

**DEPARTMENT OF LABOUR**

NO. ....

Date.....

**BASIC CONDITIONS OF EMPLOYMENT ACT 75 OF 1997**

**SECTORAL DETERMINATION NO 5: LEARNERSHIPS**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, in terms of Section 55(1) of the Basic Conditions of Employment Act no 75 of 1997, read together with Section 18(4) of the Skills Development Act, No 97 of 1998 hereby make the sectoral determination establishing conditions of employment and rates of allowances for learners in South Africa and fix the second Monday after the date of publication of this notice as the date from which provisions of this determination shall be binding upon all employers and learners in all sectors where Sector Education Authorities (SETAs) have been established.

**M.M.S. MDLADLANA, MP**  
Minister of Labour

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## DEFINITIONS

1. In this Act, unless the context indicates otherwise-

**'Act'** means the Skills Development Act, 1998 (Act No 97 of 1998)

**'agreement'** includes a collective agreement;

**'allowance'** means the amount of money paid or payable to a learner in respect of ordinary hours of work or, if they are shorter, the hours a learner normally works in a day or week;

**'bargaining council'** means a bargaining council registered in terms of the Labour Relations Act, 1995, and, in relation to the public service, includes the bargaining councils referred to in section 35 of that Act;

**'CCMA'** means the Commission for Conciliation, Mediation and Arbitration established in terms of section 112 of the Labour Relations Act, 1995;

**'collective agreement'** means a written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded by one or more registered trade unions, on the one hand and, on the other hand-

- (a) one or more employers;
- (b) one or more registered employers' organisations; or
- (c) one or more employers and one or more registered employers' organisation;

and includes a collective agreement concluded in a bargaining council and binding in terms of either section 31 or 32 of the Labour Relations Act, 1995;

**'credit'** means a credit as defined in the Regulations made under the South African Qualifications Authority Act, 1995 (Act 58 of 1995) published in Government Notice 18787 of 28 March 1998;

**'dispute'** includes an alleged dispute;

**'Labour Relations Act, 1995'** means the Labour Relations Act, 1995 (Act 66 of 1995);

**'medical practitioner'** means a person entitled to practise as a medical practitioner in terms of section 17 of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act 56 of 1974);

**'midwife'** means a person registered or enrolled to practise as a midwife in terms of section 16 of the Nursing Act, 1978 (Act 50 of 1978);

**'Minister'** means the Minister of Labour;

**'month'** means a calendar month;

**'ordinary hours of work'** means the hours of work permitted in terms of clause 9 or in terms of any agreement in terms of clauses 11 or 12;

**'NQF level'** means a level of the National Technical Qualifications Framework referred to in the regulation 3 of the Regulations made under the South African Qualifications Authority Act, 1995 (Act no. 58 of 1995) published in Government Notice 18787 of 28 March 1998;

**'overtime'** means the time that a learner works during a day or a week in excess of ordinary hours of work;

**'public holiday'** means any day that is a public holiday in terms of the Public Holidays Act, 1994 (Act 36 of 1994);

**'registered employers' organisation'** means an employers' organisation registered under section 96 of the Labour Relations Act, 1995;

**'registered trade union'** means a trade union registered under section 96 of the Labour Relations Act, 1995;

**'remuneration'** means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State, and **'remunerate'** has a corresponding meaning;<sup>1</sup>

**'sector'** means an industry or a service or a part of an industry or a service;

**'sectoral determination'** means a sectoral determination made under Chapter Eight of the Basic Conditions of Employment Act, 1997;

**'wage'** means the amount of money paid or payable to a learner in respect of ordinary hours of work or, if they are shorter, the hours an employee ordinarily works in a day or a week;

**'week'** in relation to a learner, means the period of seven days within which the working week of that learner ordinarily falls;

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<sup>1</sup> Remuneration is given a specific meaning in clause 7(5).

**'work'** includes any time that the learner is required to spend in study periods or theoretical learning sessions with the training provider in terms of the learnership agreement';

**'workplace'** means any place where learners work.

## **APPLICATION OF THIS DETERMINATION**

2. (1) This determination applies to -

- (a) the employment of a learner –
  - (i) who has concluded a learnership agreement in terms of section 17 of the Act; and
  - (ii) who was not in the employment of the employer party to the learnership agreement when the agreement was concluded.
- (b) to every employer who employs a learner contemplated in sub-paragraph (a) in respect of the employment of that learner.

(2) (a) This determination forms part of the contract of employment of any learner employed in terms of section 18(2) of the Act.

- (b) Sub-paragraph (a) does not prevent an employer and a learner concluding a contract of employment in terms of section 18(2) of the Act, which contains terms, and conditions that are more favourable to the learner.

(3) This determination takes precedence over any collective agreement, except insofar as a collective agreement concluded after this determination comes into effect expressly provides for learners to receive an allowance or conditions of employment that are more favourable to the employee than provided for in this determination.

## **LEARNER'S ALLOWANCES**

3. (1) An employer must pay a learner an allowance calculated in terms of this clause.

(2) Subject to subclause 3, a learner's allowance must be calculated as a percentage of the qualified wage in accordance with column 3 of Table A.

(3) No learner may be paid less than the applicable allowance specified in column 4 of Table A.

- (4) For the purposes of this clause –
- (a) the “qualified wage” is the wage that the employer would pay the learner on obtaining the qualification for which the learnership is registered ;
  - (b) “wage” means the amount of money payable to an employee in respect of the hours of work an employee normally works, excluding any overtime.

**Table A**

<b>COLUMN 1</b>	<b>COLUMN 2</b>	<b>COLUMN 3</b>	<b>COLUMN 4</b>
<b>Exit level of learnership</b>	<b>Credits already earned by learner</b>	<b>Percentage of qualified wage to be paid as allowance</b>	<b>Minimum allowance per week</b>
NQF 1 or 2	0 – 120	35%	R120.00
	121 – 240	69%	R240.00
NQF 3	0 – 120	17%	R120.00
	121 – 240	40%	R226.00
	241 – 360	53%	R370.00
NQF 4	0 – 120	13%	R120.00
	121 – 240	25%	R240.00
	241 – 360	53%	R370.00
	361 – 480	56%	R540.00
NQF 5 to 8	0 - 120	8%	R120.00
	120 – 240	18%	R260.00
	240 – 360	27%	R389.00
	361 – 480	38%	R548.00
	481 – 600	49%	R700.00

#### **CALCULATION OF REMUNERATION AND ALLOWANCES**

4. (1) A learner's allowance is calculated by reference to the number of hours the learner normally works.
- (2) For the purposes of calculating the allowance of a learner, a learner is deemed normally to work-
- (a) 45 hours in a week, unless the learner ordinarily works a lesser number of hours in a week;
  - (b) nine hours in a day, or seven and a half hours in the case of a learner

who works for more than five days a week, or the number of hours that a learner works in a day in terms of an agreement concluded in accordance with clause 11, unless the learner normally works a lesser number of hours in a day.

- (3) A learner's monthly remuneration or allowance is four and one-third times the learner's weekly remuneration or allowance, respectively.
- (4) If a learner's remuneration or allowance fluctuates significantly from period to period, any payment to that learner in terms of this Act must be calculated by reference to the learner's remuneration or allowance during-
  - (a) the preceding 13 weeks; or
  - (b) if the learner has been in employment for a shorter period, that period.

## **PAYMENT OF REMUNERATION**

- 5. (1) An employer must pay to a learner any remuneration that is paid in money-
  - (a) in South African currency;
  - (b) daily, weekly, fortnightly or monthly; and
  - (c) in cash, by cheque or by direct deposit into an account designated by the learner.
- (2) Any remuneration paid in cash or by cheque must be given to each learner-
  - (a) at the workplace or at a place agreed to by the learner;
  - (b) during the learner's working hours or within 15 minutes of the commencement or conclusion of those hours; and
  - (c) in a sealed envelope which becomes the property of the learner.
- (3) An employer must pay remuneration not later than seven days after-
  - (a) the completion of the period for which the remuneration is payable; or
  - (b) the termination of the learnership.
- (4) Subclause (3)(b) does not apply to any pension or provident fund payment to a learner that is made in terms of the rules of the fund.

## **INFORMATION ABOUT REMUNERATION**

6. (1) An employer must give a learner the following information in writing on each day the learner is paid:
- (a) the employer's name and address;
  - (b) the learner's name and learnership;
  - (c) the period for which the payment is made;
  - (d) the learner's remuneration in money;
  - (e) the amount and purpose of any deduction made from the remuneration;
  - (f) the actual amount paid to the learner; and
  - (g) if relevant to the calculation of that learner's remuneration-
  - (h) the learner's rate of remuneration and overtime rate;
  - (i) the number of ordinary and overtime hours worked by the learner during the period for which the payment is made;
  - (j) the number of hours worked by the learner on a Sunday or public holiday during that period; and
  - (k) if an agreement to average working time has been concluded in terms of clause 12, the total number of ordinary and overtime hours worked by the learner in the period of averaging.
- (2) The written information required in terms of subclause (1) must be given to each learner-
- (a) at the workplace or at a place agreed to by the learner; and
  - (b) during the learner's ordinary working hours or within 15 minutes of the commencement or conclusion of those hours.

## **DEDUCTIONS AND OTHER ACTS CONCERNING REMUNERATION**

7. (1) An employer may not make any deduction from a learner's remuneration unless-
- (a) subject to subclause (2), the learner in writing agrees to the deduction in respect of a debt specified in the agreement; or
  - (b) the deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.
- (2) A deduction in terms of subclause (1)(a) may be made to reimburse an employer for loss or damage only if-
- (a) the loss or damage occurred in the course of employment and was due to the fault of the learner;
  - (b) the employer has followed a fair procedure and has given the learner a reasonable opportunity to show why the deductions should not be made;
  - (c) the total amount of the debt does not exceed the actual amount of the

- loss or damage; and
  - (d) the total deductions from the learner's remuneration in terms of this subclause do not exceed one-quarter of the learner's remuneration in money.
- (3) A deduction in terms of subclause (1)(a) in respect of any goods purchased by the learner must specify the nature and quantity of the goods.
- (4) An employer who deducts an amount from a learner's remuneration in terms of subclause (1) for payment to another person must pay the amount to the person in accordance with the time period and other requirements specified in the agreement, law, court order or arbitration award.
- (5) An employer may not require or permit a learner to-
  - (a) repay any remuneration except for overpayments previously made by the employer resulting from an error in calculating the learner's remuneration; or
  - (b) acknowledge receipt of an amount greater than the remuneration actually received.
- (6) An employer may not make any deduction from a learner's remuneration, or require a learner to repay any amount, in respect of any tools, materials, equipment, protective clothing, uniforms or training material required for the purposes of the learnership.

## **INTERPRETATION OF DAY**

- 8.** For the purposes of clauses 9 to 15, 'day' means a period of 24 hours measured from the time when the learner normally commences work and 'daily' has a corresponding meaning.

## **ORDINARY HOURS OF WORK**

- 9.** (1) Subject to clauses 8 to 18, an employer may not require or permit a learner to work more than-
  - (a) 45 hours in any week; and
  - (b) nine hours in any day if the learner works for five days or fewer in week; or
  - (c) eight hours in any day if the learner works on more than five days in a week.
- (2) A learner's ordinary hours of work in terms of subclause (1) may by agreement

be extended by up to 15 minutes in a day but not more than 60 minutes in a week to enable a learner whose duties include serving members of the public to continue performing those duties after the completion of ordinary hours of work.

## **OVERTIME**

- 10.** (1) Subject to clauses 8 to 18, an employer may not require or permit a learner-
- (a) to work overtime except in accordance with an agreement;
  - (b) to work more than-
    - (i) three hours' overtime a day;
    - (ii) ten hours' overtime a week.
- (2) An employer must pay a learner at least one and one-half times the learner's allowance for overtime worked.
- (3) Despite subclause (2), an agreement may provide for an employer to-
- (a) pay a learner not less than the learner's ordinary allowance for overtime worked and grant the learner at least 30 minutes' time off on full pay for every hour of overtime worked; or
  - (b) grant a learner at least 90 minutes' paid time off for each hour of overtime worked.
- (4) (a) An employer must grant paid time off in terms of subclause (3) within one month of the learner becoming entitled to it.
- (b) An agreement in writing may increase the period contemplated by paragraph (a) to 12 months.
- (5) An agreement concluded in terms of subclause (1) with a learner when the learner commences employment, or during the first three months of employment, lapses after one year.

## **COMPRESSED WORKING WEEK**

- 11.** (1) An agreement in writing may require or permit a learner to work up to twelve hours in a day, inclusive of the meal intervals required in terms of clause 9, without receiving overtime pay.
- (2) An agreement in terms of subclause (1) may not require or permit a learner to work-
- (a) more than 45 ordinary hours of work in any week;
  - (b) more than ten hours' overtime in any week; or

- (c) on more than five days in any week.

### **AVERAGING OF HOURS OF WORK**

- 12.** (1) Despite clauses 9 (1) and (2) and 10 (1) (b), the ordinary hours of work and overtime of a learner may be averaged over a period of up to four months in terms of a collective agreement.
- (2) An employer may not require or permit a learner who is bound by a collective agreement in terms of subclause (1) to work more than-
    - (a) an average of 45 ordinary hours of work in a week over the agreed period;
    - (b) an average of five hours' overtime in a week over the agreed period;
    - (c) twelve hours in a day, inclusive of the meal intervals required in terms of clause 13.
  - (3) A collective agreement in terms of subclause (1) lapses after 12 months.
  - (4) Subclause (3) only applies to the first two collective agreements concluded in terms of subclause (1).

### **MEAL INTERVALS**

- 13.** (1) An employer must give a learner who works continuously for more than five hours a meal interval of at least one continuous hour.
- (2) During a meal interval the learner may be required or permitted to perform only duties that cannot be left unattended and cannot be performed by another learner.
  - (3) A learner must be remunerated-
    - (a) for a meal interval in which the learner is required to work or is required to be available for work; and
    - (b) for any portion of a meal interval that is in excess of 75 minutes, unless the learner lives on the premises at which the workplace is situated.
  - (4) For the purposes of this clause, work is continuous unless it is interrupted by an interval of at least 60 minutes.
  - (5) An agreement in writing may-
    - (a) reduce the meal interval to not less than 30 minutes;

- (b) dispense with a meal interval for a learner who works fewer than six hours on a day.

### **DAILY AND WEEKLY REST PERIOD**

- 14.** (1) An employer must allow a learner-
- (a) a daily rest period of at least twelve consecutive hours between ending and recommencing work; and
  - (b) a weekly rest period of at least 36 consecutive hours, which, unless otherwise agreed, must include Sunday.
- (2) A daily rest period in terms of subclause (1)(a) may, by written agreement, be reduced to 10 hours for a learner-
- (a) who lives on the premises at which the workplace is situated; and
  - (b) whose meal interval lasts for at least three hours.
- (3) Despite subclause (1)(b), an agreement in writing may provide for-
- (a) a rest period of at least 60 consecutive hours every two weeks; or
  - (b) a learner's weekly rest period to be reduced by up to eight hours in any week if the rest period in the following week is extended equivalently.

### **PAY FOR WORK ON SUNDAY**

- 15.** (1) An employer must pay a learner who works on a Sunday at double the learner's allowance for each hour worked, unless the learner ordinarily works on a Sunday, in which case the employer must pay the learner at one and one-half times the learner's allowance for each hour worked.
- (2) If a learner works less than the learner's ordinary shift on a Sunday and the payment that the learner is entitled to in terms of subclause (1) is less than the learner's ordinary daily allowance, the employer must pay the learner the learner's daily allowance.
- (3) Despite subclauses (1) and (2), an agreement may permit an employer to grant a learner who works on a Sunday paid time off equivalent to the difference in value between the pay received by the learner for working on the Sunday and the pay that the learner is entitled to in terms of subclauses (1) and (2).
- (4) Any time worked on a Sunday by a learner who does not ordinarily work on a Sunday is not taken into account in calculating a learner's ordinary hours of work in terms of clause 9 (1) and (2), but is taken into account in calculating

the overtime worked by the learner in terms of clause 10 (1)(b).

- (5) If a shift worked by a learner falls on a Sunday and another day, the whole shift is deemed to have been worked on the Sunday, unless the greater portion of the shift was worked on the other day, in which case the whole shift is deemed to have been worked on the other day.
- (6) (a) An employer must grant paid time off in terms of subclause (3) within one month of the learner becoming entitled to it.
- (b) An agreement in writing may increase the period contemplated by paragraph (a) to 12 months.

## **NIGHT WORK**

- 16. (1)** In this clause, 'night work' means work performed after 18:00 and before 06:00 the next day.
- (2) An employer may only require or permit a learner to perform night work, if so agreed, and if-
    - (a) the learner is compensated by the payment of an allowance, which may be a shift allowance, or by a reduction of working hours; and
    - (b) transportation is available between the learner's place of residence and the workplace at the commencement and conclusion of the learner's shift.
  - (3) An employer who requires a learner to perform work on a regular basis after 23:00 and before 06:00 the next day must-
    - (a) inform the learner in writing, or orally if the learner is not able to understand a written communication, in a language that the learner understands-
      - (i) of any health and safety hazards associated with the work that the learner is required to perform; and
      - (ii) of the learner's right to undergo a medical examination in terms of paragraph (b);
    - (b) at the request of the learner, enable the learner to undergo a medical examination, for the account of the employer, concerning those hazards-
      - (i) before the learner starts, or within a reasonable period of the learner starting, such work; and
      - (ii) at appropriate intervals while the learner continues to perform

such work; and

- (c) transfer the learner to suitable day work within a reasonable time if-
  - (i) the learner suffers from a health condition associated with the performance of night work; and
  - (ii) it is practicable for the employer to do so.
- (4) For the purposes of subclause (3), a learner works on a regular basis if the learner works for a period of longer than one hour after 23:00 and before 06:00 at least five times per month or 50 times per year.
- (5) The record of any medical examination performed in terms of this determination must be kept confidential and may be made available only-
  - (a) in accordance with the ethics of medical practice;
  - (b) if required by law or court order; or
  - (c) if the employee has in writing consented to the release of that information.

## **PUBLIC HOLIDAYS<sup>2</sup>**

- 17.** (1) An employer may not require a learner to work on a public holiday except in accordance with an agreement.
- (2) If a public holiday falls on a day on which a learner would ordinarily work, an employer must pay-
  - (a) a learner who does not work on the public holiday, at least the allowance that the learner would ordinarily have received for work on that day;
  - (b) a learner who does work on the public holiday-
    - (i) at least double the amount referred to in paragraph (a); or
    - (ii) if it is greater, the amount referred to in paragraph (a) plus the amount earned by the learner for the time worked on that day.
- (3) If a learner works on a public holiday on which the learner would not ordinarily work, the employer must pay that learner an amount equal to-
  - (a) the learner's daily allowance; plus

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<sup>2</sup> In terms of section 2(2) of the Public Holidays Act, 1994 (Act 36 of 1994), a public holiday is exchangeable for any other day, which is fixed by agreement or agreed to between the employer and the employee.

- (b) the amount earned by the learner for the work performed that day.
- (4) An employer must pay a learner for a public holiday on the learner's usual pay day.
- (5) If a shift worked by a learner falls on a public holiday and another day, the whole shift is deemed to have been worked on the public holiday, but if the greater portion of the shift was worked on the other day, the whole shift is deemed to have been worked on the other day.

### **EMERGENCY WORK**

- 18. (1) An employer may only require or permit a learner to work in excess of the limits on working times prescribed in clauses 8 to 17 in order to perform work which is required to be done without delay owing to circumstances for which the employer could not reasonably have been expected to make provision and which cannot be performed by employees during their ordinary working hours of work.
- (2) Any work that any learner performs in terms of subclause (1) must be remunerated-
  - (a) at overtime rates in accordance with clause 10(2), or
  - (b) if it is performed on a Sunday or on a public holiday at the applicable rate in terms of clause 15 or 17 respectively.

### **ANNUAL LEAVE**

- 19. (1) A learner who has entered into a learnership agreement in respect of learnership requiring more than 120 credits is entitled to one week's paid leave for every 40 credits that the learner earns during the learnership or every four months worked whichever is the lesser.
- (2) A learner is entitled to take leave referred to in subclause (1) during learnership.
- (3) A learner who has accumulated sufficient leave is entitled to take up to three weeks leave consecutively in any year of the learnership.
- (4) Unless a learner elects to accumulate leave for the purpose of subclause (3), an employer must grant leave not later than four months after the leave was earned.
- (5) An employer may not require or permit a learner to take annual leave during-

- (a) any other period of leave to which the learner is entitled in terms of clauses 21, 24 and 26; or
  - (b) any period of notice of termination of learnership.
- (6) Despite subclause (5), an employer must permit a learner, at the learner's written request, to take leave during a period of unpaid leave.
- (7) An employer may reduce a learner's entitlement to leave by the number of days of occasional leave on full remuneration granted to the learner at the learner's request.
- (8) An employer must grant a learner an additional day of paid leave if a public holiday falls on a day during a learner's annual leave on which the learner would ordinarily have worked.
- (9) An employer may not require or permit a learner to work for the employer during any period of annual leave.
- (10) Leave must be taken-
- (a) in accordance with an agreement between the employer and learner;  
or
  - (b) if there is no agreement in terms of paragraph (a), at a time determined by the employer in accordance with this clause.
- (11) An employer may not pay a learner instead of granting paid leave in terms of this clause except-
- (a) on termination of learnership; and
  - (b) in accordance with clause 31(b).

## **PAY FOR ANNUAL LEAVE**

- 20.** (1) An employer must pay a learner leave pay at least equivalent to the remuneration that the learner would have received for working for a period equal to the period of annual leave, calculated at the learner's rate of remuneration immediately before the beginning of the period of leave.
- (2) For the purposes of calculating a learner's leave pay, a learner's remuneration-

- (a) includes the cash value of any payment in kind that forms part of the learner's remuneration unless the learner receives that payment in kind during the period of leave; but
  - (b) excludes-
    - (i) gratuities;
    - (ii) allowances paid to a learner for the purposes of enabling a learner to work; and
    - (iii) any discretionary payments not related to the learner's hours of work or work performance.
- (3) An employer must pay a learner leave pay-
- (a) before the beginning of the period of leave; or
  - (b) by agreement, on the learner's usual pay day.

### **SICK LEAVE**

- 21.** (1) A learner is entitled to one day's paid sick leave for every 26 days, in which the learner works or receives training during a learnership.
- (2) Subject to clause 22, an employer must pay a learner for a day's sick leave-
- (a) the allowance the learner would ordinarily have received for work on that day; and
  - (b) on the learner's usual pay day.
- (3) An agreement may reduce the pay to which a learner is entitled in respect of any day's absence in terms of this clause if-
- (a) the number of days of paid sick leave is increased at least commensurately with any reduction in the daily amount of sick pay; and
  - (b) the learner's entitlement to pay-
    - (i) for any day's sick leave is at least 75 per cent of the allowance payable to the learner for the ordinary hours the learner would have worked on that day; and
    - (ii) for sick leave over the sick leave cycle is at least equivalent to the learner's entitlement in terms of subclause (2).

### **PROOF OF INCAPACITY**

- 22.** (1) An employer is not required to pay a learner in terms of clause 21 if the learner 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 learner was unable to work for the duration of the learner's absence on account of sickness or injury.
- (2) The medical certificate 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.
- (3) If it is not reasonably practicable for a learner who lives on the employer's premises to obtain a medical certificate, the employer may not withhold payment in terms of subclause (1) unless the employer provides reasonable assistance to the learner to obtain the certificate.

### **APPLICATION TO OCCUPATIONAL ACCIDENTS OR DISEASES**

- 23.** Clauses 21 and 22 do not apply to an inability to work caused by an accident or occupational disease as defined in the Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993), or the Occupational Diseases in Mines and Works Act, 1973 (Act 78 of 1973), except in respect of any period during which no compensation is payable in terms of those Acts.

### **MATERNITY LEAVE<sup>3</sup>**

- 24.** (1) (a) A learner is entitled to at least four consecutive months' maternity leave.
- (b) A learner is not entitled to receive her allowance during any period of maternity leave she takes.

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<sup>3</sup> In terms of section 187(1)(e) of the Labour Relations Act, 1995, the dismissal of an 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.

- (2) A learner 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 learner's health or that of her unborn child.
- (3) No learner may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
- (4) A learner 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 learner had commenced maternity leave at the time of the miscarriage or stillbirth.
- (5) A learner must notify an employer in writing, unless the learner is unable to do so, of the date on which the learner intends to-
  - (a) commence maternity leave; and
  - (b) return to work after maternity leave.
- (6) Notification in terms of subclause (5) must be given-
  - (a) at least four weeks before the learner intends to commence maternity leave; or
  - (b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.

## **PROTECTION OF LEARNERS BEFORE AND AFTER BIRTH OF A CHILD**

- 25. (1) No employer may require or permit a pregnant learner or a learner who is nursing her child to perform work that is hazardous to her health or the health of her child.
- (2) During a learner'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 learner is required to perform night work, as defined in clause 16 (1) 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.

## **FAMILY RESPONSIBILITY LEAVE**

- 26.** (1) This clause applies to a learner-
- (a) who has been in employment with an employer for longer than four months; and
  - (b) who works for at least four days a week for that employer.
- (2) An employer must grant a learner, during each annual leave cycle, at the request of the learner, three days' paid leave, which the learner is entitled to take-
- (a) when the learner's child is born;
  - (b) when the learner's child is sick; or
  - (c) in the event of the death of-
    - (i) the learner's spouse or life partner; or
    - (ii) the learner's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.
- (3) Subject to subclause (5), an employer must pay a learner for a day's family responsibility leave-
- (a) the allowance the learner would ordinarily have received for work on that day; and
  - (b) on the learner's usual pay day.
- (4) A learner may take family responsibility leave in respect of the whole or a part of a day.
- (5) Before paying a learner for leave in terms of this clause, an employer may require reasonable proof of an event contemplated in subclause (2) for which the leave was required.
- (6) A learner's unused entitlement to leave in terms of this clause lapses at the end of the annual leave cycle in which it accrues.
- (7) A collective agreement may vary the number of days and the circumstances under which leave is to be granted in terms of this clause.

## **CONTRACT OF EMPLOYMENT**

- 27.** (1) A contract of employment concluded between an employer and a learner in terms of section 18(2) of the Act must –
- (a) be in writing and be signed by the employer and the learner;
  - (b) be concluded when the learner commences employment; and

- (c) to the extent appropriate, contain the following particulars:
- (i) the full name and address of the employer;
  - (ii) the name of the learner and the learnership;
  - (iii) the place of work, and, where the learner is required or permitted to work at various places, an indication of this;
  - (iv) the date on which the employment began;
  - (v) the learner's ordinary hours of work and days of work, including the time that the learner is required to spend in study periods or theoretical learning sessions with the training provider;
  - (vi) the learner's allowance or the rate and method of calculating the allowance;
  - (vii) the rate of pay for overtime work;
  - (viii) any other cash payments that the learner is entitled to;
  - (ix) any payment in kind that the learner is entitled to and the value of the payment in kind;
  - (x) how frequently remuneration will be paid;
  - (xi) any deductions to be made from the learner's remuneration;
  - (xii) the leave to which the learner is entitled;
  - (xiii) the date when employment is to terminate;
  - (xiv) a list of any other documents that form part of the contract of employment, indicating a place that is reasonably accessible to the learner where a copy of each may be obtained.
- (2) The learner must be supplied with a copy of the contract of employment.
- (3) When any matter listed in subclause (1) changes-
- (a) the contract of employment must be revised to reflect the change;
  - (b) the employer and the learner must initial the change; and
  - (c) the learner must be supplied with a copy of the contract reflecting the change.
- (4) If a learner is not able to understand the written contract, the employer must ensure that it is explained to the learner in a language and in a manner that the learner understands.
- (5) A contract of employment in terms of this clause must be kept by the employer for a period of three years after the termination of the learnership.

## **INFORMING LEARNERS OF THEIR RIGHTS**

- 28.** An employer must display at the workplace where it can be read by learners a statement in the prescribed form of the learner's rights under this Act in the

official languages, which are spoken in the workplace.

### **KEEPING OF RECORDS**

- 29.** (1) Every employer must keep a record containing at least the following information:
- (a) the learner's name and learnership;
  - (b) the time worked by each learner;
  - (c) the remuneration paid to each learner;
  - (d) the date of birth of any learner under 18 years of age.
- (2) A record in terms of subclause (1) must be kept by the employer for a period of three years from the termination of the learnership.
- (3) No person may make a false entry in a record maintained in terms of subclause (1).

### **TERMINATION**

- 30.** (1) An employer may only terminate the contract of employment of a learner if–
- (a) the period of duration specified in the learnership agreement has expired;
  - (b) the learner successfully completes the learnership;
  - (c) the employer and learner have agreed in writing to terminate the learnership agreement, or if there is no such agreement the SETA which registered the agreement approves its termination; or
  - (d) the learner is fairly dismissed for a reason related to the learner's conduct or capacity as an employee.

### **PAYMENTS ON TERMINATION**

- 31.** (1) On termination of employment, an employer must pay a learner–
- (a) for any paid time off that the learner is entitled to in terms of clause 10 (3) or 15 (3) and that the learner has not taken;
  - (b) remuneration calculated in accordance with clause 20(2) for any period of leave due in terms of clause 19(1) that the learner has not taken.

### **CERTIFICATE OF SERVICE**

- 32.** (1) On termination of employment a learner is entitled to a certificate of service substantially in the form of annexure “A” stating-
- (a) the learner's full name;
  - (b) the name and address of the employer;
  - (c) a description of any council or sectoral employment standard by which the employer’s business is covered;
  - (d) the date of commencement and date of termination of the learners’ employment with the employer;
  - (e) a brief description of the training and work experience received by the learner;
  - (f) the remuneration at date of termination;
  - (g) if the learner so requests, the reason for termination of employment.

### **DISPUTES ABOUT THIS DETERMINATION**

- 33.** (1) A party dispute in terms of this determination may refer the dispute to the CCMA by submitting a completed Form 7.11 published in terms of the Labour Relations Act 66 of 1995.
- (2) The party who refers a dispute in terms of subclause (1) must satisfy the CCMA that a copy of the referral has been served on all the other parties to the dispute.
  - (3) The relevant provisions of Part C and D, Chapter VII of the Labour Relations Act 66 of 1995, read with the changes required by the context, apply in respect of a dispute referred to in terms of subclause (1).

### **KEEPING OF THE DETERMINATION FOR LEARNERS**

- 34.** (1) Every employer on whom this determination is binding must-
- (a) keep a copy of the determination available in the workplace at all times;
  - (b) make the copy available for inspection by a learner; and
  - (c) give a copy of the determination-
    - (i) to a learner who has paid the prescribed fee; and
    - (ii) free of charge, on request, to a learner who is a trade union representative or a member of a workplace forum.

ANNEXURE "A"

CERTIFICATE OF SERVICE

**DETERMINATION OF TERMS AND CONDITIONS OF EMPLOYMENT FOR LEARNERS**

**READ THIS FIRST**



**WHAT IS THE PURPOSE OF THIS FORM?**

This form is proof of learnership with an employer.

**WHO FILLS IN THIS FORM?**

The employer.

**WHERE DOES THIS FORM GO?**

To the learner.

**INSTRUCTIONS**

This form may be issued upon termination of learnership.

**NOTE**

The reason for termination of learnership must only be given if requested by the learner.

*This is only a model and not a prescribed form. Completing a document in another format containing the same information is sufficient compliance with clause 32.*

I .....  
(Name and designation of person)

of

.....  
(Full name of employer)

Address: .....  
.....

in the ..... (Trade)

declare that

.....  
(Full name of learner)

.....  
(I.D. no.)

was in learnership

from ..... until .....

as

.....  
(Type of learnership)

any other information.....

On termination of learnership this learner was earning: R.....

..... (Amount in words)

per hour  per day  per week  per fortnight  per month  per year

.....  
Employer's signature

.....  
Date