

(11) Notwithstanding anything to the contrary contained herein, the wage of an employee who, immediately prior to the date on which this Agreement comes into operation, is in receipt of a wage higher than that prescribed for the class of work in which he is engaged shall, with effect from the date on which this Agreement comes into operation, be increased by an amount equal to the difference between the wage prescribed in the Agreement published under Government Notice No. R. 2598 of 11 September 1992 and the wage prescribed in this Agreement for the class of work in which he is engaged: Provided that this subclause shall not apply to an employee who, by virtue of the operation of clause 1 (2) (b), previously fell outside the provisions of the Agreement published under Government Notice No. R. 2598 of 11 September 1992.

## 5. PAYMENT OF WAGES

(1) Nothing in this Agreement shall operate to reduce the wage which was being paid immediately prior to or to which any employee was entitled at the date of the commencement of this Agreement whilst such employee is employed by the same employer. The provisions of this subclause shall also apply in the case of any employee whose services are terminated by such employer subsequent to the date of commencement of this Agreement and who is re-engaged by such employer.

For the purposes hereof, this Agreement shall include any amendment thereto.

(2) (a) The wages due to an employee, other than a shift worker or a casual employee, shall be paid in cash each Friday during working hours, but not later than 17:30, at the place and time specified in the notice posted up in the establishment.

Any time which may elapse after the normal hours of work and the time at which payment is made shall be deemed to be overtime. If a pay day falls upon a public holiday, payment shall be made during working hours on the day preceding such holiday.

In the case of a shift worker the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during the usual office hours of the establishment, but not later than 24 hours after the usual pay day.

(b) Employees engaged on a monthly basis shall be paid not later than the last day in each calendar month, or upon the termination of employment if this should take place before the ordinary pay day of the employee.

(c) Where the contract of employment is terminated on any working day other than the ordinary pay day in the establishment, all wages or other moneys due to the employee shall be paid immediately upon termination of employment, and where this is not done, the employee shall, in addition, be entitled to his normal wages for any period up to the time at which payment is made.

(d) A casual employee shall be paid in cash for each day worked not later than the usual closing time of the establishment.

(3) **Wage envelopes:** All wages shall be handed to employees in sealed envelopes which shall bear the name of the employee, his factory number, the name of the employer, the number of hours worked by the employee, his prescribed weekly wage rate, deductions made in terms of subclause (4) and clause 12 (i.e., short time), and the period in respect of which payment is made.

(4) No deductions of any description, other than the following, shall be made from the amount due to an employee:

- (a) Except where otherwise provided in this Agreement, whenever an employee is absent from work and such absence is not at the request or on the instructions of his employer, a pro rata deduction for actual time lost;

- (b) with the written consent of the employee, deductions for a savings and/or holiday fund: Provided that the commencement or continuance of a savings and/or holiday fund is subject to the approval of the Regional Chamber, after the employer has agreed to deposit such moneys deducted from his employee's wages in a trust under the supervision of the Regional Chamber;
- (c) levies in terms of clause 22, Health Care Fund contributions in terms of clause 26 of this Agreement, and Provident Fund contributions in terms of clause 6 of the Provident Fund Collective Agreement;
- (d) any amount that an employer is compelled by law, ordinance or legal process to make payment of on behalf of an employee;
- (e) where scissors have been provided by an employer to his employee, a weekly installment not exceeding R2,00 may be deducted until the cost incurred by the employer has been repaid, but in the event of the employee returning the scissors to his employer he shall be entitled to a refund of the total amount he has paid;
- (f) deductions in respect of tea (or any other beverage) in terms of clause 13 of this Agreement;
- (g) where no work is available to an employee on account of a breakdown of machinery or other cause beyond the control of the management, the employer may make a pro rata deduction for any time lost in excess of two hours;
- (h) deductions for contributions to trade union funds;
- (i) deductions for cash advanced against wages;
- (j) deductions in respect of repayments on housing loans provided for in clause 8 (4) of the Provident Fund Agreement of the Regional chamber;
- (k) where overalls have been provided by an employer to his employee at his request, a weekly installment not exceeding R2,00 may be deducted until the cost thereof has been repaid, but in the event of the employee leaving or absconding before the full cost of an overall has been paid, the outstanding amount may be deducted from his wages;
- (l) deductions for contributions to pension funds approved by the Registrar of Pension Funds;
- (m) deductions in respect of payments to local authorities for housing loans, rentals and rates;
- (n) deductions from the wages of monthly-paid employees in respect of life insurance premiums;
- (o) deductions in respect of clipcards for bus or train travel.

(5) Employers who supply their employees with goods of any kind whatsoever, shall not deduct the amounts owing thereon from the wage of such employees. Wages shall at all times be paid in full except as is provided for in subclause (4) hereof and clause 12, and no deduction shall be made in respect of goods that may have been accidentally spoilt during the manufacturing process.

(6) Where work of any nature whatsoever is performed in an establishment by employees organised in sets or teams, each individual employee in the said sets or teams shall be paid his wage by the employer or his representative in the establishment where the work is performed.

(7) No employer shall charge, nor shall he accept, any premium or monetary or other compensation for the training of an employee: Provided that this subclause shall not apply in respect of a training scheme to which the employer is legally required to contribute.

(8) Whenever work ceases or is interrupted in the whole or in part of an establishment owing to damage caused by fire, storm or flooding, an employer shall pay all employees affected thereby wages for up to a maximum of two weeks: Provided that such payment shall include any payment in respect of notice of termination of service which may be due in terms of clause 18 of this Agreement: provided further that where work in a part or in the whole of the establishment is resumed within two weeks from the date on which work was so ceased or interrupted, the payment due shall be only in respect of the actual time lost by the employees affected.

The provisions of this subclause shall also apply to any employee who, at the date of such fire, storm or flood, is employed on trial in terms of clause 18 (8) of this Agreement.

(9) Subclause (8) shall not apply to a casual employee.

## 6. TIME RECORDS

(1) Every employer shall provide, to the satisfaction of the Regional Chamber, a semi-automatic time recording clock or other recording system and shall establish beyond reasonable doubt the actual time each individual employee has attended at the establishment.

(2) Every employee shall, unless prevented by sickness or other unavoidable cause, register day by day the actual periods of his attendance at the establishment.

(3) Every employee shall register in person, in accordance with the method employed in the establishment, and no employee may register for any other employee in such establishment.

(4) All time cards or other types of records shall, in accordance with the requirements of section 205 (1) and (2) of the Act, be kept for a period of three years subsequent to the date of the record and on request shall be available for inspection by the designated agent of the Council or Regional Chamber.

**7: WAGE INCENTIVES, PIECEWORK AND TASK-WORK**

(1) Task-work is prohibited and employees who are required to produce a given number of units of production shall be placed under a piecework or incentive system as provided for in this clause.

(2) No employer shall employ an employee on piecework or any other form of wage incentive except in accordance with the following conditions:

- (a) No employee shall be paid in any week less than the minimum wage to which he would have been entitled in terms of clause 4 of this Agreement if he had been employed purely as a timeworker.
- (b) The Regional Secretary of the Regional Chamber shall, within seven days of the introduction of any piecework or other form of wage incentive, be notified of the introduction thereof.
- (c) A schedule of the piecework rates and, in the case of any other form of wage incentive, a statement clearly illustrating how bonus payments will be calculated, shall forthwith be exhibited and kept posted in a conspicuous place readily accessible to the employees and such schedule and/or statement shall be signed in situ by a designated agent of the Council or Regional Chamber.
- (d) The employees affected by any wage incentive scheme other than straight piecework shall have the right to elect a works committee of two (or such additional numbers as may be agreed to by the employer) and in the event of a works committee being appointed, full details of the actual operation of the scheme shall be made available to the committee.
- (e) Full details of the wage incentive scheme showing the operations covered, work values and allowances made in calculating work values shall be maintained by the employer and where any changes are effected, the record of the previous system shall be retained for a period of one year after such change.
- (f) No details of the wage incentive scheme may be changed to reduce the earnings of the employees affected without the consent of the works committee (if there is one), and in the event of any dispute arising, the matter shall be referred to the Regional chamber: Provided that this shall not apply to any changes effected during the trial period of three months after the coming into operation of the scheme.

Piecework rates shall not be reduced without the consent of the Regional Chamber.

- (g) No wage incentive system may be continued for a period exceeding one month after a trial period of three months without a certificate of permission having been obtained from the Regional Chamber.

**8: PROPORTION OR RATIO OF EMPLOYEES**

(1) Where an employer employs four or more cutters in any establishment he shall employ one head cutter at a wage of not less than the wage prescribed in clause 4 (1).

(2) Where an employer is a limited liability company or a close corporation or a partnership, no director or member or other officer of such company or close corporation or partnership shall be deemed to be an employee for ratio purposes.

**9: ORDINARY HOURS OF WORK, MEAL INTERVALS AND REST INTERVALS**

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

- (a) In the case of an employee, other than a shift worker, boiler attendant, casual employee and watchman or caretaker—
  - (i) 42½ hours, excluding meal intervals, but including rest intervals, in any week from Monday to Friday, inclusive;
  - (ii) 8½ hours on any day between 07:30 and 18:00.
- (b) In the case of a shift worker—
  - (i) 42½ hours, excluding meal intervals, but including rest intervals, in any week from Sunday to Saturday, inclusive;
  - (ii) nine hours on any day where two shifts are employed daily and eight hours on any day where three shifts are employed daily:

Provided that an employer may make mutual arrangements with his shift workers to work 42½ hours on night shift, excluding meal intervals, but including rest intervals, in any week from Monday to Thursday (four-day week):

Provided further that no employer may require employees to work as shift workers without giving the Council at least 15 working days' notice of his intention to work shifts, and without consulting the trade union in this regard.

- (c) In the case of boiler attendants, the weekly hours may be 46 and the daily hours 9¼.
- (d) In the case of watchmen or caretakers, the weekly hours may be 60 and the daily hours 12 (five-day week) or 10 (six-day week).
- (e) In the case of casual employees, the weekly hours may be 25½ and the daily hours 8½.



(2) **Hours of work to be consecutive:** All working hours in any day shall, except for meal intervals and rest intervals as provided for in this clause, be consecutive.

(3) **Rest intervals:** An employer shall grant to each of his employees a rest interval of not less than—

- (a) 15 minutes as near as practicable to the middle of each morning work period;
- (b) 10 minutes as near as practicable to the middle of each afternoon work period;

during which such employee shall not be required or permitted to perform any work, and such interval shall be deemed to be part of the ordinary hours of work: Provided that this clause shall not apply to a traveller's driver, a motor vehicle driver, a watchman or a caretaker, or an employee engaged in delivering goods or messages outside the establishment of his employer: Provided further that where three shifts are worked daily in any establishment, such rest intervals need not be granted to a shift worker, provided he is supplied free of charge with one cup of tea as near as practicable to the middle of each shift, such tea to be taken while at his post.

(4) **Meal intervals:** An employer shall not require or permit an employee to work for more than five hours continuously without a meal interval of not less than one hour during which interval such employee shall not be required or permitted to perform any work: Provided that—

- (i) periods of work interrupted by intervals of less than one hour shall be deemed to be continuous;
- (ii) if such interval be for longer than one hour, the period in excess of one hour shall be deemed to be hours of work;
- (iii) where two or three shifts are worked daily in any establishment, a shift worker shall be granted two meal intervals of not less than 15 minutes per shift or one meal interval of not less than 30 minutes per shift, during which intervals such employee shall not be required or permitted to perform any work;
- (iv) with regard to employees other than shift workers, an employer may conclude an arrangement with his employees to shorten such employees' meal intervals to not less than 30 minutes daily.

(5) **Savings:** The provisions of this clause shall not apply to travellers, drivers and watchmen or caretakers: Provided that in the case of a watchman or caretaker he shall not be required or permitted to work for more than six days consecutively without being granted a day off duty on full pay: Provided further that the employer may, in lieu of granting his watchman or caretaker any such day off, pay the employee concerned the wage which he would have received if he had not worked on such day, plus an amount of not less than his daily wage in respect of such day not granted. The provisions of subclauses (2), (3) and (4) shall not apply to an employee engaged on emergency work or in the overhauling and repair of machinery, which cannot be performed during the regular working hours.

#### 10: OVERTIME

(1) **Overtime:** All time worked by employees other than shift workers—

- (a) in excess of the ordinary hours of work specified in clause 9 (1); or
- (b) before 07:30 and after 18:00 from Monday to Friday, except in the case of boiler attendants, watchmen, caretakers, canteen employees or employees engaged in cleaning premises; shall be deemed to be overtime.
- (c) **Shift workers:** All time worked by shift workers in excess of the ordinary daily or weekly hours of work specified in clause 9 (1) (b) shall be deemed to be overtime.

(2) **Limitation of overtime:**

- (a) **Weekly and daily limits:** No employer shall require or permit an employee to work overtime for more than—
  - (i) 10 hours in any week; or
  - (ii) three hours on any day.
- (b) **Notice of working overtime to be given to employees:** No overtime in excess of one hour in any day may be required of or permitted an employee unless the employer—
  - (i) gave notice thereof to such employee the previous day; or
  - (ii) provides such employee with an adequate meal before he commences overtime; or
  - (iii) pays such employee an allowance of R5,00 to enable the employee to obtain a meal before the overtime is due to commence.
- (c) Overtime shall be voluntary.
- (d) Before overtime is commenced on any day (Monday to Friday), the employer shall grant his employees a 10-minute paid meal interval (regarded as part of the overtime hours) or an unpaid meal interval of 30 minutes' duration, depending on the wishes of the majority of the employees concerned.
- (e) An employee shall not be required to work overtime without his consent and an employee shall not be dismissed by reason of his refusal to work overtime.



(3) An employee shall be deemed to be working in the employ of an employer, in addition to any period during which he is actually working—

- (a) during any period during which, in accordance with the requirements of his employer, he is present upon or in any premises in which the Industry is being carried on;
- (b) during any period during which he is present upon or in any such premises; and
- (c) during any period during which he is in charge of any vehicle used in the Industry, whether or not it is being driven:

Provided that if it is proved that during any part of any such period as referred to in paragraph (b) or (c) any such employee did not actually work in his employment, the presumption established by this subclause shall not apply in respect of that employee in relation to that period.

(4) Overtime shall accrue daily and shall be reckoned as time worked outside of the ordinary hours of work specified in clause 9. All overtime of a lesser period than 15 minutes shall be paid for as a quarter of an hour overtime.

(5) **Day of rest:** An employer shall grant to each of his shift workers one full day of rest in any week: Provided that if an employer requires or permits such an employee to work on his day of rest, the hours so worked shall be deemed not to be part of the ordinary hours of work specified in clause 9 (1) (b).

(6) Overtime shall apply to all employees in an establishment, except travellers' drivers.

#### **11: PAYMENT FOR OVERTIME AND WORK ON SATURDAYS, SUNDAYS AND PUBLIC HOLIDAYS**

(1) **Overtime:** An employer shall pay his employee in respect of all overtime worked by him not less than—

- (a) in the case of an employee other than a boiler attendant, watchman or caretaker and casual employee, one and a half times his wage divided by 42½ for each hour or part of an hour so worked;
- (b) in the case of a boiler attendant, one and a half times his wage, divided by 46, for each hour or part of an hour so worked;
- (c) in the case of a watchman or caretaker, one and a half times his wage, divided by 60, for each hour or part of an hour so worked;
- (d) in the case of a casual employee, one and a half times his daily wage, divided by 8½, for each hour or part of an hour so worked.

(2) **Saturday work:**

- (a) No work shall be performed on any Saturday without the prior permission of the Regional Chamber which may impose such conditions as it may deem fit.
- (b) Subject to paragraph (c), any time worked on a Saturday shall be deemed to be overtime and be paid for as follows:
  - (i) All work performed in excess of 4¼ hours or after 12:00, at a rate of double an employee's hourly wage for every hour or part of an hour so worked;
  - (ii) all other work in accordance with subclause (1).
- (c) Where an employee is required or permitted to work on a Saturday, his employer shall pay the employee concerned a travelling allowance of not less than R1,75.
- (d) The provisions of this subclause shall not apply to shift workers.

(3) **Sunday work:** No work shall be performed on a Sunday without the permission of the Regional Chamber, and whenever an employee, other than a shift worker, is required or permitted to work on a Sunday, his employer shall either—

- (a) pay the employee—
  - (i) if he so works for a period not exceeding four hours, not less than the ordinary wage payable in respect of the period ordinarily worked by him on a weekday; or
  - (ii) if he so works for a period exceeding four hours, wages, at a rate of not less than double his ordinary rate of pay, in respect of the total period worked on such Sunday, or the wage which is not less than double the ordinary wage payable in respect of the period ordinarily worked by him on a weekday, whichever is the greater; or
- (b) pay the employee not less than one and a half times his ordinary hourly wage in respect of each hour worked on such Sunday and grant him within seven days of such Sunday, one work day, i.e., a day other than a Saturday or Sunday, as a holiday, and pay him in respect thereof not less than eight and a half hours' remuneration: Provided that for the purposes of this subclause, a piece-worker shall be paid not less than the equivalent amount to which he would have been entitled had he been employed as a time-worker.

(4) **Public holidays:**

- (a) An employee, other than a casual employee, shall be entitled to leave on full pay in respect of the following public holidays, and where he is required or permitted to work on such holiday he shall be paid in addition to his normal wage in respect of such holiday, wages at straight time in respect of the hours so worked:

New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day and Day of Goodwill.

- (b) Notwithstanding the provisions of this subclause, an employee who absents himself from work on any ordinary working day immediately preceding and/or immediately following any public holiday, shall not be paid for such public holiday unless such absence is on account of medically certificated sickness.

(5) Remuneration payable in terms of any of the provisions of this clause shall be paid to the employee concerned not later than the payday next succeeding the period in respect of which such remuneration becomes payable.

(6) **Easter weekend:** No work shall be performed after 13:00 on the day immediately preceding Good Friday and employees shall be granted the afternoon off as a paid half-holiday.

The employee shall receive for such afternoon full pay in respect of the hours normally worked on Thursday afternoons. Where work is performed on such paid half-holiday, the employee shall, in addition to payment for such half-holiday, receive payment for time worked after 13:00 at overtime rates.

No employer shall require or permit his employees to work in time at ordinary rates of pay or at overtime rates in substitution for the morning work period of the day immediately preceding Good Friday.

This subclause shall not apply to a casual employee.

(7) The provisions of subclause (3) shall, mutatis mutandis, apply to a shift worker who works on his day of rest.

(8) Overtime shall apply to all employees in an establishment, except travellers' drivers.

## 12: SHORT TIME

(1) An employer shall, prior to the day on and from which he intends to work short time, notify all employees concerned by posting up a notice, or notices, in a prominent position well known and easily accessible to employees in any section or department of the establishment concerned.

(2) Any employee who has not been given notice in terms of subclause (1) shall, on attending at the establishment, be entitled to be employed for a full working day, or be paid full wages in lieu thereof.

(3) An employee who on any day attends at the establishment on the instructions of the employer or his representative shall be entitled to be employed for at least four hours on such day or to receive four hours' pay at his ordinary rate of pay in terms of clause 4 (1), read with clause 4 (10).

(4) Consultation with the trade union shall take place prior to the introduction of short time.

## 13: PROVISION OF TEA AND OTHER BEVERAGES

(1) Where tea (or any other beverage) is provided by the employer, a deduction of not more than one cent per cup may be made from the wages of the employees: Provided that the majority of employees in any establishment have agreed to accept tea (or any other beverage).

Reference to "tea" in this subclause shall include the provision of milk and sugar for mixing with such tea (or any other beverage).

(2) Where tea (or any other beverage) is not provided, the employer shall, at his own expense, provide and have immediately available to his employees at the commencement of each rest interval, and also at lunch time, a sufficient supply of boiling water and the necessary utensils for the making of tea.

## 14: EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

(1) **Persons under the age of 15 years:** No employer shall employ any person under the age of 15 years.

(2) **Non-members of trade union:** No employer who is a member of any of the employers' organisations shall continue to employ an employee who, while being eligible for membership of the trade union is not a member of the union as at 11 May 1998 and up to 10 November 1999, or who does not become a member of the trade union within a period of 90 days from such date or from the date of entering into employment where the entering into employment takes place after the date of coming into operation of this Agreement; and no member of the trade union may continue his employment with an employer who is not a member of any of the employers' organisations as at the date of coming into operation of this Agreement or who does not within a period of 90 days after such date or after the date of employment of the employee concerned where the employment takes place after the date of coming into operation of this Agreement, become a member of any of the employers' organisations: Provided that the provisions of this subclause shall not apply to—

- (a) clerks; or
- (b) any employee to whom, in the opinion of the Regional Chamber, membership of the trade union has been refused without good and sufficient cause and the applicant has applied to the Council or Regional Chamber within 30 days of such refusal for exemption from the operation of this subclause; or
- (c) an immigrant during the first year after the date of his entry into the Republic of South Africa: Provided that if any immigrant has at any time after the first 90 days of commencement of his employment in the Industry refused any invitation from the trade union to become a member of it, the provisions of this clause shall immediately come into operation; or

## (d) a casual employee:

Provided further that the provisions of section 26 (3) (c) and (d) of the Act shall be observed by the parties to the Regional Chamber and to whom this clause is applicable.

**15: ANNUAL LEAVE AND PAID PUBLIC HOLIDAYS**

(1) **Annual leave:** Subject to the provisions of subclause (7), every employee shall, between 15 december of each year and 14 January of the following year, be granted at least three consecutive weeks' and one working day's annual leave and shall, in respect of such leave, be paid as follows:

- (a) In the case of an employee who, on the latest day on which he can commence leave, has completed at least one year's continuous employment with his employer—
  - (i) 15 ordinary working days at full wage;
  - (ii) Christmas Day, Day of Goodwill and New Year's Day as paid public holidays in accordance with clause 11 (4) of this Agreement;
  - (iii) when the Day of Reconciliation falls within the period of annual leave, it shall, in accordance with clause 11 (4) of this Agreement, also be observed as a paid public holiday, thus extending the annual leave period by one day.
- (b) In the case of an employee who, on the date of closing of the establishment for the specified annual leave period, has not completed one year's continuous employment with his employer and whose employment has not been terminated—
  - (i) for each completed month of employment in that year, an amount equal to one day's pay; plus
  - (ii) for any of the following public holidays falling within the period during which the establishment is closed for the annual holiday period: Day of Reconciliation, Christmas Day, Day of Goodwill and New Year's day, an amount equal to one day's pay in respect of each such holiday:

Provided that upon termination of employment an employee shall receive payment in lieu of leave calculated as follows:

One day's pay in respect of each completed month of employment calculated from 15 December of the previous year or from the date of engagement, whichever is the shorter period:

Provided further than an employer shall not set off against such days of paid leave any days of paid leave granted such employee in excess of the number of days' paid leave he was required to pay the employee for in terms of this subclause.

**(2) Paid public holidays**

- (a) In addition to the paid public holidays normally falling within the period of annual leave, i.e., Christmas Day, Day of Goodwill and New Year's Day, each employee shall be entitled to and be granted leave on full pay on Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day and Day of Reconciliation.
- (b) Where an employee's employment terminates immediately before any of the paid public holidays referred to in subclause (2) (a), he shall be entitled to payment for such public holidays, provided they fall within an extended period calculated as follows:

One working day in respect of each completed month of employment (calculated from the day on which the employee last became entitled to leave or from date of engagement, whichever is the shorter period) shall be added to the date on which the employee's employment terminates, and if any paid public holiday falls within such added period it shall be paid for: Provided that—

- (i) where the employment of an employee is terminated by his employer at any time during December of any year for reasons other than dismissal without notice for any good cause recognised by law as sufficient, as referred to in clause 18 (1) (a), such employee shall be paid one day's pay in respect of each of the public holidays referred to in subclause (1) (a) which fall after the date of termination of employment;
- (ii) where an employee gives notice to his employer of his intention to terminate employment at any time during December of any year, such employee shall not be entitled to payment in respect of the paid public holidays referred to in subclause (1) (a) unless such paid public holidays fall within an extended period calculated in the manner set out herein.
- (c) Whenever an employee works on New year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day or Day of Goodwill, his employer shall pay him not less than his ordinary hourly wage in respect of the total period worked on such day, or an amount equal to at least the wage payable to the employee in respect of the time (excluding overtime) ordinarily worked by the employee on that day of the week, whichever amount is the greater, in addition to the remuneration to which he would have been entitled had he not so worked.
- (d) In the event of a paid public holiday falling upon a Sunday, it shall be observed the following day.



- (e) In the event of any of the paid public holidays referred to in subclause (1) (a) (ii) and paragraph (a) hereof falling on Saturday, an employer shall pay his employee who does not work on such day five and a half hours' wage in addition to the remuneration which is due to him for time worked from the Monday to the Friday immediately preceding such Saturday.
- (f) Whenever an employee works on a paid public holiday falling upon a Saturday, payment for any such day shall be in terms of paragraph (e) hereof, plus, in addition, one and a half times his hourly rate of pay for each hour worked on such Saturday.

(3) **Payment for leave:** The employer shall pay his employee to whom leave is granted in terms of subclause (1), his pay in respect of leave not later than the last working day before the commencement of the said period, and any amount paid to an employee in terms of subclause (1) or (2) shall be calculated at the rate of pay which the employee was receiving immediately prior to the date upon which the leave became due or his employment terminated, as the case may be, and whenever an employee is paid on a basis other than in accordance with the time actually worked by him, his ordinary rate of pay shall, for the purposes of this clause, be calculated as though he were paid by the hour and shall be ascertained at any date by dividing his total wage during the three months immediately preceding that date, or during the total period of his employment by the employer concerned, whichever is the shorter, by the number of hours worked during the period in respect of which such wage was paid.

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

- (a) the date on which the employee enters the employer's service; or
- (b) the date on which an employee who has, in accordance with the previous Agreement, been granted leave of absence on full pay, becomes entitled to such leave in terms of such Agreement, whichever may be the later.

(5) Short time shall not be deducted by an employer when computing the period of employment qualifying for annual leave in terms of subclause (1).

(6) Where an employee has absented himself from work for any reason, other than that referred to in subclause (9), such period of absence shall not be considered employment in terms of subclause (1).

(7) **Annual leave at periods other than the specified leave period:** An employer may make mutual arrangements with his—

- (a) clerks, factory shop assistants, maintenance staff and watchmen or caretakers to take their annual leave at a period other than between 15 December and the ensuing 14 January, and in that event such employees shall be entitled to not less than three consecutive weeks' leave to be granted not later than within that period up to and including Good Friday of the year immediately succeeding the year of employment to which it relates, and for the purposes hereof—

"maintenance staff" means employees who are engaged in making repairs or adjustments to machinery or equipment, including the installation of such machinery or equipment, and who may effect cleaning, repairs or renovations to buildings, fixtures and fittings;

- (b) employees engaged in making samples, to take not more than 10 days' annual leave at a period other than between 15 December and the ensuing 14 January, and in that event such employees shall be entitled to not less than two consecutive weeks' leave, or such lesser period of leave as might be due to the employees concerned, to be granted not later than within that period up to and including Good Friday of the Year immediately succeeding the year of employment to which it relates: Provided that in the case of employees making samples, an employer shall be permitted to work 10 employees, or a minimum of 5 per cent of his labour force, whichever is the greater;
- (c) employees, by agreement, to allow for two consecutive weeks' leave, inclusive of public holidays, to be taken in the period December to January each year, with the balance to be taken before the end of June of the following year: Provided that the terms of any such agreement reached by an employer with his employees shall be referred to the Regional Chamber for record purposes.

(8) **Leave and notice not to be concurrent:**

(a) Notice of termination of a contract of employment given by an employer shall—

- (i) not be given during any period of leave to which the employee is entitled in terms of this Agreement; and
- (ii) not run concurrently with any period of leave to which the employee is entitled in terms of this Agreement.

(b) Nothing in this clause shall affect the right—

- (i) of a dismissed employee to dispute the lawfulness or fairness of the dismissal in terms of Chapter VIII of the Act, or any other law; and
- (ii) of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law.

(c) **Payment instead of notice:** Instead of giving an employee notice, an employer may pay the employee the remuneration the employee would have received, calculated in accordance with this Agreement, if the employee had worked during the notice period.



## (9) Any period during which an employee—

- (a) is on leave in terms of subclause (1); or
- (b) is absent on military service, not exceeding four months, undergone in that year; or
- (c) is absent from work on the instructions or at the request of the employer; or
- (d) is absent from work owing to illness or by reason of the fact that no female shall work in an establishment and no employer shall require or permit any female to work in his establishment during the period commencing four weeks prior to the expected date of her confinement and ending eight weeks after birth (if the child is stillborn or dies before the expiration of eight weeks after birth, the provisions of this subclause shall cease to apply as from the date fixed by the Regional Chamber);

shall be deemed to be employment for the purposes of subclauses (1) and (2): Provided that—

- (i) the provisions of paragraph (d) shall not apply in respect of any period of absence owing to illness of more than three consecutive days, if the employee, not being an employee referred to in proviso (ii) fails, after a request for such certificate by the employer, to submit to the employer a certificate by a medical practitioner that he was prevented by illness from doing his work, or in respect of that part of any total period of absence during any 12 months of employment which is in excess of 30 days;
- (ii) an employee whose employer is required in terms of any Act of Parliament to provide for the care and treatment of such employee when sick or injured, shall not be required to submit a certificate by a medical practitioner in respect of any period of absence referred to in proviso (i).

(10) **Advance notice of annual leave period:** At least one calendar month's notice of the actual date of the end of the year leave period shall be given by the employer by exhibition of an appropriate notice in the factory in a conspicuous place readily accessible to his employees.

(11) **Extension of annual leave period:** An employer shall not be entitled to extend the period of annual leave referred to in subclause (1) without the prior permission of the Regional Chamber which may impose such conditions as it may deem fit.

(12) This clause shall not apply to a casual employee.

## 16: ENGAGEMENTS, TERMINATIONS, ABSENCES FROM WORK AND TRANSFERS IN OCCUPATION

### (1) Service record cards to be produced on engagement

- (a) Subject to the provisions of subclause (7), an employer shall, before engaging an applicant for work, require an applicant to produce a service record card issued by the Regional Chamber in the form and manner specified by the Regional Chamber.

In addition to issuing a service record card the Regional chamber shall issue a certificate of service reflecting the employee's employment history.

- (b) The employer shall forthwith on engaging the employee enter in the space provided for "subsequent experience" the name of his factory, the date of engagement, occupation and wage on engagement and shall retain the card in safekeeping so that it can in due course be dealt with in terms of subclause (2) upon termination of service of the employee.
- (c) No employer shall engage any employee who is, in terms of this Agreement, entitled to possess a service record card unless such employee has produced to the employer such service record card issued by the Regional Chamber.
- (d) No employer shall engage any employee who is, in terms of this Agreement, entitled to possess a Health Care Fund card unless such employee has produced to the employer such membership card issued by the Clothing Industry Health Care Fund in proof of membership of that Fund by such employee.
- (e) The employer shall forthwith on engagement of such employee enter in the space provided on such card the name of the factory and the date of engagement, and shall immediately thereafter hand the card back to the employee.
- (f) On termination of such employee's services the employee shall on the day such termination takes place produce to the employer the said membership card issued by the Health Care Fund and the employer shall in the space provided enter the date of termination and shall initial such date in the space provided.
- (c) If the service record card indicates that the employee is re-entering the Industry after confinement, the employer shall not permit the employee to commence work until a post-natal examination certificate has been produced in terms of subclause (7).

(2) **Service record card to be returned to employee on termination of service or retained if on maternity leave:** On termination of service of an employee, the employer shall complete the remaining details on the employee's service record card, i.e., date of leaving, wage at date of leaving and length of employment. The completed card shall thereafter be initialled and handed to the employee on termination of service.

If the employee is ceasing employment owing to confinement, this shall be endorsed on the card by the words "Owing to confinement" being written on the line on which the "Date of leaving" is recorded.

If the employee is proceeding on maternity leave, the words "Maternity leave" and the date from which the employee proceeds on maternity leave must be written on the card on the line on which the "Date of leaving" is recorded and the card retained by the employer.

(3) **Procedure when employee does not produce a service record card:** The employer shall forthwith on engagement cause an application in the form and manner specified by the Regional Chamber, including a Provident Fund nomination of beneficiary form, to be completed by the prospective employee and shall attach same to the weekly return of engagements referred to in subclause (4).

(4) **Weekly returns of engagements, terminations, absences from work and transfers in occupation:** Not later than Friday of each week the employer shall complete and transmit to the Regional chamber a record, in the form and manner specified by the Regional Chamber, of all engagements, terminations, the first or last dates of absences from work for four or more consecutive pay weeks and transfers in occupation of employees in respect of that week: Provided that where in any week no changes have been effected, a "Nil" return shall be submitted.

(5) **Dependants to be registered:** Every employer shall, when the Minister declares this Agreement binding and thereafter at the engagement of each employee, determine if an employee has dependants and ensure that such dependants are registered with the Health Care Fund, and every employer shall, if an employee's dependants have not previously been registered with the Health Care Fund, inform the Regional Chamber of the dependants of each of his employees within five days of the end of each calendar month in the form and manner specified by the Regional Chamber. In the event of no dependants having to be registered in respect of the calendar month, a 'Nil' return shall be submitted.

An employee who can prove to the satisfaction of his employer that his dependants are covered by a registered medical aid scheme need not register his dependants with the Health Care Fund. Proof of such medical aid scheme membership must be available for inspection purposes.

An employer shall forward the service record card of each employee with dependants to the Regional Chamber to enable the Regional Chamber to record the fact that an employee has dependants on such card unless the employee's card already reflects such information.

(6) **Notice of termination of service to be given in writing by employer or employee**

- (a) An employer shall, when giving notice of his intention to terminate an employee's employment, give his employee written notice in the form and manner specified by the Regional Chamber.
- (b) An employee shall, when giving notice of his intention to terminate his employment, give his employer written notice in the form and manner specified by the Regional Chamber.

(7) **Procedure where employee proceeds on maternity leave or leaves employment owing to confinement and on re-employment thereafter**

- (a) Where an employee resigns when proceeding on maternity leave, this fact shall be recorded on her service record card as provided for in subclause (2) above.
- (b) Where an employee leaves work owing to confinement, the employer shall record the date of ceasing work owing to confinement.
- (c) Not later than on the date of such termination or ceasing of work or commencement of maternity leave, as the case may be, the employer shall provide the employee with a blank "post-natal examination certificate", and neither the same employer nor any new employer shall permit the employee to recommence employment or to start fresh employment unless the employee produces a properly completed post-natal examination certificate of her fitness for employment.
- (d) Where such certificate shows that the employee requires further treatment, the Secretary of the Health Care Fund shall be notified thereof and the certificate forwarded to him by registered post.
- (e) Supplies of the blank post-natal examination certificates may be obtained from the Secretary of the Fund.

(8) **Procedure where an employee withdraws notice:** An employee may withdraw notice of his intention to terminate his contract of employment only within two (2) working days of having tendered such notice and the employer shall require the employee concerned to acknowledge and confirm such withdrawal in the form and manner specified by the Regional Chamber.

(9) **Duplicate service record cards:** Duplicate service record cards may be issued by the Council upon the payment of an amount determined by the Council from time to time.

- (1) This clause shall not apply to a casual employee.

## 17: RECORD CARDS AND AGREEMENT

(1) **Record cards:** Every employer shall maintain a record card in respect of each of his employee other than casual employees showing the following particulars:

- (a) Factory number of employee;
- (b) name;
- (c) sex;
- (d) address;

- (e) age;
- (f) occupation;
- (g) starting date;
- (h) previous experience;
- (i) number of service record card;
- (j) commencing wage;
- (k) increments and dates thereof;
- (l) transfers in occupation and dates thereof.

(2) **Exhibition of Agreement:** Every employer shall affix and keep affixed in his establishment in a conspicuous place readily accessible to his employees, in the form prescribed in the regulations under the Act, a legible copy of this Agreement in at least two official languages: Provided that every employer on whom the collective agreement, arbitration award, or determination is binding shall—

- (a) keep a copy of that collective agreement, arbitration award or determination available in the workplace at all times;
- (b) make that copy available for inspection by any employee; and
- (c) give a copy of that collective agreement, arbitration award or determination—
  - (i) to an employee who has paid the prescribed fee; and
  - (ii) free of charge, on request, to an employee who is a trade union representative or a member of a workplace forum.

(3) **Administration of Agreement:** The Regional Chamber shall be the body responsible for the administration of this Agreement, and may issue expressions of opinion not inconsistent with the provisions thereof for the guidance of employers and their employees.

## 18: TERMINATION OF EMPLOYMENT

(1) **Period of notice:** Subject to—

- (a) the right of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law as sufficient;
- (b) the provisions of any written agreement between the employer and his employees which provides for a period of notice of equal duration on both sides and for longer than one week or one month, as the case may be;
- (c) the provisions of subclause (8);

an employer and his employee shall, in the case of a weekly paid employee, give not less than one week's notice and in the case of a monthly-paid employee, not less than one month's notice, of his intention to terminate a contract of employment.

(2) **Payment or forfeiture in lieu of notice:** In the event of an employer or an employee failing to give notice as provided for in subclause (1), an employer shall pay the employee or the employee shall pay and/or forfeit to the employer—

- (a) in the case of a weekly-paid employee, one week's wages;
- (b) in the case of a monthly-paid employee, one month's wages;

calculated at the rate of pay which such employee was receiving immediately before the date of such termination.

In the above regard absence from work without prior permission for a period of six consecutive days shall constitute a termination of the contract of employment unless, within six days, the employee has furnished to his employer a medical certificate certifying his inability to perform his/her usual work, in which case the employer shall, within three days of receipt of such certificate, advise the employee that it will keep his/her employment open until the employee is able to work or tender to such employee written notice of termination of service. Any employer who fails to keep the employee's employment open or to tender notice within such three days shall be required to pay the employee in lieu of such notice: Provided that where an employee has submitted a medical certificate to his employer and subsequently returns to resume service and his employer elects to summarily terminate his employment, his date of termination shall be the date of summary termination and not the date on which he last worked.

For the purposes of this subclause, where an employee attends work on a Friday, the period of absence from work shall commence from the next succeeding Monday, i.e., the intervening Saturday and Sunday shall be disregarded in calculating the six consecutive calendar days' period of absence.

Nothing contained in this subclause shall in any way limit the rights and protection afforded to employees in terms of Chapter VIII of the Act.

(3) Notwithstanding anything to the contrary in this Agreement, should any money owing by an employer to an employee by way of wages be insufficient to meet the full amount of forfeiture referred to in subclause (2), the employer shall be entitled to retain such amount from other benefits (if any) which were in the process of accrual to such employee at the time of termination of his contract of employment.



For the purposes of this subclause, any payment which may be due to an employee in terms of clause 15 (1) (2) and (3) of this Agreement shall also be regarded as a benefit in the process of accrual.

(4) When an agreement is entered into in terms of subclause (1), the payment or forfeiture in lieu of notice shall be proportionate to the period of notice agreed upon.

(5) **Date of coming into operation of notice to terminate employment:**

(a) **Weekly-paid employees:** Notice shall be given on any working day and shall operate from the following day.

(b) **Monthly-paid employees:** Notice shall be given at any time prior to the usual closing time of the establishment on the last working day of the calendar month and shall operate from the first day of the succeeding month.

(6) For the purposes of this clause, a week's notice shall mean a working week of not more than the number of hours ordinarily worked by the employee, or a full week's pay in lieu thereof, and the same principle shall apply to the period of notice specified or mutually agreed upon in terms of subclause (4).

(7) Where short time is worked in an establishment, notice to terminate employment shall be in terms of (a) and (b) hereof.

(a) An employee may terminate his contract of employment by giving his employer notice equivalent to the number of days worked in the week preceding the notice week; and

(b) an employer working short time shall give like notice to an employee to terminate his contract of employment.

(7) **Trial periods:**

(a) **Weekly employees:** The provisions of this clause shall not apply during the first four weeks of employment. Such four weeks shall be deemed to be a period of trial during which the employment may be terminated by the employer or the employee on 24 hours' notice.

(b) **Monthly employees:** The provisions of this clause shall not apply during the first six weeks of employment. Such six weeks shall be deemed to be a period of trial during which the employment may be terminated by the employer or the employee on 24 hours' notice.

(9) This clause shall not apply to a casual employee.

## 19: EXEMPTION PROVISIONS AND CRITERIA

### A. For any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this Agreement:

(1) Any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this Agreement may apply to the Council for exemption from any or all of the provisions of this Agreement.

(2) All applications for exemption shall be made in writing, on an application form provided by the Council. The applicant shall annex a copy of its Council Registration Certificate to the application and shall address the application to the Regional Secretary of the Regional Chamber for consideration by the Council or Regional Chamber.

(3) All applications for exemption must be fully motivated and supported by any relevant documentation and in addition must contain the following information:

(a) The period for which the exemption is sought;

(b) the number of employees affected;

(c) the clauses and subclauses of this Agreement from which the exemption is requested;

(d) satisfactory proof that the exemption applied for has been discussed between the employer, the employees affected and/or their respective representatives, including the response resulting from such discussions either in support of or in opposition to the application.

(4) If the exemption application is expressed by the applicant to be urgent, the Regional Secretary of the Regional Chamber and/or General Secretary of the Council shall examine the application to determine whether it is, in his sole discretion, urgent. If the Regional Secretary of the Regional Chamber and/or General Secretary of the Council decides that the application is urgent, then he shall refer the application to the Chairman of the Council or Regional Chamber, as the case may be, who shall convene a meeting of the Council or Regional Chamber within seven (7) days of receipt of the application from the Regional Secretary of the Regional Chamber and/or General Secretary of the Council to consider the application. If the Regional Secretary of the Regional Chamber and/or General Secretary of the Council decides that the application is not urgent, then he shall deal with it in the ordinary course as set out below.

(5) The Regional Secretary of the Regional Chamber or General Secretary of the Council shall place the full exemption application before the appropriate meeting of the Council or Regional Chamber, as the case may be, for its consideration, including any background information which may be required and which the Regional Secretary of the Regional Chamber or General Secretary of the Council can provide.



- (6) The Council or Regional Chamber may, after considering the application, including any urgent application, in terms of the provisions and criteria outlined in this Agreement grant, partially grant or reject such application for exemption and may impose any conditions on the granting or partial granting of any application as it deems fit under the circumstances.
- (7) The appropriate Council or Regional Chamber meeting shall consider all applications for exemption having regard to all relevant information, and in particular to—
- (a) the written and verbal (if any) motivation provided by the applicant, and supporting documentation;
  - (b) the extent of discussion between employer and employees affected and their respective representatives, where applicable, including the responses of these persons to the application;
  - (c) the terms of the exemptions sought, including the period thereof;
  - (d) any possible infringement of basic conditions of employment rights which may result if the exemption is granted;
  - (e) whether or not a competitive advantage will be afforded to the applicant should the exemption be granted; including its broader impact on the Industry as a whole and on other stakeholders within the Industry who may be disadvantaged by the granting of an exemption;
  - (f) if the exemption sought is from any employee benefit fund or training provision, the sufficiency of the alternative benefit or provisions proposed by the applicant, including such factors as the cost to the employee, transferability, administration, management, costs, growth and stability;
  - (g) the extent to which the proposed exemption may undermine collective bargaining and labour peace in the Industry or the sector concerned;
  - (h) any existing special financial, economic or other circumstances which are put forward by the applicant as reasons warranting the granting of the exemption: Provided that the Council or Regional Chamber may require the disclosure of such relevant, verifiable information as it may deem fit in this regard;
  - (i) the history of the business entity and/or its shareholders, directors and owners within the Industry, including its period of operation, and in particular whether or not the entity is a new emerging enterprise;
  - (j) the current status of the business entity vis-à-vis the Council or Regional Chamber, including whether any levies or contributions to benefit funds are outstanding, and any previous exemptions which may have been granted by the Council or Regional Chamber;
  - (k) any representations made by the employees and/or their representatives, the Council or Regional Chamber and/or parties to the Council or Regional Chamber as contemplated in clauses 3(d) and 5 above;
  - (l) any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances; and
  - (m) the cost, efficacy and administration of any conditions which the Council or Regional Chamber may feel it necessary to impose, and the re-evaluation thereof;
- (8) The Council or Regional Chamber shall notify an applicant of its decision within fourteen days of such decision having been reached.
- (a) If the application has been granted, the Council or Regional Chamber shall specify the following in its notification to the applicant:
    - (i) The conditions, if any, of its approval of the application;
    - (ii) the period for which the exemption is to be valid;
    - (iii) the clauses or subclauses of this Agreement for which the exemption is granted.
  - (b) Upon receipt of a written request, the Council or Regional Chamber shall provide reasons for its decision to grant the exemption to any party which has an interest in the matter.
  - (c) If the application for exemptions is rejected, the Council or Regional Chamber shall provide concise reasons for such rejection to the applicant within 14 days of the date of its decision.
- (9) Any decision of the Council or Regional Chamber to reject, partially grant or withdraw an application may be referred by the Applicant to the Independent Exemptions Body (styled the Exemptions Board) hereby established in terms of the Act and the Constitution of the Council and the provisions of subclauses (1) to (8) above, shall, mutatis mutandis, apply when appeals are heard and decided upon by the Exemptions Board.

**B. For any employer who is a party or a member of a party to the Council and its employees represented by a trade union representative**

- (1) (a) Exemption from the provisions of this Agreement shall be granted in the following circumstances:
- (i) Where the employer, who is a party or a member of a party to the Council, and its employees, represented by a trade union representative as defined in the Act have concluded a collective agreement in accordance with the procedure set out in subclause (2) below to vary such provisions: Provided that—
    - (aa) the collective agreement does not contravene the minimum employment standards in the Council's Main Collective Agreement for the Western Cape Region; any law or the provisions of the Agreement dated 25 May 1993 between the Cape Clothing Manufacturers' Association, the Cape Knitting Industry Association, the Garment Manufacturers' Association of the Western Cape, the Eastern Province Clothing Manufacturers' Association, the Natal Clothing Manufacturers' Association, the Orange Free State and Northern Cape Clothing Manufacturers' Association, the Transvaal Clothing Manufacturers' Association (incorporating the Transvaal Knitters' Association) and the South African Clothing and Textile Workers Union;
    - (ab) wage rates and contributions to social funds, including the Council's fund, may not be amended without the Council's approval.
  - (ii) Where the Exemptions Board established by the Council requires the Council or Regional Chamber to do so after granting an application for exemption;
  - (iii) On application by an employer employing five or fewer employees.
- (b) An application for exemption must be made to the Council or Regional Chamber in accordance with the Council's or Regional Chamber's exemption procedure as provided for in subclauses (2) and (3) of Part A above.
- (2) An employer who is a party or a member of a party to the Council shall implement the following procedure in order to conclude a collective agreement as set out in subclause (1) (a) (i) above.
- (a) The employer shall place on the notice board of the establishment a notice to employees specifying the proposed variation to the Council's Main Collective Agreement for the Western Cape Region. At the same time a copy of the notice shall be sent to the union.
  - (b) A meeting shall take place at the establishment in order to reach agreement on the proposed variation, which agreement shall be reduced to writing. In the absence of agreement the employer shall undertake not to refer an application for exemption to the Exemptions Board established by the Council.
  - (c) The agreement shall be referred to the Council or Regional Chamber for registration and any agreement concluded in terms of subclause (1) (a) (i) above that is in contravention of any law or the minimum employment standards set out in this Agreement shall be null and void ab initio.

**20: SEATING ACCOMMODATION**

Seats with suitable back rests, approved by the Regional Chamber, shall be provided for all female employees.

**21: TOOLS AND MATERIALS**

The employer shall, free of charge, supply to the employees all tools (other than scissors), materials and requisites for the manufacture of clothing.

**22: EXPENSES OF THE COUNCIL AND REGIONAL CHAMBER**

(1) For the purpose of meeting the expenses of the Council and Regional Chamber, every employer shall deduct from the earnings of each of his employees for whom minimum wages are prescribed in clause 4 of this Agreement, an amount of 48 cents per week. To the amount so deducted, the employer shall add a like amount and forward, month by month, and not later than the 14th day of each month, the total sum to the Regional Secretary of the Regional Chamber.

(2) (a) Every employer shall make a return to the Regional Chamber of the number of employees employed by him for each week of each calendar month in the form and manner specified and supplied by the Regional Chamber.

(b) Should any amount due in terms of this clause not be received by the Regional Chamber by the 14th day of the month it is due, the employer shall forthwith be liable for and be required to pay interest on such amount as remains unpaid at a rate determined by the Regional Chamber from time to time, calculated from the 1st day of the month in which the payment is due until the day upon which payment is actually received by the Regional Chamber: Provided that the Regional Chamber shall be entitled in its absolute discretion to waive payment of such interest or part thereof in any individual instance.

(c) In the event of the Council or Regional Chamber incurring any costs or becoming obliged to pay any collection commission by reason of the failure of the employer to make any payment on or before the due date, the employer shall then also be liable to pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission, and the Council or Regional Chamber shall be entitled in its absolute discretion to allocate any payment by the employer first in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.

(3) This clause shall not apply to a casual employee.

### **23: TRADE UNION REPRESENTATIVES ON THE REGIONAL CHAMBER**

Every employer shall give to any of his employees who are trade union representatives on the Council every reasonable facility to attend to their duties in connection with the work of the Council or Regional Chamber: Provided that in establishments employing 5 or fewer employees, the trade union shall give the employer 5 days' written notice of its request for time off for its representative in terms of this clause.

### **24: POWERS OF DESIGNATED AGENTS WHEN ATTEMPTING TO RESOLVE DISPUTES AND SECURE COMPLIANCE OF AND IN TERMS OF THIS AGREEMENT**

(1) One or more persons shall be appointed by the Council or Regional Chamber to be agents to assist in enforcing the terms of the Council's or Regional Chamber's Collective Agreements.

(2) The Council may, in terms of section 33 of the Act, request the Minister of Labour to appoint any person to be a designated agent of the Council or Regional Chamber.

(3) A designated agent shall have all the powers conferred on a Commissioner by section 142 of the Act, except the powers conferred by section 142 (1) (c) and (d) of the Act.

(4) A designated agent who has been appointed to attempt to resolve a dispute or investigate any alleged contravention and for purposes of routine inspections to enforce compliance with this Agreement in terms of clause 36 or the Disputes Procedure in terms of clause 37 of this Agreement may—

- (a) subpoena for questioning any person who may be able to give information or whose presence at the conciliation or arbitration proceedings may help to resolve the dispute;
- (b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the resolution of the dispute, to appear before the agent or be questioned or to produce that book, document or object;
- (c) administer an oath or accept affirmation from any person called to give evidence or be questioned;
- (d) at any reasonable time, but only after obtaining the necessary written authorisation—
  - (i) enter and inspect any premises on or in which any book, document or object, relevant to the resolution of the dispute is to be found or is suspected on reasonable grounds of being found there; and
  - (ii) examine, demand the production of, and seize any book, document or object that is on or in those premises and that is relevant to the resolution of the dispute; and
  - (iii) take a statement in respect of any matter relevant to the resolution of the dispute from any person on the premises who is willing to make a statement; and
- (e) inspect, and retain for a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the agent.

(5) A subpoena issued for any purpose referred to in subclause (4) shall be signed by a designated agent and shall—

- (a) specifically require the person named in it to appear before the designated agent;
- (b) sufficiently identify the book, document or object to be produced; and
- (c) state the date, time and place at which the person is to appear.

(6) The written authorisation referred to in subclause (4) (d)—

- (a) if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to the Constitution of the Republic of South Africa, 1996, and then only on application by the agent and/or any appointed persons setting out under oath or affirmation the following information—

- (i) the nature of the dispute;
- (ii) the relevance of any book, document or object to the resolution of the dispute;
- (iii) the presence of any book, document or object on the premises; and
- (iv) the need to enter, inspect or seize the book, document or object; and

- (b) in all other cases, may be given by the General Secretary of the Council or Regional Secretary of the Regional Chamber.

(7) The owner or occupier of any premises that an agent and/or any other appointed person is authorised to enter and inspect, and every person employed by that owner or occupier, shall provide any facilities that an agent or such person requires to enter those premises and to carry out the inspection or seizure.



(8) The agent and/or appointed person shall issue a receipt for any book, document or object seized in terms of subclause (4).

(9) The law relating to privilege, as it applies to a witness subpoenaed to give evidence or to produce any book, document or object before a court of law, applies equally to the questioning of any person or the production or seizure of any book, document or object in terms of this clause.

(10) The agent and/or appointed person shall pay the witness fee specified from time to time in terms of section 208 of the Act to each person who appears before him in response to a subpoena issued, where such fee has been specified by the Minister of Labour or, in the absence of a fee being specified by the Minister, as may be determined by the Council from time to time.

(11) A person is in contempt of the designated agent—

- (a) if, after having been subpoenaed to appear before him, the person without good cause does not attend at the time and place stated in the subpoena;
- (b) if, after having appeared in response to a subpoena, that person fails to remain in attendance until excused by the agent and/or appointed person;
- (c) by refusing to take the oath or to make an affirmation as a witness when an agent and/or appointed person so requires;
- (d) by refusing to answer any question fully and to the best of that person's knowledge and belief subject to subclause (9);
- (e) if the person, without good cause, fails to produce the book, document or object specified in a subpoena to an agent and/or appointed person;
- (f) if the person willfully hinders an agent and/or appointed person in performing any function conferred by or in terms of this Agreement;
- (g) if the person insults, disparages or belittles an agent and/or appointed person, or prejudices or improperly influences an investigation or improperly anticipates the agent and/or appointed person's recommendations;
- (h) by willfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings;
- (i) by doing anything else in relation to the agent and/or appointed person which, if done in relation to a court of law, would have been contempt of court.

(12) The designated agent may on recommendation of the Council or Regional Chamber refer any contempt to the Labour Court for an appropriate order.

## **25: OUTWORK AND DISCLOSURE OF EMPLOYERS' PATTERNS, ETC.**

(1) Every employer giving out work on contract shall at all times keep a record showing—

- (a) the name and address of the person to whom the work has been given out;
- (b) a description of the type and quantity of work given out; and
- (c) the dates upon which the work was given out and the dates upon which it was received back.

For the purposes of this subclause, "giving out work" shall include the issue of materials for the purpose of having such materials made up into garments or parts of garments.

(2) Every employer shall retain such record for a period of three years subsequent to the occurrence of that event and shall, on demand by a designated agent of the Council or Regional Chamber made at any time during the said period of three years, produce the said record for inspection.

(3) Every employer shall within 14 days of the end of each quarter (i.e., for the periods ending 31 March, 30 June, 30 September and 31 December) forward a return of outwork to the Regional Chamber in the form and manner specified by the Regional Chamber.

(4) No employee in the employ of an employer shall disclose to any other employer or person any cutting patterns or templates used by his employer.

(5) No employer shall induce any employee of another employer to disclose any cutting patterns or templates used by such employee's employer.

## **26: CLOTHING INDUSTRY HEALTH CARE FUND**

(1) The Fund established under Government Notice No. 43 of 9 January 1948, and known as the "Clothing Industry Health Care Fund" (formerly the "Cape Clothing Industry Sick Fund" and "Cape Clothing Industry Sick Benefit Fund") and hereinafter referred to as the "Fund" is hereby continued.

(2) The administration of the Fund shall be vested in a management committee which shall be appointed at a duly constituted meeting of the Regional Chamber, in terms of the Council's Constitution, and shall consist of six employers' representatives and six employee representatives, with the Chairman and the Vice-Chairman of the Regional Chamber, as ex officio members. A paid secretary, who shall also be the Secretary of the Fund, shall be appointed by the Committee.



(3) One copy of this Collective Agreement, clause 26 of which shall represent the Rules of the said Fund, and any amendments thereof, shall be kept by the General Secretary of the Council and Regional Secretary of the Regional Chamber.

(4) (a) The purpose of the Fund is to provide medical and related benefits for employees and their dependants and for such purpose every employer shall each week deduct from the wages of each of his employees for whom wages are prescribed in this Agreement and who has worked during any week, irrespective of the time so worked (hereinafter referred to as a "contributor"), the following amount:

**Group 1:** In the case of a contributor earning a wage of less than R465,01 per week—  
without dependants: R7,40;  
with dependants: R12,10.

**Group 2:** In the case of a contributor earning a wage of R465,01 per week and more—  
without dependants: R9,40;  
with dependants: R16,10.

(b) An employer shall, in respect of each contributor from whose wages deductions are made in terms of paragraph (a) above, contribute per week the amounts set out below:

**Group 1:** In the case of a contributor earning a wage of less than R465,01 per week: R4,40.

**Group 2:** In the case of a contributor earning a wage of R465,01 per week and more: R5,40.

(c) (i) The total sum representing the employer's contributions and the contributor's contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22 (2) of this Agreement.

(ii) Should any amount due in terms of this clause not be received by the Regional Chamber by the 14th day of the month it is due, the employer shall forthwith be liable for and be required to pay interest on such amount as remains unpaid at a rate determined by the Regional Chamber from time to time, calculated from the first day of the month in which the payment is due until the day upon which payment is actually received by the Regional Chamber: Provided that the Regional Chamber shall be entitled in its absolute discretion to waive payment of such interest or part thereof in any individual instance.

(iii) In the event of the Council or Regional Chamber incurring any costs or becoming obliged to pay any collection commission by reason of the failure of the employer to make any payment on or before the due date, the employer shall then also be liable to pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission, and the Council or Regional Chamber shall be entitled in its absolute discretion to allocate any payment by the employer first in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.

(d) Upon receipt of the first eight payments to the Fund in respect of each contributor, the Secretary of the Fund shall allocate a Fund number to each contributor and prepare a membership card reflecting—

(i) the full name of the employer;

(ii) the full name of the contributor;

(iii) the Fund number of the contributor.

The Secretary of the Fund shall thereafter either notify the contributor to call and the card shall be handed to the contributor after the contributor has signed the card in the presence of an official of the Fund, or transmit the card to the employer to hand it to the contributor, in which event it shall be the duty of such employer to ensure that the contributor signs the card immediately on receipt thereof and furnishes a receipt thereof which the employer shall, thereafter, transmit to the secretary of the Fund within seven days.

(e) All moneys received by the Fund shall be deposited in a banking account for the Fund which shall be opened by the Regional Chamber, in the name of the "Clothing Industry Health Care Fund": Provided that the Management committee may from time to time authorise investments of funds in terms of the Act.

(f) The Management Committee shall appoint an auditor for the Fund, who shall be a registered accountant, and determine his remuneration, which shall be paid out of the Fund. The accounts of the Fund shall be audited for the periods ending 30 June and 31 December of each year, and the auditor's report shall be made available not later than 30 September and 31 March, respectively. A copy of the statement of accounts, together with the auditor's report, shall be transmitted to the Registrar of Labour Relations, and a copy shall also lie for inspection at the office of the Regional Chamber.

(g) Disbursements from the fund shall cease whenever the amount to the credit of the Fund falls below R50 000.

(h) The employer shall each week notify the Fund of all contributors who have been absent without pay for four or more consecutive pay weeks in the manner specified in clause 16 (4) of this Agreement.

(5) (a) The contributor shall be liable for any benefits paid to him or obtained by him as a result of his misrepresentation of the facts or as a result of an error in the calculation of such benefits, and the Management Committee may set off the incorrect amount paid to the contributor against any further benefits due to him or recover the amount from the contributor.

(b) If a contributor leaves his employment in the industry for the purpose of taking up employment outside the industry, he shall forfeit all claims to the Fund.

**(c) Maternity benefits**

(i) Subject to the provisions of this Agreement a female contributor who—

(aa) has continuously contributed to the Health Care Fund for no less than one year; and

(ab) has continuously been employed in the Industry for no less than one year; as at the date of ceasing employment because of her pregnancy shall be entitled to the maternity benefits set out in (iii) below.

(ii) For the purposes of this subclause, non-contributing periods owing to illness and/or short time shall be deemed to be periods of contribution.

(iii) Any employee who is entitled to maternity benefits shall receive a lump sum payment equal to 25 per cent of such employee's weekly wage earned at the time of ceasing employment because of her pregnancy, multiplied by 13: Provided that no such payment shall be made to the employee—

(aa) earlier than four weeks prior to the expected date of her confinement and the expected date of her confinement shall be determined by a recent medical certificate signed by a medical practitioner indicating the number of weeks' pregnancy and the expected date of confinement; or

(ab) in the event a prematurely born child which is alive at birth, unless she produces a birth certificate; or

(ac) in respect of a miscarriage, abortion or still-born child that occurs during the first 35 weeks of pregnancy; or

(ad) if the employee dies prior to claiming the benefit due to her in terms of this subclause, until such time as the Master of the High Court has decided to whom such benefit should be paid.

(6) All contributors from whose wages eight or more consecutive weekly deductions have been made in terms of subclause (4) (a) shall be entitled to the following benefits:

(a) The services of a medical officer appointed by the Fund;

(b) consultations with specialists appointed by the Fund;

(c) free medicines prescribed and dispensed by the medical officers or specialists appointed by the Fund;

(d) the benefits provided for in subclauses (7), (8) and (9);

(e) medical and related benefits, as determined by the Management Committee, for their registered dependants.

The benefits provided for in this subclause shall cease eight weeks after the date of termination as a contributor in the Industry.

The cost of medical attention or pharmaceutical supplies rendered or dispensed by medical officers appointed by the management committee in respect of a contributor shall be paid by the Fund, which shall also pay the cost of operating the assisted optical scheme referred to in subclause (8) and the dental surgeries referred to in subclause (9).

Such costs shall be payable in respect of a period not exceeding three weeks in any cycle of one calendar year and shall be subject to such further conditions as may from time to time be decided by the Management Committee.

Where a contributor withdraws the money standing to his credit from the Cape Clothing Industry Provident Fund, and provided such payment is made owing to the employee's leaving the Industry as a result of serious ill health or incapacity prior to reaching the age for retirement from the Cape Clothing Industry Provident Fund, such employee shall be entitled to free medical treatment from any one of the Fund's medical officers and free medicines supplied by such medical officer during the period of 26 weeks calculated from the date on which such employee leaves the Industry.

Pregnancy shall not be regarded as an "illness" for the purpose of calculating benefits and only one visit to the doctor shall be allowed at the expense of the Fund.

(7) **Gynaecological clinics:** Reasonable facilities shall be afforded to employees to attend the Health Care Fund clinic and upon production of a certificate from the Health Care Fund sister that an appointment has been made, the employer shall pay for time lost by the employee in attending the clinic up to a maximum of two hours in any week.

(8) **Optical clinic:** The Fund shall provide and equip an optical clinic where employees may be tested by means of an Ortho-rater or similar machine. Where such test shows that further attention is needed, the Fund shall, in consultation with the employer, arrange an appointment with an ophthalmologist and the employee shall be notified of such appointment. The employer shall pay for the time lost by the employee in attending the clinic and for the purpose of keeping the appointment with the ophthalmologist, up to a maximum of two hours in any week. Before an appointment is made with such specialist on behalf of an employee, the employee shall lodge with the Health Care Fund such amount as may from time to time be determined by the management Committee as being the employee's contribution towards the cost of spectacles. Such contribution shall be in respect of standard type frames, as approved by the Management committee. Where a more expensive frame is desired, the additional costs involved shall be borne by the employee.

(9) **Dental surgeries**

(a) The Fund shall provide and equip one or more dental surgeries for the benefit of contributors.

(b) A contributor shall pay not more than the following percentages of the charge submitted by a dental technician for dentures, partial dentures or repairs to dentures which have been prescribed by the Fund's dental surgeon:

(i) Contributors who have completed 10 years' membership of the Fund, 60 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures;

- (ii) contributors who have completed five years' membership of the Fund, 80 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures;
- (iii) contributors who have completed less than five years' membership of the Fund, 100 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures.
- (c) The Management Committee may determine the contributor's payment towards the cost of any other dental treatment: Provided that no contributor shall be required to pay towards the cost of the treatment of dental caries or X-rays taken, as prescribed by the Fund's dental surgeon.
- (d) The Fund shall, in consultation with a contributor, arrange an appointment with the dental surgeon for treatment and the employer shall be notified of the appointment. The employer shall pay the contributor for time lost by the contributor in attending the dental surgery for the purpose of keeping such appointment, up to a maximum of two hours in any week.

(10) In the event of the expiration of this Agreement by effluxion of time or cessation for any other cause, the Fund shall continue to be administered by the Management Committee until it be either liquidated or transferred by the Council or Regional Chamber to any other fund constituted for the same purpose as that for which the original Fund was created: Provided that the Fund shall be liquidated by a person appointed by the Council or Regional Chamber unless an Agreement providing for the continuation of the Fund or for the transfer of its moneys as aforesaid is entered into within 12 months of the date of expiration of this Agreement.

(11) In the event of the dissolution of the Council or Regional Chamber, or in the event of its ceasing to function during any period in which this Agreement is binding in terms of the Act, the management Committee shall continue to administer the Fund and the members of the Management Committee existing at the date on which the Council or Regional Chamber, as the case may be, ceases to function or is dissolved shall be deemed to be members thereof for such purpose: Provided, however, that any vacancy occurring on the Management Committee may be filled by the Registrar from employers or employees as the case may be, in the Industry, so as to ensure an equality of employer and employee representatives and of alternates in the membership of the Management Committee. In the event of such Management Committee being unable or unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable in the opinion of the Registrar, he may appoint a trustee or trustees who shall carry out the duties of the management Committee and who shall possess all the powers of the Management Committee for such purpose.

In the event of there being no Council or Regional Chamber in existence, the Fund shall be liquidated upon the expiration of this Agreement in the manner set forth in subclause (12), and if upon the expiration of the Agreement the affairs of the Council or Regional Chamber, as the case may be, have already been wound up and its assets distributed, the balance of the Fund shall be distributed as provided for in section 59 (5) of the Act and the Council's Constitution as if it formed part of the general funds of the Council or Regional Chamber.

(12) Upon liquidation of the Fund in terms of subclause (10), the moneys remaining to the credit of the Fund after payment of all claims against the Fund, including administration and liquidation expenses, shall be paid into the general funds of the Council or Regional Chamber.

(13) (a) An employer shall grant an employee who is absent from work through incapacity—

- (i) in the case of an employee who regularly works not more than five days a week, not less than 10 working days', or
- (ii) in the case of any other employee, not less than 12 working days'.

sick leave in the aggregate on full pay during each period of 12 consecutive months commencing 1 July 1997, and on each July 1st thereafter, for which the employee is employed by him (hereinafter referred to as the 'sick leave cycle'): Provided that during the first 12 consecutive months of employment an employee shall not be entitled to sick leave on full pay at a rate of more than, in the case of an employee who regularly works not more than five days in a week, one working day in respect of each completed period of five weeks of employment and, in the case of any other employee, one working day in respect of each completed month of employment. The sick leave cycle of such employees shall commence on the next July 1st so as to ensure a common Industry anniversary date of 1 July for sick leave.

(b) The amount to be paid in terms of paragraph (a) to an employee in respect of a day's sick leave on full pay shall not be less than the wage payable to him in respect of the time (excluding overtime) ordinarily worked by him on that day of the week.

(c) An employer shall not be bound in terms of paragraph (a) to pay to an employee an amount in respect of any absence from work for a period covering more than two consecutive days, unless the employee produces a certificate signed by a medical practitioner stating the nature and duration of the employee's incapacity: Provided that if an employee has during any period of up to eight weeks received payment in terms of paragraph (a) on two or more occasions without having produced such a certificate to his employer, his employer shall during the period of eight weeks immediately succeeding the last such occasion not be bound to pay the said amount to the employee in respect of any absence from work, unless he produces such a certificate.

(d) Where an employer is by or under a provision of any law required to pay fees for hospital or medical treatment in respect of an employee and he pays such fees in respect of any incapacity of an employee, the employer may set off the amount so paid against any payment which he has to pay in terms of paragraph (a) to the employee in respect of sick leave because of such incapacity.



(e) The provisions of paragraph (a) shall not apply in respect of any period of incapacity of an employee in respect of which the employer is by or under a provision of any law required to pay the employee an amount of not less than the equivalent of his wage.

(f) For the purposes of this subclause—

(i) any period during which an employee—

(aa) is on leave by virtue of clause 15;

(ab) is on sick leave by virtue of paragraph (a);

(ac) is absent from work on the instruction or at the request of his employer; or

(ad) is undergoing military training,

amounting in the aggregate in any sick leave cycle to not more than 30 weeks in respect of the periods referred to in (aa), (ab) and (ac), plus up to 12 months of any period of military training referred to in (ad) undergone in that sick leave cycle, shall be deemed to be employment with his employer;

(ii) any continuous employment which an employee has had with the same employer at the date from which the Minister declares this Agreement binding shall be taken into account, and any sick leave on full pay granted by the employer to that employee during that period of continuous employment shall be deemed to have been granted under this subclause: Provided that the provisions of this paragraph shall apply only to employees exempted from the provisions of subclauses (1) to (12).

(g) For the purposes of this subclause—

(i) the proviso in paragraph (a) shall apply irrespective of whether or not an employee has exceeded the 30 days (or 36 days, as the case may be) under his incomplete 36-month cycle as at 30 June 1997 in terms of the previous Agreement;

(ii) any employee who had not been paid by his employer for sick leave taken since 1 July 1997 in terms of the previous agreement, shall be entitled to payment for those days up to a maximum of his new 10-day (or 12 days, as the case may be) entitlement in terms of this Agreement;

(iii) sick leave not taken in one year cannot be carried forward to the next year and the following year's paid leave of 10 days (or 12 days, as the case may be) may not be taken in advance; however, this does not detract from an employee's right to unpaid sick leave when the 10 days (or 12 days, as the case may be) per year limit has been exceeded;

(iv) all employees who have been certified as having an illness of 10 days or more (or 12 days, as the case may be) in any period of 36 consecutive months' employment with an employer, commencing on 1 July 1997 and ending on 30 June 2000, and on 1 July of every 36-month period thereafter, may apply to the Health Care Fund Management Committee referred to in subclause (2) for paid sick leave up to a maximum of 30 days (or 36 days, where more than five days per week are regularly worked), or any balance exceeding 10 days (or 12 days, as the case may be) and still remaining in such period of 36 months: Provided that on receipt of such application, the Health Care Fund Management Committee may exercise its right to decide on the merits of the application and rule whether or not the employer should pay for such extended sick leave and this provision shall be referred to as the "Serious Illness or Injury Provision";

(v) employees and employers shall have the right to dispute a decision of payment or non-payment and they may use the dispute resolution procedures of the Bargaining Council to resolve same and these dispute procedures may be applied where an employee or employer objects to the ruling of the Health Care Fund Management Committee or where the Management Committee is unable to make a ruling for whatever reason;

(vi) all parents employed in the Industry shall be entitled to use all or part of their annual paid sick leave entitlement (10 or 12 days, as the case may be) in terms of this Agreement or the provisions of the Basic Conditions of Employment act, 1997 (Act No. 75 of 1997), whichever may be applicable under the circumstances, for the purposes of caring for ill dependent children on condition that—

(aa) an ill dependent child must have been diagnosed and certified at a Health Care Facility of the Fund as seriously ill or injured and that the parent's presence is necessary during the period of the child's recovery or part thereof; and

(ab) prior appointment for consultation at a Health Care Facility of the Fund has been made or prior notification has been given to the principal member's employer and/or where the principal member has reported to a Health Care Facility of the Fund:

Provided that the mere presence of the principal member with an ill child at a Health Care Facility of the Fund shall not automatically entitle such member to a certificate for sick leave payment and that all certificates are to be issued at the sole discretion of the Medical Officer or other professional staff of the Fund and in such cases, the Medical Officer or other professional staff of the Fund shall endorse the certificate with the appropriate wording determined by the Management Committee of the Fund:



Provided further that a principal member parent who presents a certificate for a child, which has been issued by a public funded hospital, shall be eligible for benefits under this arrangement only in instances where the Fund's own professional staff have confirmed the diagnosis and requirements in terms of this provision and for the purposes hereof, a "public funded hospital" shall mean any of those larger State Hospitals which usually provide a 24-hour service:

Provided further that employees in the Industry who fall within the jurisdiction of the Regional Chamber and who have been exempted from contributing to the Fund shall be entitled to attend a Health Care Fund facility of the Fund for purposes of obtaining the required certification in respect of an ill dependent child, however, such an arrangement shall not entitle the employee or his dependents to any medical attention.

(14) **Indemnity:** The members of the Management Committee and their alternates shall not be liable for any loss to the Fund arising by reason of any act in their bona fide administration of the Fund or by reason of the negligence or fraud of any agent or employee who may be employed by the Fund, although the employment of such agent or employee was not strictly necessary, or by reason of any act or omission made in good faith by such members or alternates or by such local representatives or by reason of any other matter or thing save individual wilful or fraudulent wrongdoing on the part of such members or alternates or on the part of such local representatives who are sought to be made liable. Any such member or alternate and any such local representative shall be reimbursed by the fund for any liability incurred by him in defending any proceedings, whether civil or criminal, arising out of an allegation involving bad faith in which judgment is given in his favour or in which he is acquitted.

(15) **Millinery Industry (Cape):** The provisions of this clause shall, mutatis mutandis, apply to the employers and the employees subject to the Agreement for the Millinery Industry, Cape, published under Government Notice No. R. 1162 of 8 June 1979, or the corresponding provisions of any agreement superseding that Agreement.

(16) The Management Committee shall decide from time to time upon the form and manner in which claims shall be lodged and benefits paid in terms of this clause.

(17) This clause shall not apply to a casual employee.

## 27: TRADE UNION SUBSCRIPTIONS

(1) An employer shall deduct trade union subscriptions and levies weekly from the remuneration of trade union members on their written authorisation, unless an exemption has been granted by the Council or Regional Chamber or by the Independent Exemptions Body: Provided such moneys have been determined in terms of the union's constitution. The employer shall forward such amounts so deducted to the Regional Secretary of the Regional Chamber, for transmission to the union.

(2) Each month the total amount of such deductions, together with a list showing the names and service record card numbers of the employees and the amounts deducted each week for each employee, shall be forwarded to the Regional Secretary of the Regional Chamber by no later than the fourteenth day of the month succeeding the month in which the deductions were made.

(3) Every employer shall, in respect of each trade union member employed by him, contribute towards the trade union bursary fund at the rate of 20c per employee per week.

(4) Every employer shall, in respect of each of his employees for whom Bargaining Council contributions are paid in terms of clause 22 of this Agreement, contribute towards the trade union's HIV/AIDS project at the rate of 10 cents per employee per week.

(5) Each month the total sum representing trade union subscriptions of employees, bursary fund and HIV/AIDS project contributions by the employer shall be recorded in the manner specified in clause 22 (2) of this Agreement and shall then be forwarded to the Regional Secretary of the Regional Chamber.

## 28: REGISTRATION OF EMPLOYERS

(1) Every employer on whom this Agreement is binding and who has not already done so in terms of a previous agreement shall, within seven days of the date on which this Agreement becomes binding on him, furnish to the Regional Secretary of the Regional chamber the particulars set out in the form and manner specified by the Regional Chamber.

(2) In the event of any change in the name under which or the address or addresses at which business is carried on, or among the partners, or if the employer is a company, in the name of its secretary or among its directors or managers or, if the employer is a close corporation, among its members, or in the event of the sequestration of the employer's estate or, if the employer is a company or close corporation, of the winding up of the company or close corporation, or in the event of the transfer or abandonment of the business carried on, or the acquisition or commencement of any other business, or the acquisition or commencement of any other business which is subject to this Agreement, every employer shall furnish to the Regional Secretary of the Regional Chamber within seven days, notice of the change, sequestration, winding up, transfer, abandonment, acquisition or commencement by means of a written statement setting forth full particulars of the change, sequestration, winding up, transfer, abandonment, acquisition or commencement, as the case may be.

## 29: WAGE GUARANTEE

(1) (a) Every employer who enters the Industry after the date of coming into operation of this Agreement shall, within seven days of the date on which such employer commences operations in the Industry, lodge with the Regional Chamber a guarantee acceptable to the Regional Chamber.

(b) Every employer who entered the Industry prior to the date of coming into operation of this Agreement and who was required to lodge an acceptable wage guarantee with the Regional Chamber shall likewise and in the same manner lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.

(c) Where the guarantee lodged by any employer in accordance with the provisions of any previous agreement is no longer valid, the employer concerned shall on demand by the Regional Chamber lodge with the Regional Chamber a fresh guarantee as specified in paragraph (a) hereof.

(d) Where any employer ceases operations in the Industry and subsequently resumes operations in the Industry, he shall be regarded as a new employer and shall likewise and in the same manner lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.

(e) Notwithstanding the provisions of subclause (1) (a) of this clause, where any employer fails to pay levies/contributions due to the Regional Chamber and its funds for a period of two months or more within the periods specified, the employer concerned shall on demand by the Regional Chamber lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.

(2) (a) Where the guarantee lodged by an employer is deemed to be inadequate by the Regional Chamber, the employer shall on demand by the Regional Chamber increase the amount of such guarantee to an amount deemed adequate by the Regional Chamber.

(b) An employer shall be permitted to reduce the amount of his guarantee where a reduction in the number of employees engaged by such employer warrants a deduction: Provided that no increase or reduction of the amount of any guarantee shall be required or permitted at intervals of less than six months.

(3) The Regional Chamber shall be entitled to utilise any guarantee lodged by an employer with the Regional Chamber in terms of subclause (1) to pay any amount which may be due to the Regional Chamber by such employer in respect of levies and contributions or to pay any wages and/or leave pay which may be due to any one or more employees of such employer, where the Regional Chamber is satisfied that such wages and/or leave pay is due and payable to the employees concerned by the employer involved: Provided that the total claim in respect of any one or more employees shall not exceed the total amount of the guarantee lodged with the Regional Chamber.

### 30: MATERNITY LEAVE

(1) Subject to the provisions of this Agreement a female employee who—

(a) has continuously worked for the same employer for not less than one year; and

(b) whose employer has been continuously registered with the Regional Chamber for not less than one year;

as and at the date of commencing her maternity leave shall be entitled to maternity leave not exceeding six months for any one pregnancy.

A female contributor who has less than one year's continuous service with the same employer or whose employer has not been registered with the Regional Chamber, or has been operating in the Industry for less than one year shall not qualify for the maternity leave set out in this subclause but shall instead be entitled to the maternity leave provisions as provided for in section 25 (1) of the Basic Conditions of Employment Act, No. 75 of 1997, and all other provisions related to maternity leave in this clause shall apply to such employees.

(2) During the period of maternity leave all the rights and obligations that the employee and the employer may have under the employment contract shall be suspended and no benefit shall accrue to the employee during this period except that—

(a) provided she has complied with subclause (3) (a), (b), (c) and (d) hereunder, her service will be regarded as uninterrupted;

(b) the employer shall continue to pay, in the case of a Health Care Fund contributor, all Health Care Fund contributions as provided for in this Agreement of the Council and, in the case of a Provident Fund contributor, all Provident Fund contributions as provided for in the Collective Agreement of the Provident Fund of the Regional Chamber—in respect of himself and of any employee on maternity leave while such employee is on such leave until—

(i) the employee breaches the provisions of this Agreement by failing to notify her employer of her intended date of return to work as provided for in subclause (3) (b) below, unless good cause for such failure is shown; or

(ii) the employee breaches the provisions of this Agreement by failing to return to work on the date as provided for in subclause 3 (a) and (b) below, unless good cause for such failure is shown; or

(iii) the employee returns to work;

whichever occurs first:

Provided that an employer shall not be required to make the contributions outlined in subclause (2) (b) above for an employee who has worked for the same employer for less than one continuous year or whose employer has not been registered with the Regional Chamber or has been operating in the Industry for less than one year. Such employees shall, for the duration of their maternity leave, be entitled to utilise a Health Care Fund operated facility and shall also not be prejudiced with regard to any benefit to which they may be entitled in terms of the Provident Fund Collective Agreement of the Regional Chamber.

(3) At the end of the period of maternity leave the employee shall be entitled to resume her work in a position identical or similar to, but not less favourable than the one which she held prior to her taking maternity leave. This obligation on the employer to re-engage the employee is subject to and conditional upon the employee having complied with the following:

- (a) Completing a form as specified for such purpose by the Regional Chamber at least one month before the date of commencement of her maternity leave: provided that this requirement shall not apply in the event of the employee having to stop work, owing to medical reasons, earlier than anticipated; and
- (b) notifying her employer at least four weeks prior to her intended date of return to work of her intention to so return to work by completing a form as specified for such purpose by the Regional Chamber, or by any other written notification, and forwarding such form or notice to her employer per registered mail or delivering such notice or form to a responsible officer of the employer and obtaining a written acknowledgement of receipt thereof; and
- (c) returning to work and resuming her normal duties on the date stipulated and in the form referred to in subclause (a) above, or showing good cause why it was not possible to return to work on the stipulated date; and
- (d) commencing her maternity leave not earlier than at 22 weeks of pregnancy and returning to work within the six-month period or, where the maternity leave period expires during the employer's annual leave period or the return day falls on a public holiday, returning to work on the first working day after the annual leave period or the public holiday.

(4) Subject to the provisions of this Agreement, no employer shall require or permit any female employee to work during the period commencing four weeks prior to the expected date of her confinement and ending eight weeks after the date of her confinement.

(5) An employer shall be entitled to fill a position which has become vacant owing to an employee's having gone on maternity leave by employing another person on a fixed-term contract until the return of the employee from maternity leave. The fixed-term contract shall contain the provisions set out in the form specified for such purpose by the Regional Chamber, and shall be signed by both the employer and the temporary employee. The latter shall be remunerated at the wage prescribed in this Agreement for the class in which he is employed.

(6) Although the contract of employment of an employee may be terminated if she fails to comply with the provisions of subclause (3) (a), (b), (c) and (d) above, such termination will not in any way whatsoever change the temporary nature of the fixed-term contract of employment of any other employee who may have been employed to fill her position.

### 31. NEGOTIATION OF PROCEDURES AT INDIVIDUAL ESTABLISHMENTS

(1) An employer shall, at the request of the trade union, negotiate with the trade union at his establishment on procedures relating to—

- (a) grievances;
- (b) discipline;
- (c) retrenchment;
- (d) health and safety.

(2) The negotiations referred to in subclause (1) shall commence within 15 working days of the date of receipt of any such request.

(3) This clause shall not detract from the right of an employer to act in a fair manner relating to the above matters, in the absence of negotiated procedures. This clause equally shall not detract from the right of an employee to be treated in a fair manner.

### 32: ACCESS

(1) Trade union officials shall be granted reasonable access to establishments provided that prior permission, which shall not be unreasonably withheld, is obtained from an official designated by the employer concerned.

(2) If the designated official should be absent from the establishment for a period of four hours or longer, the most senior official of the employer who may be present shall be deemed to be the designated official as from the beginning of the four-hour period.

(3) Access shall be subject to any existing written access agreements signed by both the trade union and the individual employer concerned.

### 33: SHOP STEWARDS

(1) An employer shall recognise the right of the trade union to have shop stewards elected by its members at his establishment.

(2) A shop steward recognition agreement at an establishment shall, on request by the trade union or the employer, be negotiated between the trade union and the employer. Negotiations shall commence within 15 working days of the date of receipt of such request.

(3) Provided that an outline of each shop stewards' training course has been lodged with the Regional Chamber, and is available on request to any employer, shop stewards shall be entitled to four days' paid leave per annum per shop steward to attend shop stewards' training courses if such attendance falls within normal working hours.



(4) In addition to the leave granted in (3) above, shop stewards shall be eligible for and have access to further paid leave to attend to trade union duties. This additional leave shall be calculated at five days per annum per shop steward. At each establishment this additional leave shall be pooled and the shop stewards shall be entitled to use the additional leave so pooled to attend to trade union duties in any manner that the trade union deems fit: Provided that in establishments employing five or fewer employees, the trade union shall give the employer ten days' written notice of the activity for which it seeks time off in terms of this clause.

(5) Shop stewards at all establishments shall be granted reasonable facilities to enable them to carry out their legitimate trade union duties, provided that prior permission, which shall not be unreasonably withheld, is obtained from management.

#### **34: RETRENCHMENT BENEFITS**

(1) An employer shall 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, unless the employer has been exempted from the provisions of this clause.

(2) An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer shall not be entitled to severance pay in terms of subclause (1).

(3) The payment of severance pay in compliance with this clause shall not affect an employee's right to any other amount payable according to law.

(4) If there is a dispute only about the entitlement to severance pay in terms of this clause, the employee may refer the dispute in writing to the Regional Chamber, if the parties to the dispute fall within the registered scope of the Regional Chamber.

(5) An employee who refers the dispute to the Regional Chamber shall satisfy the Regional Chamber that a copy of the referral has been served on all the other parties to the dispute.

(6) The Regional Chamber shall attempt to resolve the dispute through conciliation.

(7) If the dispute remains unresolved, the employee may refer it to arbitration.

#### **35. PATERNITY LEAVE**

Male employees, regardless of marital status, shall be entitled, subject to prior arrangement, to a maximum of three days' unpaid paternity leave per annum. The employer shall be entitled to require proof of paternity.

#### **36: PROCEDURE TO ENFORCE COMPLIANCE WITH THIS AGREEMENT**

(1) The Council or Regional Chamber shall take all reasonable steps necessary to ensure compliance with this Agreement. If, whether through its own investigations or through any other source, it appears as if the provisions of this Agreement have been breached, then the following procedure shall apply to enforce compliance:

- (a) The General Secretary or Regional Secretary or relevant official of the Council or Regional Chamber shall appoint a designated agent to investigate the alleged breach and/or refer the matter to the Regional Chamber's Disputes Committee.
- (b) If, upon completion of the investigation the designated agent or Disputes Committee has reason to believe that this Agreement has been breached, the agent or Disputes Committee may endeavour to secure compliance with this Agreement through conciliation.
- (c) At the end of the conciliation process the designated agent or Disputes Committee shall submit a report to the Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary of the Council as to the result of the investigation, the steps taken to secure compliance with this Agreement through conciliation and the outcome thereof.
- (d) Upon receipt of the report, the Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary of the Council may—
  - (i) require the designated agent to make further investigations; or
  - (ii) refer the matter to arbitration in terms of this Agreement; or
  - (iii) take such other steps as may be deemed reasonable.
- (e) If the Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary of the Council decides to refer the matter to arbitration, he must appoint an arbitrator to hear and determine the alleged breach of this Agreement.
- (f) The arbitrator, in consultation with all the parties who may have a legal interest in the outcome of the arbitration, shall decide the date, time and venue of the arbitration hearing.
- (g) The Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary of the Council shall serve notices of the date, time and venue of the arbitration on all the parties who may have a legal interest in the outcome of the arbitration.
- (h) Any party who has a legal interest in the outcome of the arbitration shall have the right to—
  - (i) give evidence;
  - (ii) call witnesses;

- (iii) question the witnesses of any other party;
- (iv) address concluding arguments to the arbitrator;
- (v) be represented by—
  - (aa) a legal practitioner; or
  - (ab) an office bearer or official of his registered trade union or employers' organisation and, if the party is a juristic person, by a director or employee thereof.
- (i) The arbitrator shall have the following powers:
  - (i) To determine whether there has been a breach of this Agreement;
  - (ii) to make any appropriate award that gives effect to this Collective Agreement and ensures compliance therewith;
  - (iii) to determine the appropriate form of and the procedure to be followed at the arbitration proceedings;
  - (iv) to make any order as to costs that he deems appropriate and where the Act provides for such an order to be made or for the Council or Regional Chamber to recover its costs of providing the arbitration service: Provided that—
    - where the Council's or Regional Chamber's Disputes Committee or accredited conciliator has made an advisory award in terms of clause 37 (3) (c) which is substantially the same as the award made by the arbitrator, the arbitrator shall make a costs order against the party concerned which shall, as a minimum, cover the Council's and/or Regional Chamber's cost of dealing with the dispute;
  - (v) to make an award in the absence of a party who is alleged to have breached this Agreement if—
    - (aa) the party fails to appear in person or be represented at the arbitration proceedings; and
    - (ab) proof is presented that such party has been notified of the proceedings and notice of the arbitration proceedings shall be deemed to have been given if proof is presented that written notification has been forwarded to such party; and
    - (ac) prima facie evidence has been presented to the arbitrator that the party in question has failed to comply with this Agreement;
  - (vi) to vary, rescind or amend any arbitration award made by him or any other arbitrator on good cause shown and without limiting the generality hereof, the arbitrator shall have this power if—
    - (aa) the award was erroneously sought or erroneously made in the absence of any party affected by the award;
    - (ab) the award is ambiguous or contains an obvious error or omission, but only to the extent of that ambiguity, error or omission;
    - (ac) the award was granted as a result of a mistake common to the parties to the proceedings.
- (j) Any award made by the arbitrator, together with any reasons therefor, shall be served on all interested parties by the Council or Regional Chamber.
- (k) The General Secretary of the Council or Regional Secretary of the Regional Chamber may apply to make the arbitration award an order of the Labour Court in terms of section 158 (1) of the Labour Relations Act. This shall in no way limit the rights of any party in terms of the Act, in the absence of a decision of the Council or Regional Chamber.

### 37: DISPUTE PROCEDURE

#### (1) Accreditation

- (a) The Council shall apply for accreditation for the purposes of dispute resolution as provided for in section 127 of the Act.
- (b) In the event of the Council not being accredited for whatever reason, the Council or Regional Chamber shall employ the services of an accredited agency to perform the conciliation and arbitration services provided for herein.

#### (2) Scope of application

- (a) For the purposes of this clause, "dispute" means any dispute which arises within the registered scope of the Council about a matter of mutual interest between—
  - (i) on the side—
    - (aa) one or more registered trade unions;
    - (ab) one or more employees; or
    - (ac) one or more registered trade unions and one or more employees; and
  - (ii) on the other side—
    - (aa) one or more registered employers' organisations;
    - (ab) one or more employers or
    - (ac) one or more registered employers' organisations and one or more employers.

- (b) For the purposes of this clause a party to the dispute includes any employer or employee engaged in activities within the Council's registered scope.

**(3) Referral and conciliation of disputes to and by the Council**

Disputing parties shall seek to resolve any dispute between themselves as follows:

- (a) Any party to the dispute may refer the dispute to the Council. Except for disputes which arise from negotiations for the purpose of reaching a collective agreement in the Council, all dispute referrals shall be in writing setting out the nature of the dispute and the outcome sought. The party who refers the dispute to the Council or Regional Chamber shall satisfy it that a copy of the referral has been served on all the other parties to the dispute. The Council or Regional Chamber shall attempt to resolve the dispute through conciliation within 30 (thirty) days of the date of the Council or Regional Chamber receiving a written referral of the dispute: Provided that if the dispute arose from negotiations for the purpose of reaching a collective agreement in the Council, the Council shall attempt to resolve the dispute through conciliation within 30 (thirty) days of the date of the nature of the dispute first being minuted in the Council or Regional Chamber. The parties to the dispute may agree in writing to extend the 30 (thirty) day period.
- (b) Disputes about the interpretation, application or enforcement of this Agreement or any collective agreement concluded in the Council shall be dealt with by the Council or Regional Chamber: Provided that unfair dismissal disputes shall be dealt with by the Regional Chamber.
- (c) The Council or Regional Chamber or any disputes committee and/or accredited conciliator appointed by it shall, during the conciliation proceedings, attempt to resolve the dispute, which may include—
  - (i) mediating the dispute, and/or appointing a conciliator from the panel to conciliate the dispute;
  - (ii) conducting a fact-finding exercise; and
  - (iii) making a recommendation to the parties which may be in the form of an advisory arbitration award.
- (d) In the conciliation proceedings a party to the dispute may appear in person or be represented only by a member, an office-bearer or official of that party's registered trade union or registered employers' organisation and by a director or employee of that party.
- (e) When the conciliation has failed, or at the end of the 30 (thirty) day period, or any further period agreed between the parties in writing, the Regional Secretary of the Regional Chamber or General Secretary of the Council shall issue a certificate stating whether or not the dispute has been resolved.

**(4) Adjudication of certain disputes by the Council**

- (a) If the dispute remains unresolved after conciliation, the Council or Regional Chamber shall—
  - (i) arbitrate the dispute if any party to the dispute has requested the Council or Regional Chamber in writing that it be resolved through arbitration and—
    - (aa) the dispute has been referred within 90 days after the date on which that dispute's certificate of outcome in conciliation was issued; however, the Council or Regional Chamber, on good cause shown, may condone a party's non-observance of that timeframe and allow a request for arbitration filed by the party after the expiry of the 90-day period; or
    - (ab) the Act requires arbitration; or
    - (ac) the dispute relates to an unfair dismissal for which the Act permits the dispute to be referred to the Labour Court, save in respect of a dismissal which the employer alleges—
      - (aA) based on the employer's operational requirements; or
      - (aB) is for participating in or supporting or indicating an intention to participate in or support, a strike or protest action;
      - (aC) must be dealt with in terms of paragraph (ii) below;
      - (aD) relates to the interpretation or application of this Collective Agreement or any collective agreement concluded in the Council; or
      - (aE) all the parties to the dispute consent to, in writing, to arbitration being conducted under the auspices of the Council or Regional Chamber in terms of subclause (6) below;
  - (ii) subject to paragraph (a) (i) (ab) above, refer the dispute to the Labour Court if the Act requires the dispute to be referred to the Labour Court and any party to the dispute has requested the Council or Regional Chamber in writing to refer the dispute on its behalf to the Labour Court.
- (b) Parties shall not be entitled to refer the disputes identified in paragraphs (a) (i) (ab) and (a) (i) (ac) to the labour Court or Labour Appeal Court.

**(5) Appointment of conciliation and arbitration panel**

- (a) The conciliator or arbitrator appointed shall be selected from the panel appointed by the Council or Regional Chamber. An employee of the Council or Regional Chamber shall be eligible for appointment to the panel: Provided that, should the Council or Regional Chamber have an interest in the dispute to be conciliated and/or arbitrated, employees of the Council or Regional Chamber shall not be eligible to arbitrate the dispute.



- (b) The panel shall consist of at least six conciliators and/or arbitrators, and all parties to the Council shall attempt to reach agreement on the persons to be appointed to the panel. In the event that the parties to the Council cannot agree on the appointment of some or all of the arbitrators, the following process shall be followed:
  - (i) The union parties to the Council shall prepare a list of nominees to fill the remaining vacancies on the panel, and the employer parties to the Council shall do likewise;
  - (ii) the list prepared by the parties shall be exchanged, and each party shall rank the nominees of the other party in order of their preference;
  - (iii) in the event of the number of remaining vacancies being an even number, half of the vacancies shall be filled by appointing the nominees most preferred by the union parties from the employer parties list, and the remaining half by appointing the nominees most preferred by the employer parties from the union parties' list;
  - (iv) in the event that the number of remaining vacancies is an odd number, then the appointments from the parties' list shall make up the number of vacancies less one, and the final vacancy shall be filled by inserting the names of the next most preferred nominee from each list into a hat, from which the General Secretary of the Council shall draw the name of the remaining appointee.
- (c) Conciliators and/or arbitrators are to be appointed to the panel for a period of two years, after which period they may be re-appointed by agreement between all the parties to the Council. Should any or all of the persons not be re-appointed, all parties to the Council shall attempt to reach agreement on the persons to be appointed to the panel, failing which the remaining vacancies shall be filled according to the method described in paragraph (b) above.
- (d) Notwithstanding paragraph (c) above, the parties to the Council shall have the power, by unanimous agreement, to replace any conciliator and/or arbitrator on the panel with another person.
- (e) Conciliations and arbitrations shall be allocated to persons on the panel on a rotational basis by the Regional Secretary of the Regional Chamber or General Secretary of the Council, unless the parties to the dispute agree upon a conciliator and/or arbitrator from the panel.

#### (6) Arbitrations

- (a) The arbitrator, in consultation with the parties to the dispute, shall decide the date, time and venue of the arbitration: Provided that, unless the parties agree to an extension or the circumstances warrant it, the date of the arbitration shall be within 14 days of the referral to arbitration by the Council or Regional Chamber.
- (b) The Regional Secretary of the Regional Chamber or General Secretary of the Council shall serve notices of the date, time and venue of the arbitration on the parties to the dispute.
- (c) Any party who has a legal interest in the arbitration may apply to the arbitrator to be allowed to intervene in the arbitration. Such intervention may be allowed by the arbitrator, who shall have the power to grant an adverse costs order against that party if such intervention is found by him to be frivolous or vexatious.
- (d) Subject to paragraph (f) below, any party who has a legal interest in the outcome of the arbitration and whose application in terms of paragraph (c) above has been granted by the arbitrator, shall have the right to—
  - (i) give evidence;
  - (ii) call witnesses;
  - (iii) question the witnesses of any other party;
  - (iv) address concluding arguments to the arbitrator;
  - (v) be represented by—
    - (aa) a legal practitioner; or
    - (ab) an office-bearer or official of his registered trade union or registered employers' organisation and, if the party is a juristic person, by a director or employee thereof:

Provided that if the dispute being arbitrated is about the fairness of a dismissal and the aggrieved employee has alleged that the reasons for the dismissal relate only to that employee's conduct or capacity, the parties are not entitled to be represented by a legal practitioner in the arbitration proceedings unless—

- (aa) the arbitrator and all other parties consent; or
- (ab) the arbitrator concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering—
  - (A) the nature of the questions of law raised by the dispute;
  - (B) the complexity of the dispute;
  - (C) the public interest; and
  - (D) the competence of the opposing parties or their representatives to deal with the arbitration of the dispute.

## (e) The arbitrator shall have the following powers:

- (i) To arbitrate the dispute;
- (ii) to make any appropriate award;
- (iii) to determine the appropriate form of and the procedure to be followed at the arbitration proceedings;
- (iv) to make an order as to costs if a party, or the person who represented that party in the arbitration proceedings, acted in a frivolous or vexatious manner—
  - (aa) by proceeding with or defending the dispute in the arbitration proceedings;
  - (ab) in its conduct during the arbitration proceedings;
 which costs order shall be limited to the amount of the Council's and/or Regional Chamber's cost of dealing with the dispute;
- (v) to make an award in the absence of a party if—
  - (aa) the party fails to appear in person or be represented at the arbitration proceedings; and
  - (ab) proof is presented that such party has been notified of the proceedings and notice of the arbitration proceeding shall be deemed to have been given if proof is presented that written notification has been forwarded to such party—
    - (A) by registered mail to such party's last known address and 14 days have elapsed since such notification has been mailed; or
    - (B) by fax transmission to such party's last known fax number; or
    - (C) by hand delivery to such party's last known business or residential address; and
  - (ac) prima facie evidence has been presented to justify such an award;
- (vi) to vary, rescind or amend any arbitration award made by him, on good cause shown or of his own accord and, without limiting the generality hereof, the arbitrator shall have this power if—
  - (aa) the award was erroneously sought or erroneously made in the absence of any party affected by the award;
  - (ab) the award is ambiguous or contains an obvious error or omission;
  - (ac) the award was granted as a result of a mistake common to the parties to the proceedings.

(f) The arbitrator may conduct the arbitration in the manner the arbitrator considers appropriate in order to determine the dispute fairly and quickly, but shall deal with the substantial merits of the dispute with the minimum of legal formalities.

## (g) In making the awards referred to in this clause the arbitrator shall be bound by—

- (i) Labour Appeal Court precedents; and if there are none, by
- (ii) Labour Court precedents.

(h) Any award made by the arbitrator shall be final and binding on the parties to the dispute.

(i) The Council or Regional Chamber shall serve the award, together with any reasons therefor, on all interested parties.

(j) Any party or the Regional Secretary of the Regional Chamber or General Secretary of the Council may apply to make the arbitration award an order of the Labour Court in terms of section 158 (1) of the Act.

(k) Except in the case of paragraph (c) hereof, the parties to a dispute may agree in writing to amend or vary any of the provisions of subclause (6) hereof.

(l) In addition to the rights of review provided for in the Arbitration Act, No. 42 of 1965, any party to any arbitration in terms of this clause shall be entitled to the right of review to the Labour Court provided for in the Act.

(7) **Disputes involving non-parties to the Council**

(a) If the Minister of Labour extends this Collective Agreement concluded in the Council to non-parties to the Council in terms of section 32 of the Act, then disputes involving non-parties to the Council or Regional Chamber shall be dealt with in terms of the above disputes procedure, provided the Council has been accredited in terms of the Act.

(b) If this Collective Agreement concluded in the Council or Regional Chamber is not extended to non-parties, and provided the Council or Regional Chamber has been accredited in terms of the Act, then the following procedure shall apply:

- (i) If a dispute is referred to the Council or Regional Chamber in terms of the Act and any party to that dispute is not a party to the Council, the Council or Regional Chamber shall attempt to resolve the dispute—
  - (aa) through conciliation; and

- (ab) if the dispute remains unresolved after conciliation, the Council or Regional Chamber shall arbitrate the dispute if—
  - (A) the Act requires arbitration and any party to the dispute has requested that it be resolved through arbitration; or
  - (B) all the parties to the dispute consent to arbitration under the auspices of the Council or Regional Chamber.

### 38: INDUSTRY PROTECTION FUND

(1) In terms of section 28 (1) (g) of the Act, read with clause 3.6 and 3.7 of the Council's Constitution, a fund to protect the fashion industry from further job losses and decline, which shall be known as the Fashion Industry Protection Fund (hereinafter referred to as "the Fund") is hereby established.

(2) The objects of the Fund shall be to provide financial support to campaigns and programmes engaged in by the parties to the Regional Chamber, where such programmes are aimed at protecting the Industry in the Western Cape Sub-Chamber of the Cape Chamber of the Council, and jobs within it by improving its competitiveness in the fashion industry.

(3) The Fund shall commence on 1 July 2001 and shall continue to operate until such date as the Regional Chamber and the parties thereto may decide.

(4) Every employer shall, each week, deduct from the wages of each of his employees for whom wages are prescribed in this Agreement, an amount of 12 cents.

(5) An employer shall, in respect of each employee from whose wages deductions are made in terms of subclause (4), contribute an amount of 13 cents per week.

(6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22 (2) of this Agreement.

(7) The moneys collected by the Regional Chamber shall be paid monthly by the Regional Chamber into a bank account styled "Fashion Industry Protection Fund" opened by the Regional Chamber for the purpose of receiving these funds and for disbursing them for the purpose for which they are intended.

This account shall be administered by the Regional Chamber.

(8) The moneys collected shall be used by the Regional Chamber to finance the following bona fide strategies in pursuit of the objects of the Fund as set out in subclause (2):

- (a) "Buy Local" campaigns;
- (b) Combating customs fraud and illegal imports; or

for such other strategies as meet the objectives of the Fund.

(9) During the period of operation of the Fund, should the Southern African Clothing & Textile Workers' Union (SACTWU) and/or the Cape Clothing Association (CCA) become or wish to become engaged in additional strategies or bona fide activities in pursuit of the objectives of the Fund other than those specified in subclause (8), they may apply in writing to the Regional Chamber for the activities in question to be recognised by the Regional Chamber as an authorised strategy or activity which can be financed in terms of the Fund's provisions. The decision as to whether to recognise the strategy or activity in question shall be at the sole discretion of the Regional Chamber and shall be recorded as a resolution of the Regional Chamber and subject to approval by the Registrar: Labour.

(10) The Fund's moneys shall be used to meet all reasonable expenses incurred in pursuit of the authorised activities in regard to the strategies referred to above and may not be used for any unauthorised purpose or activity.

(11) If SACTWU or the CCA is in doubt about whether contemplated expenditure of the Fund's moneys qualifies as expenditure on an authorised activity, SACTWU or the CCA, as the case may be, may request confirmation in advance from the Regional Chamber in this regard.

(12) No moneys of the Fund shall be disbursed by the Regional Chamber until the Fund has been established by this Agreement and SACTWU, the CCA and the Regional Chamber have signed a written agreement, acceptable to the Registrar: Labour, to secure compliance with the provisions of the Fund as set out herein.

(13) Any interest that is earned on Fund moneys at any time shall be used for the benefit of the activities and purposes authorised in terms of the Fund.

(14) SACTWU and the CCA shall, annually, by the second month of the Regional Chamber's financial year, provide the Regional Chamber with a financial plan of how the funds will be utilised towards achieving the objectives of the Fund. The plan shall be submitted to the Regional Chamber for approval.

(15) Expenditure incurred by the parties shall be paid by the Fund against invoices or vouchers submitted to the Regional Secretary of the Regional Chamber, provided he is satisfied that the expenditure—

- (a) is in terms of the approved plan;
- (b) is clearly classified by strategy, activity and the nature of the expense; and



- (c) has been authorised by the Regional Organising Secretary or National Organising Secretary of SACTWU, or the Executive Director of the CCA.

Should the Regional Secretary of the Regional Chamber deem it necessary, such approved expenditure shall be presented to the Regional Chamber for approval prior to payment.

(16) Any expenses that have been incurred by SACTWU or the CCA for unauthorised purposes or activities and which have been paid or reimbursed to SACTWU or the CCA, may be recovered by the Regional Chamber from SACTWU or the CCA, as the case may be.

(17) The Regional Secretary of the Regional Chamber shall be obliged to account to the Regional Chamber every two months in relation to income and expenditure of the Fund. This accounting to the Regional Chamber shall include, but not be limited to, providing a schedule summarising the expenses incurred on authorised activities in pursuance of the objects of the Fund and in respect of which payment is claimed.

(18) SACTWU and the CCA shall be obliged to report back to the Regional Chamber every two months after the establishment of the Fund on the activities undertaken by their organisation in pursuance of the objects of the Fund.

(19) In the event that there is a disagreement between the parties as to whether any activity or expenditure or proposed activity or expenditure falls within the objects of the Fund, either party may refer a dispute in this regard for conciliation in terms of clause 15.5 of the Council's Constitution and, if it remains unresolved after conciliation, the proposing party may request the Regional Chamber in writing that the dispute be resolved through arbitration in accordance with clause 15.4.2.1.2 of the Council's Constitution.

(20) Each party to this agreement has a pre-emptive right to require all undertakings or commitments between the parties, not only those referred to in this resolution, to be reduced to writing.

### **39: TRADE UNION CAPACITY BUILDING FUND**

(1) A Trade Union Capacity Building Fund, hereinafter referred to as "the Fund" is hereby established.

(2) The Fund shall be administered by the Regional Chamber, or its successor in name and title, for and on behalf of the union and its members in terms of the rules of the Fund as approved by the Registrar: Labour.

(3) Every employer shall, in respect of each employee for whom wages are prescribed in the Council's main Knitting Division and Country Areas Collective Agreements for the Western Cape Region, contribute an amount of 25 cents per week.

(4) The total sum representing the employer's contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22 (2) of this Agreement.

(5) All moneys received by the Regional Chamber for and on behalf of the Fund shall be paid monthly by the Regional Chamber into a banking account styled "Trade Union Capacity Building Fund" opened and administered by the Regional Chamber for the purpose of disbursing it to the union in terms of the rules of the Fund.

(6) Moneys in the Fund's banking account not required to meet the current disbursements may be invested by the Regional Chamber as per the requirements of the Act.

(7) Any interest that is earned on Fund moneys shall accrue to the Fund and be used in terms of the rules of the Fund.

(8) The accounts of the Fund shall be audited annually in terms of generally accepted auditing standards by the Council's auditors.

(9) The Regional Secretary of the Regional Chamber shall report to the Regional Chamber on a quarterly basis on all expenditure of the Fund, including, but not limited to providing a schedule detailing the income collected and authorised disbursements made to the union and matters incidental thereto as may be requested by the Regional Chamber from time to time. The union shall provide the Regional Secretary of the Regional Chamber, on a monthly basis, with the details of the expenditure incurred in this regard.

(10) The audited annual financial statements of the Fund shall be signed by the Chairperson and Regional Secretary of the Regional Chamber and a relevant union official and be submitted to the Department of Labour as per the requirements of the Act or any other regulations and conditions that may be set by the Registrar: Labour upon approval of the Fund's rules, or from time to time.

### **40: COLLECTIVE BARGAINING/DISPUTE RESOLUTION LEVY**

(1) The parties to this Agreement recognise that the Cape Clothing Association (CCA) is the majority employers' organisation in the region covered by the Western Cape Sub-Chamber of the National Bargaining Council for the Clothing Manufacturing Industry ("the region"), that it incurs significant expenses during annual collective bargaining and by participating in dispute resolution, and that employers who are not its members derive a benefit from these activities without contributing to the cost thereof. Accordingly, the parties agree that every employer in the region who is subject to this Agreement shall pay a monthly fee in an amount calculated in terms of subclause (2) hereunder, on the following basis:

- (a) every employer that belongs to the CCA shall pay its membership fee directly to the CCA;
- (b) every employer that does not belong to the CCA shall pay a monthly levy equal to the membership fee that the employer would have paid if it were a member of the CCA, to the Regional Secretary of the Regional Chamber on or before the 14th day of each month, together with a breakdown of the amount so paid.

(2) The amount of the monthly levy shall be as determined at a general meeting of the CCA from time to time, which shall be identical to the monthly membership fee for ordinary members of the CCA.

(3) The Regional Secretary of the Regional Chamber shall deposit all moneys received in terms of this clause into a separate, dedicated banking account under the name "CCA levy account".

(4) The Regional Chamber shall disburse moneys from the account to the CCA on receipt of acceptable proof from the CCA of expenditure incurred by it as contemplated under clause 5 below.

(5) The moneys received in terms of this clause may be used only for expenditure incurred by the CCA in respect of—

(a) collective bargaining; and

(b) dispute resolution,

and may not be—

(c) paid to a political party as an affiliation fee; or

(d) contributed in cash or kind to a political party or a person standing for election to any political office.

(6) The CCA shall arrange for an annual audit of the CCA levy account within six months of its financial year by an auditor who—

(a) shall be independent;

(b) shall conduct the audit in accordance with generally accepted auditing standards;

(c) shall report in writing to the CCA and to the Regional Chamber expressing an opinion as to whether or not the CCA has complied with the provisions of its constitution relating to financial matters and the provisions of subclause (5).

(7) Any person may inspect the auditor's report submitted to the Regional Chamber in terms of subclause (6) at the Regional Chamber's offices at Industria House, 350 Victoria Road, Salt River, Cape Town.

(8) The Regional Chamber shall provide a certified copy of, or extract from, the auditor's report to any person requesting such copy or extract.

(9) The Regional Chamber's exemption committee may on application from an employer who conscientiously objects to associating with persons other than those who share his religious beliefs or who shows good cause, grant an exemption from the provisions of this clause.

(10) Any dispute about the application, enforcement, or interpretation of the provisions of this clause shall be referred to a conciliator and arbitrator agreed on by the parties to the dispute: Provided that if no agreement is reached within 30 days of the lodging of the dispute, the conciliator and arbitrator shall be appointed by the Regional Chamber from its list of accredited conciliators/arbitrators.

(11) No payment of levies by non-members shall be made in terms of this clause for any period that the CCA does not represent the employers who employ the majority of employees in the region for whom wages are prescribed in this Agreement. The Regional Chamber shall forthwith inform all concerned if this should occur.

(12) Notwithstanding the fact that this clause may have ceased to be operative or that the CCA may have lost its majority, the funds in the CCA levy account may continue to be disbursed until they have been exhausted.

Signed at Salt River on this 18th day of September 2002.

**C. O. JEFTHA**

**Chairperson**

**M. W. SIDDONS**

**Vice-Chairperson**

**W. A. ROBERTS**

**Acting General Secretary**

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