

- (a) when the employee commenced work; or
 - (b) the end of the employee's prior sick leave cycle.
- (2) During every sick leave cycle, the employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.
 - (3) Despite sub-clause (2), during the first six months of work, the employee is entitled to one day's sick leave for every 26 days worked.
 - (4) An employer may, during the employee's first leave cycle, reduce the employee's entitlement to sick leave in terms of sub-clause (2) by the number of days' sick leave taken in terms of sub-clause (3).
 - (5) Where an employer, at the request of the employee, pays fees for an employee's hospital or medical treatment, the fees paid may be set off against the employee's pay.
 - (6) An employer is not required to pay the employee in terms of this clause if the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury.
 - (7) The medical certificate in terms of sub-clause (6) must be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament.
 - (8) If it is not reasonably practicable for an employee who lives on the employer's premises to obtain a medical certificate, the employer may not withhold

payment in terms of sub-clause (6) unless the employer provides reasonable assistance to the employee to obtain the certificate.

21. Family responsibility leave

- (1) This clause applies to an employee –
 - (a) who has been employed by an employer for longer than four months; and
 - (b) who works on at least four days a week for that employer.

- (2) An employer must grant an employee, during each 12 months of employment, at the request of the employee, three days' paid leave, which the employee is entitled to take -
 - (a) when the employee's child is born;
 - (b) when the employee's child is sick; or
 - (c) in the event of the death of –
 - (i) the employee's spouse or life partner; or
 - (ii) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchildren or sibling.

- (3) An employee may take family responsibility leave in respect of the whole or part of the day.

- (4) Subject to sub-clause (5), an employer must pay an employee for a day's family responsibility leave-
 - (a) the wage the employee would normally have received for work on that day; and
 - (b) on the employee's usual pay day.

- (5) Before paying an employee for leave in terms of this clause, an employer may require reasonable proof of an event contemplated in sub-clause (2) for which the leave was required.

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

22. Maternity leave^[2]

- (1) An employee is entitled to at least four consecutive month's maternity leave.
- (2) An employee may commence maternity leave -
- (a) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
 - (b) on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.
- (3) An employee may not work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
- (4) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.
- (5) An employee must notify an employer in writing, unless she is unable to do so, of the date on which the employee intends to -
- (a) commence maternity leave; and
 - (b) return to work after maternity leave.
- (6) Notification in terms of sub-clause (5) must be given -

^[2] In terms of section 187(1)(e) of the Labour Relations Act, 1995, the dismissal of a employee on account of her pregnancy, intended pregnancy, or any reason related to her pregnancy, is automatically unfair. The definition of dismissal in section 186 of the Labour Relations Act, 1995, includes the refusal to allow an employee to resume work after she has taken maternity leave in terms of any law, collective agreement or her contract. An employee may claim maternity benefits in terms of the Unemployment Insurance Act, 2001.

- (a) at least four weeks before the employee intends to commence maternity leave;
 - (b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- (7) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her child, including operating dangerous machinery or handling and/or using spray chemicals.
- (8) During a employee's pregnancy, and for a period of six months after the birth of her child, her employer must offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if-
- (a) the employee is required to perform night work, as defined in clause 15 or her work poses a danger to her health or safety or that of her child; and
 - (b) it is practicable for the employer to do so

PART F:

PROHIBITION OF CHILD LABOUR AND FORCED LABOUR

23. Prohibition of child labour and forced labour

- (1) No person may employ a child –
- (a) who is under 15 years of age; or
 - (b) who is under the minimum school leaving age in terms of any law, if this is 15 or older.^[3]

^[3] Section 31(1) of the South African Schools Act (Act 84 of 1996) requires every parent to cause every learner for whom he or she is responsible to attend a school until the last day of the year in which the learner reaches the age of 15 or the ninth grade, whichever is the first.

- (2) No person may employ a child in employment –
 - (a) that is inappropriate for a person of that age;
 - (b) that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.
- (3) An employer must maintain for three years, a record of the name, date of birth and address of every employee under the age of 18 years employed by them.
- (4) Subject to the Constitution of the Republic of South Africa, all forced labour is prohibited.
- (5) No person may, for his/her own benefit or for the benefit of someone else cause, demand or impose forced labour in contravention of sub-clause (4).
- (6) A person who employs a child in contravention of sub-clause (1) and (2) or engages in any form of forced labour in contravention of sub-clauses (4) and (5) commits an offence in terms of sections 46 and 48 of the Basic Conditions of Employment Act respectively, read with section 93 of that Act.

PART G: TERMINATION OF EMPLOYMENT

24. Notice of termination of employment

- (1) A contract of employment terminable at the instance of a party to the contract may be terminated only on notice of not less than-
 - (a) one week if the employee has been employed for six months or less;
 - (b) two weeks, if the employee has been employed for more than six months but not more than one year;
 - (c) four weeks, if the employee has been employed for one year or more.
- (2) The employer and employee may agree to a longer notice period, but the agreement may not require or permit an employee to give a period of notice longer than that required of the employer.

- (3) Notice of termination of contract of employment must be given in writing except when it is given by an illiterate employee.
- (4) If an employee who receives notice of termination is not able to understand it, the notice must be explained orally by, or on behalf of, the employer to the employee in an official language the employee reasonably understands.
- (5) Notice of termination of a contract of employment given by an employer must—
 - (a) not be given during any period of leave to which the employee is entitled to in terms of this determination
 - (b) not run concurrently with any period of leave to which the employee is entitled in terms of this determination, except sick leave.
- (6) Nothing in this clause affects the right -
 - (a) of a dismissed employee to dispute the lawfulness or fairness of the dismissal in terms of Chapter VIII of the Labour Relations Act, 1995, or any other law; and
 - (b) of an employer or an employee to terminate a contract of employment without notice for any cause recognized by law.

25. Payment instead of notice

- (1) Instead of giving an employee notice in terms of this clause, an employer may pay the employee the wages the employee would have received, if the employee had worked during the notice period.
- (2) If an employee gives notice of termination of employment, and the employer waives any part of the notice, the employer must pay the wages referred to in sub-clause (1), unless the employer and the employee agree otherwise.

26. Payments on termination

- (1) On termination of employment, an employer must pay an employee all monies due to the employee including –

- (a) any remuneration that has not been paid;
- (b) any paid time off that the employee is entitled to in terms of clause 11(2) or 14(3) that the employee has not taken;
- (c) remuneration calculated in accordance with clause 19(9) for any period of annual leave due in terms of clause 19(1) that the employee has not taken; and
- (d) if the employee has been in employment longer than four months, in respect of the employee's annual leave entitlement during an incomplete annual leave cycle as defined in section 19(1) –
 - (i) one day's remuneration in respect of every 17 days on which the employee worked or was entitled to be paid; or
 - (ii) remuneration calculated on any basis that is at least as favourable to the employee as that calculated in terms of subparagraph (i).

27. Severance pay

- (1) For the purpose of this clause, "operational requirements" means requirements based on the economic, technological, structural or similar needs of an employer.
- (2) An employer must pay an employee who is dismissed for reasons based on the employer's operational requirements, severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer.
- (3) An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer is not entitled to severance pay in terms of sub-clause (2).
- (4) The payment of severance pay in compliance with this clause does not affect an employee's right to any other amount payable according to law.
- (5) 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 CCMA.

28. Certificate of service

- (1) On termination of employment, an employee is entitled to a certificate of service stating –
 - (a) the employee's full name;
 - (b) the name and address of the employer;
 - (c) the date of commencement and date of termination of employment;
 - (d) the title of the job or brief description of the work for which the employee was employed at the date of termination;
 - (e) any relevant training received by the employee;
 - (f) the pay at date of termination; and
 - (g) if the employee so requests, the reason for termination of employment.

29. Keeping of sectoral determination

- (1) Every employer on whom this sectoral determination is binding must keep a copy of the sectoral determination or an official summary, available in the workplace in a place to which the employee has access.

30. Temporary employment services

- (1) In this clause, "temporary employment service" means any person who, for reward, procures for or provides employees to a client if that person remunerates the employees.
- (2) For the purpose of this Determination, an employee whose services have been procured for, or provided to, a client by a temporary employment service is employed by that temporary employment service, and the temporary employment service is that person's employer.
- (3) The temporary employment service and the client are jointly and severally liable to comply with this determination in respect of its employees.

- (4) If the temporary employment service is in default of its obligation to make any payment in terms of this determination to an employee for a period of thirty days, the client concerned becomes liable to make payment.
- (5) A client that in terms of this clause makes any payment that is owing to a employee is entitled to recover such amount from the employment service.

31. Cancellation of wage determinations

- (1) Wage determination 457: Hotel Trade, Certain Areas; Wage determination 461: Catering Trade, Certain Areas; and Wage determination 479: Accommodation Establishment Trade, Certain Areas, is cancelled with effect from the date that this determination becomes binding.

32. What words mean in this determination

- (1) Any expression in this determination, which is defined in the Basic Conditions of Employment Act (the Act) and is not defined in this clause, has the same meaning as in the Act and-

“agreement” includes a collective agreement;

“Basic Conditions of Employment Act” means the Basic Conditions of Employment Act, 1997 (Act 75 of 1997)

“child” means a person who is under 15 years of age;

“day” means, for the purposes of measuring hours of work, a period of 24 hours, measured from the time when a employee normally commences work;

“dispute” includes an alleged dispute;

“employee” means – (a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and (b) any other person who in any manner assists in carrying on or conducting the business of an employer;

“incapacity” means inability to work owing to sickness or injury;

“Minister” means the Minister of Labour;

“month” means a calendar month;

“monthly wage” means an employee's weekly wage multiplied by four and a third;

“night work” means work performed after 18:00 and before 06:00 the next day,

“ordinary hours of work” means the hours of work permitted in terms of clause 9

“overtime” means the time that the employee works during a day or in a week in excess of ordinary hours of work;

“paid leave” means any annual leave, paid sick leave or family responsibility leave that a employee is entitled to in terms of Part E of this determination;

“public holiday” means any day that is a public holiday in terms of the Public Holiday Act, 1994 (Act No. 36 of 1994);

“remuneration” means any payment in money or in kind, or both in money and in kind excluding any gratuity or gift received from a customer for service rendered, made or owing to any person in return for that person working for any other person, including the State;

“trade of letting of flats, rooms or houses” means the trade carried on by persons who carry on the business of letting flats, rooms or houses and includes the agents to whom such persons entrust the letting of flats, rooms or houses and the employees of such agents who are employed exclusively in connection with such flats, rooms or houses.

