

**DEPARTMENT OF LABOUR**

No R.....

Date:.....

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

**SECTORAL DETERMINATION 11: TAXI SECTOR**

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, make a Sectoral Determination establishing conditions of employment and minimum wages for the Taxi Sector in South Africa, which appears in the schedule hereto and fix the 2<sup>nd</sup> Monday after publication as the date from which the provisions of the said Sectoral Determination shall be binding.

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

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**PART A: APPLICATION****1. Scope Of Application**

- (1) Subject to sub-clauses (3) and (4), the determination applies to the employment of all employees working in the taxi sector, as defined.
- (2) This determination applies throughout the Republic of South Africa.
- (3) For the purposes of this determination, an employee in the taxi sector includes, but is not limited to –
  - (a) taxi drivers;
  - (b) administrative staff;
  - (c) rank marshalls;
  - (d) employees engaged to clean vehicles, premises, machinery, tools, or any other articles used in relation to taxi operations;
  - (e) employees who check and collect fares from passengers and who manage the loading of passengers into different taxi vehicles.
- (4) The determination does not apply to –
  - (a) owner-drivers;
  - (b) employers and employees in the metered taxi sector;
  - (c) any person employed in activities covered by another sectoral determination or by a bargaining council agreement in terms of the Labour Relations Act, 1995.
- (5) The provisions of the Basic Conditions of Employment Act, 1997 apply to all employees and employers in the sector covered by this determination in respect of any matter that is not regulated by this sectoral determination.
- (6) Only clauses 2 and 3 setting minimum wages and regulating annual increases to minimum wages, apply to employees who work for an employer in the taxi sector for less than 24 hours in a month.

**PART B: MINIMUM WAGES****2. Minimum Wage Level**

- (1) With effect from 1<sup>st</sup> July 2005 an employer must pay an employee, at least the minimum wage prescribed in this clause.
- (2) An employer must pay an employee who works 48 hours per week, at least the monthly wage set out in Table 1 below -
- (3) Employees who work less than 48 hours per week must be paid at least the hourly rate set out in Table 1 below, times the number of hours worked in a month.
- (4) If an employee who works 48 hours per week is paid weekly or fortnightly, the employer must calculate the weekly or fortnightly wage in such a way as to ensure that the employee is not paid less than the minimum monthly wage set out in sub-clause (2).

**3. Annual Increase**

<b>Table 1: Minimum wages for employees in the Taxi Sector</b>							
<b>Minimum rate for the period</b> 1 July 2005 to 30 June 2006				<b>Minimum rate for the period</b> 1 July 2006 to 30 June 2007		<b>Minimum rate for the period</b> 1 July 2007 to 30 June 2008	
	Monthly	Weekly	Hourly				
Drivers	R 1,350.00	R311.56	R6.49	Drivers	Previous year's wage +CPIX*+2%	Drivers	Previous year's wage +CPIX*+2%
Admin workers	R 1,350.00	R311.56	R6.49	Admin workers	Previous year's wage +CPIX*+2%	Admin workers	Previous year's wage +CPIX*+2%
Rank marshals	R 1,080.00	R249.24	R5.19	Rank marshals	Previous year's wage +CPIX*+2%	Rank marshals	Previous year's wage +CPIX*+2%
Workers not elsewhere specified	R 945.00	R218.09	R4.54	Workers not elsewhere specified	Previous year's wage +CPIX*+2%	Workers not elsewhere specified	Previous year's wage +CPIX*+2%

\*CPIX is the Consumer Price Index, excluding interest rates on mortgage bonds for metropolitan and other urban areas as reported by Statistics SA six weeks before the increases become effective.

- (1) Subject to sub-clause (3), the minimum wage –
  - (a) set in terms of clause 2 will increase by the CPIX + 2% for the period of 12 months commencing one year after this determination comes into effect;
  - (b) set in terms of paragraph (a) will increase by the CPIX + 2% for the period commencing two years after this determination comes into effect.
- (2) For the purposes of this clause, the CPIX is the Consumer Price Index<sup>1</sup> as reported by Statistics South Africa six weeks before the increase becomes effective.
- (3) If the CPIX is 10% or higher at a date contemplated in sub-clause (2), the minimum wage will be increased by the CPIX and the increase determined in sub-clause (1)(a) or (b) will not apply.

**4. Calculation Of Wages**

- (1) The wages of an employee must be calculated by reference to that employee's ordinary hours of work.
- (2) For the purposes of any calculation in terms of this determination –
  - (a) the daily wage of an employee is obtained by multiplying the hourly wage by the number of ordinary hours, worked in a day;
  - (b) the weekly wage of an employee is obtained by multiplying the hourly wage by the number of ordinary hours worked in a week.

<sup>1</sup> Defined by Statistics South Africa as the Consumer Price Index excluding interest rates on mortgage bonds for the historical metropolitan and other urban areas.

- (c) the monthly wage of an employee is obtained by multiplying the weekly wage by four and one third.

#### **5. Payment Of Wages**

- (1) An employer must pay an employee covered by the determination –
  - (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 employee.
- (2) Any payment in cash or by cheque must be given to each employee –
  - (a) at the workplace or at a place agreed to in writing by the employee;
  - (b) during the employee's working hours; and
  - (c) in a sealed envelope which becomes the property of the employee.
- (3) An employer must pay an employee on the normal payday agreed to in writing by the employee.

#### **6. Information Concerning Pay**

- (1) On every payday, the employer must give the employee a statement showing –
  - (a) the employer's name and address;
  - (b) the employee's name and occupation;
  - (c) the employee's wage rate, overtime rate and allowance rate;
  - (d) the period in respect of which payment is made;
  - (e) the number of ordinary hours worked by the employee during that period;
  - (f) the number of overtime hours worked by the employee during that period;
  - (g) the number of hours worked by the employee on a public holiday or on a Sunday;
  - (h) the employee's total wage for the period;
  - (i) details of any other pay arising out of the employee's employment;
  - (j) details of any deductions made;
  - (k) the employer's registration number with the Unemployment Insurance Fund and the employer's contribution to the Fund; and
  - (l) the actual amount paid to the employee.
- (2) An employer must retain a copy or record of each statement for three years.
- (3) Unless there is an agreement in writing to the contrary, an employer must maintain an attendance register which indicates the hours of work, overtime, night work and work on Sundays and public holidays in respect of every employee.
- (4) An attendance register maintained in terms of sub-clause (3), must be kept by the employer for a period of three years from the date of the last entry in the record.

#### **7. Prohibited Acts Concerning Pay**

- (1) An employer may not withhold any payment from an employee or require an employee to pay the employer or any other person in respect of –
  - (a) the employment or training of that employee;
  - (b) the supply of any work equipment or tools; or

- (c) the supply of anything necessary to ensure compliance with health and safety requirements.<sup>2</sup>
- (2) An employer may not levy a fine against an employee.
- (3) An employer may not require or permit an employee to –
  - (a) repay any amount paid except for overpayments previously made by the employer resulting from an error in calculating the employee's pay; or
  - (b) acknowledge receipt of an amount greater than the pay actually received.

## **8. Deductions**

- (1) An employer may not make any deduction from an employee's pay except –
  - (a) on the written request of an employee, a deduction of an amount which the employer has paid or undertaken to pay to a third party including, but not limited to –
    - (i) any holiday, sick, medical, insurance, savings, provident fund or pension fund of which the employee is a member;
    - (ii) any registered trade union in respect of subscriptions;
    - (iii) any bank, building society, insurance business, registered financing institution, or local authority in respect of a payment on a loan granted to the employee to acquire a dwelling;
    - (iv) the owner or agent in respect of the rent of a dwelling or accommodation occupied by the employee;
  - (b) with the agreement of the employee, a deduction, not exceeding one-tenth of the wage due to the employee on the pay-day concerned, towards the repayment of any amount loaned or advanced to the employee by the employer;
  - (c) a deduction of any amount which the employer is required to make by law or in terms of a court order or arbitration award; or
  - (d) with the written agreement of the employee, and subject to sub-clause (2), a deduction to reimburse an employer for loss or damage.
- (2) A deduction in terms of sub-clause (1)(d) may only be made if –
  - (a) the loss or damage occurred in the course of employment and was due to the fault of the employee;
  - (b) the employer has followed a fair procedure and has given the employee a reasonable opportunity to show why the deduction 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 deduction from the employee's pay in terms of this sub-clause does not exceed one-quarter of the employee's total wage.

## **9. Boarding Allowances**

- (1) If an employer requires an employee to sleep over at a place other than where the employee resides, the employer must either –
  - (a) pay the employee an accommodation allowance of R200 per night; or
  - (b) reimburse the employee's reasonable accommodation expenses; or
  - (c) with the agreement of the employee, accommodate the employee in reasonable accommodation.

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<sup>2</sup> An employer may not make any deduction from remuneration or require or permit an employee to make any payment to the employer or any other person in respect of anything that the employer is required to do in the interests of the health and safety of an employee (section 23 of the Occupational Health and Safety Act, 85 of 1993).

- (2) Unless agreed otherwise, if an employee is paid an accommodation allowance in terms of sub-clause (1), the allowance must be paid before the employee starts a journey.
- (3) If the employer chooses to reimburse the employee's reasonable expenses in terms of sub-clause 1(b) –
  - (a) the employer must do so in terms of a framework established by the employer and communicated to all affected employees;
  - (b) the employee must be paid an amount estimated to cover those costs before starting a journey; and
  - (c) on return, the employee must produce proof of any expenditure in the form of invoices or receipts.

**PART C: PARTICULARS OF EMPLOYMENT****10. Written Particulars Of Employment**

- (1) An employer must supply an employee, when the employee starts work with the following particulars in writing -
  - (a) the full name and address of the employer;
  - (b) the name and occupation of the employee, or a brief description of the work for which the employee is employed;
  - (c) the place of or places where the employee is required or permitted to work or, in the case of a driver, the place where the driver is required to report for work and the routes on which the driver is to drive;
  - (d) the date on which employment began;
  - (e) the employee's ordinary hours of work and days of work;
  - (f) the employee's wage or the rate and method of payment;
  - (g) the rate of pay for overtime work;
  - (h) any other cash payments that the employee is entitled to;
  - (i) any payment in kind received by the employee;
  - (j) how frequently wages will be paid;
  - (k) any deductions to be made from the employee's wages;
  - (l) the leave to which the employee is entitled;
  - (m) the period of notice required to terminate employment, or if employment is for a specific period, the date when employment is to terminate.
- (2) If an employee is not able to understand the written particulars, the employer must ensure that they are explained to the employee in a language and in a manner that the employee understands.
- (3) The employer must revise the written particulars if there is any change in the employee's terms of employment.
- (4) An employer must retain a copy of the written particulars while the employee is employed and for three years thereafter.



**PART D: HOURS OF WORK****11. Ordinary Hours Of Work**

- (1) An employer may not require or permit an employee to work more than –
  - (a) 48 hours in any week; and
  - (b) ten hours on any day if the employee works for five days or less in a week;<sup>3</sup> or
  - (c) eight hours in any day if the employee works for more than five days in any week.
- (2) In respect of employees who regularly work on Sundays or public holidays, work on those days is part of ordinary hours worked unless there is an agreement to the contrary, except that work on Sundays or public holidays must be paid at the rates set out in clauses 14 and 15.

**12. Overtime**

- (1) An employer may not require or permit an employee -
  - (a) to work overtime except in accordance with an agreement concluded by the employer and the employee;
  - (b) to work more than 15 hours overtime a week; or
  - (c) to work more than 12 hours, including overtime, on any day.

**13. Payment Of Overtime**

- (1) An employer must pay an employee at least one and one-half times the employee's wage for overtime worked.
- (2) Despite sub-clause (1), an agreement may provide for an employer to -
  - (a) pay an employee not less than the employee's ordinary wage for overtime worked and grant the employee at least 30 minutes time off on full pay for every hour of overtime worked; or
  - (b) grant an employee at least 90 minutes paid time off for each hour of overtime worked.
- (3) An employer must grant paid time off in terms of sub-clause (2) within one month of the employee becoming entitled to it.
- (4) An agreement in writing may increase the period contemplated by sub-clause (3) to twelve months.
- (5) An agreement concluded in terms of sub-clause (4) with an employee when the employee commences employment, or during the first three months of employment, is only valid for one year.
- (6) Any overtime worked on a Sunday or public holiday must be paid in accordance with the provisions for Sundays and public holidays in clauses 14 and 15.

**14. Work On Sundays**

- (1) An employer must pay an employee who works on a Sunday –
  - (a) if the employee works for five hours or less, the employee's ordinary daily wage;
  - (b) if the employee works for more than five hours, one and a half times the employee's ordinary daily wage.
- (2) Despite sub-clause (1), an agreement may permit an employer to grant an employee who works on a Sunday paid time off equivalent to the difference in value between the pay received by the employee for working on the Sunday and the pay that the employee is entitled to in terms of sub-clause (1).

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<sup>3</sup> As an employee may not work more than 48 ordinary hours of work a week, an employee who works for 10 hours on four days, for example, may not work more than 8 hours on the fifth day.

- (3) Any time worked on a Sunday by an employee who does not ordinarily work on a Sunday is not taken into account in calculating an employee's ordinary hours of work in terms of clause 11, but is taken into account in calculating the overtime worked by the employee in terms of clause 12.
- (4) If a shift worked by an employee falls on a Sunday and another day, the whole shift is deemed to have been worked on the Sunday, unless the greater portion of the shift was worked on the other day, in which case the whole shift is deemed to have been worked on the other day.
- (5)
  - (a) An employer must grant paid time off in terms of sub-clause (2) within one month of the employee becoming entitled to it.
  - (b) An agreement in writing may increase the period contemplated by paragraph (a) to 12 months.
  - (c) An agreement concluded in terms of paragraph (b) with an employee when the employee commences employment, or during the first three months of employment, is only valid for one year.

#### **15. Work On Public Holidays<sup>4</sup>**

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

#### **16. Night Work**

- (1) For the purposes of this determination, "night work" means work performed after 20:00 and before 05:00 the next day.
- (2) An employer may only require or permit an employee to perform night work, by agreement and if –
  - (a) the employee 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 employee's place of residence and the workplace at the commencement and conclusion of the employee's shift.
- (3) An employer who requires an employee to perform work on a regular basis after 20:00 and before 05:00 the next day must –

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<sup>4</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.

- (a) inform the employee in writing, or orally if the employee is not able to understand a written communication, in a language that the employee understands -
    - (i) of any health and safety hazards associated with the work that the employee is required to perform; and
    - (ii) of the employee's rights to undergo a medical examination in terms of paragraph (b);
  - (b) at the request of the employee, enable the employee to undergo a medical examination, for the account of the employer, concerning those hazards -
    - (i) before the employee starts, or within a reasonable period of the employee starting, such work; and
    - (ii) at appropriate intervals while the employee continues to perform such work; and
  - (c) transfer the employee to suitable day work within a reasonable time if -
    - (i) the employee suffers from a health condition associated with the performance of night work; and
    - (ii) it is practicable for the employer to do so.
- (4) Sub-clause (3) applies to employees who work after 20:00 and before 05:00 at least five times per month or 50 times per year.

#### **17. Meal Intervals**

- (1) Subject to sub-clause (3), an employer must give an employee who works continuously for more than five hours, a meal interval of at least one continuous hour.
- (2) The meal interval may be taken at a specific agreed time or whenever it is practicable to do so but may not be taken later than six hours after the employee began work.
- (3) For the purposes of sub-clause (1), a driver is deemed not to be working continuously if for a period of at least one hour the driver's only duty is to be in charge of the vehicle, which the driver drives, or in charge of its load.
- (4) During a meal interval, an employee may be required or permitted to perform only those duties that cannot be left unattended and cannot be performed by another employee.
- (5) An employee must be paid for a meal interval in which the employee is required to be available for work.
- (6) An agreement in writing may-
  - (a) reduce the meal interval to not less than 30 minutes;
  - (b) dispense with a meal interval for an employee who works fewer than six hours on a day.
- (7) Whenever an employer is required to give an employee a second meal interval because of overtime worked, that interval may be reduced to not less than 15 minutes.

#### **18. Rest Period**

- (1) An employer must grant an employee –
  - (a) a daily rest period of at least twelve consecutive hours between ending work and starting work the next day;
  - (b) a weekly rest period of at least thirty-six consecutive hours, which, unless otherwise agreed, must include a Sunday.
- (2) A daily rest period in terms of sub-clause 1 (a) may, in terms of a written agreement, be reduced to ten hours for an employee -
  - (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 sub-clause (1)(b), an agreement in writing may provide for–
  - (a) a rest period of at least sixty consecutive hours every second week; or
  - (b) the reduction of an employee’s weekly rest period by up to eight hours in any week if the rest period in the following week is extended equivalently.

**PART E: LEAVE****19. Annual Leave**

- (1) An employer must grant an employee –
  - (a) at least three weeks leave on full pay in respect of each twelve months of employment (the 'annual leave cycle');
  - (b) by agreement, at least one day of annual leave on full pay for every 17 days on which the employee worked or was entitled to be paid; or
  - (c) by agreement, one hour of annual leave on full pay for every 17 hours on which the employee worked or was entitled to be paid.
- (2) Leave granted in terms of sub-clause (1)(a) –
  - (a) must be granted not later than six months after the end of the annual leave cycle;
  - (b) must be granted over a continuous period, if requested by the employee.
- (3) An employer must grant an employee an additional day of paid leave if a public holiday falls on a day during an employee's annual leave on which the employee would otherwise have worked.
- (4) An employer may reduce an employee's entitlement to annual leave by the number of days of occasional leave on full pay granted to the employee at the employee's request in that annual leave cycle.
- (5) Annual leave must be taken -
  - (a) at a time agreed between the employer and the employee; or
  - (b) if there is no agreement in terms of paragraph (a), at a time determined by the employer in accordance with this section.
- (6) An employer may not require or permit an employee to take annual leave during -
  - (a) any other period of leave to which the employee is entitled in terms of this determination; or
  - (b) any period of notice of termination of employment.
- (7) An employer may not require or permit an employee to work for the employer during any period of annual leave.
- (8) An employer may not pay an employee instead of granting paid leave in terms of this clause except on termination of employment in terms of clause 27(1)(b).
- (9) An employer must pay an employee leave pay at least equivalent to the remuneration the employee would have received for working for a period equal to the period of leave, calculated at the employee's remuneration rate immediately before the beginning of the period of leave.
- (10) An employer must pay an employee leave pay before the beginning of the period of leave.

**20. Sick Leave**

- (1) For the purpose of this clause "sick leave cycle" means the period of 36 months employment with the same employer immediately following –
  - (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 day's 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 worker'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 three consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the absence on account of sickness or injury.
- (7) Within the scope of their professional expertise, a medical certificate in terms of sub-clause (6) may be provided by any person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament, including -
  - (a) a medical practitioner;
  - (b) a clinic nurse practitioner;
  - (c) a traditional healer;<sup>5</sup>
  - (d) a community health worker; or
  - (e) a psychologist.

## **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, grandchild or sibling.
- (3) An employer and an employee may conclude a written agreement in terms of which an employer may reduce an employee's entitlement to annual leave in terms of clause 19 of this determination by the number of days of family responsibility leave on full remuneration granted to the employee at the employee's request in terms of this clause.
- (4) An employee may take family responsibility leave in respect of the whole or part of the day.
- (5) Subject to sub-clause (6), 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 payday.
- (6) 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.

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<sup>5</sup> Until such time as the Interim Traditional Health Practitioners Council of the Republic of South Africa is established in terms of the Traditional Health Practitioners Act, 2004 an employer may accept a certificate from a traditional healer notwithstanding the fact that the traditional healer will not be registered with a professional council established by an Act of Parliament.

- (7) 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<sup>6</sup>**

- (1) An employee is entitled to at least four consecutive months' 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 the employee 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 -
- (a) at least four weeks before the employee intends to commence maternity leave; or
  - (b) if it is not reasonably practicable to give notice in terms of sub-clause 6(a), 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.
- (8) During an 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 the health and safety of her child; and
  - (b) it is practicable for the employer to do so.

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<sup>6</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. An employee may claim maternity benefits in terms of the Unemployment Insurance Act, 2001.

**PART F: PROHIBITION OF EMPLOYMENT OF CHILDREN AND CHILD LABOUR****23. Prohibition Of Child Labour**

- (1) No person may employ a child in the taxi sector -
  - (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.<sup>7</sup>
- (2) No person may employ a child in any employment in the taxi sector -
  - (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.

**24. Prohibition Of Forced Labour**

- (1) Subject to the Constitution of the Republic of South Africa, all forced labour is prohibited.
- (2) No person may, for their own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of sub-clause (1).

**25. Offences**

A person, who employs a child in contravention of clause 22 or engages in any form of forced labour in contravention of clause 23, 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.

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<sup>7</sup> 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.



## **PART G: TERMINATION OF EMPLOYMENT**

### **26. Notice Of Termination Of Employment**

- (1) A contract of employment terminable at the instance of a party may be terminated 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)
  - (a) Notice of termination of a contract of employment must be given in writing except when it is given by an illiterate employee.
  - (b) 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.
- (4) 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 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.
- (5) 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.

### **27. Payment Instead Of Notice**

- (1) Instead of giving an employee notice in terms of this clause, an employer may pay the employee the wage 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 wage referred to in sub-clause (1), unless the employer and the employee agree otherwise.

### **28. 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 clauses 13(2) or 14(2) 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 -
    - (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).

**29. 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, calculated in accordance with clause 2.
- (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.

**30. 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 requests, the reason for termination of employment.

## PART H: GENERAL PROVISIONS

### 31. Keeping Of Sectoral Determination

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.

### 32. Presumption As To Who Is An Employee

- (1) A person who works for, or renders services to, any other person in the taxi sector is presumed, until the contrary is proved, to be an employee, regardless of the form of the contract, if any one or more of the following factors is present -
- (a) the manner in which the person works is subject to the control or direction of another person;
  - (b) the person's hours of work are subject to the control or direction of another person;
  - (c) the person forms part of the employer's organisation;
  - (d) the person has worked for that other person for an average of at least 40 hours per month over the last three months;
  - (e) the person is economically dependant on the other person for whom that person works or renders services;
  - (f) the person is provided with tools of trade or work equipment by the other person; or
  - (g) the person only works for or renders services to one person.

### 33. Cancellation Of Wage Determination

Wage determination 452 for the Road Passenger Transportation Trade is cancelled with effect from the date that this determination becomes binding.

### 34. Definitions

- (1) Unless the context indicates otherwise –

**"administrative staff"** are employees who are responsible for general administrative functions including typing, filing, faxing, photocopying, answering the telephone, and receiving visitors;

**"agreement"** includes a collective agreement, and any agreement in terms of this determination;

**"Basic Conditions of Employment Act"** means the Basic Conditions of Employment Act, 1997 (Act 75 of 1997)

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

**"child"** means a person who is under 18 years of age;

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

**"dispute"** includes an alleged dispute;

**"driver"** means an employee, other than a chauffeur, who drives a motor vehicle, excluding a bus, and for the purposes of this determination the expression "drives a motor vehicle" includes all periods of driving, any time spent by the driver on work connected with the vehicle or the load and all periods during which the driver is obliged to remain at his or her post in readiness to drive, and "taxi driver" has the same meaning;

**"employee"** means –

- (a) any person who is employed mainly or wholly in the taxi sector, who works for another person or for the State and who receives, or is entitled to receive, any remuneration, but excludes an independent contractor; and

- (b) any other person who in any manner assists in carrying on or conducting the business of an employer in the taxi sector;

**"hours of work"** includes all periods during which the driver of a vehicle or employees accompanying a driver are –

- (a) engaged in driving for purposes of transporting passengers;  
 (b) engaged with other work connected with the vehicle or the load;  
 (c) obliged to remain at or near their vehicles in readiness to work;

**"metered taxi industry"** means the taxi industry where –

- (a) fares are dependent on the mileage traveled;  
 (b) mileage is mechanically recorded by means of a meter;  
 (c) customers determine the routes and timing of operations;

**"night work"** means work performed between 20h00 and 05h00;

**"ordinary hours of work"** means the hours of work permitted in terms of clause 11;

**"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, family responsibility leave or maternity leave that an 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);

**"rank marshals"** are employees who work at a taxi rank and who manage the allocation of passengers to drivers on a particular route according to an agreed roster;

**"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;

**"taxi sector"** means the sector in which employers and employees are associated for the purpose of conveying for reward on any public road any person by means of a self-propelled vehicle intended to carry not more than 35 persons, including the driver simultaneously, and includes all operations incidental thereto or consequent thereon but excludes the metered taxi industry;

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

**"week"** in relation to an employee, means the period of seven days within which the working week of that employee falls;

**"workplace"** means the employer's premises and any other place where the employee works, such as a taxi rank.

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

**ANNEXURE B**

**SECTORAL  
DETERMINATION  
11: TAXI SECTOR,  
SOUTH AFRICA**

**Clause 6**

**READ THIS FIRST**



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

This form is a record of information about remuneration.

**WHO FILLS IN THIS FORM?**

The employer.

**WHERE DOES THIS FORM GO?**

To the employee

**INSTRUCTIONS**

This information must be given to each employee with the remuneration in a sealed envelope which becomes the property of the employee

- At the workplace or at a place agreed to by the employee; and
- During the employee's ordinary working hours or within 15 minutes of the commencement or conclusion of those hours.
- The full value of remuneration including payment in kind must be specified
- *This is only a model and not a prescribed form.* Completing a document in another format containing the same information is sufficient compliance with this clause.

**PAYSLIP**

**NAME OF EMPLOYER:** .....

**ADDRESS:** .....

**NAME OF EMPLOYEE:** .....

**ID NO:**.....**OCCUPATION/GRADE:**.....

**PAY PERIOD: FROM:**.....**TO:**.....

**BASIC WAGE:** .....

**MANNER OF PAYMENT:**     PER HOUR     PER DAY     PER WEEK  
*(Tick applicable block)*     PER FORT NIGHT     PER MONTH

	Rate	No of hours	Rand earned
Ordinary hours worked	.....	.....	.....
Overtime worked	.....	.....	.....
Sundays time worked	.....	.....	.....
Public holidays time worked	.....	.....	.....
Payment in kind	.....	.....	.....
Standby	.....	.....	.....
Allowances (specify)	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
<b>TOTAL:</b>			

<b>DEDUCTIONS:</b>	<b>P.A.Y.E</b>	.....
	<b>UIF</b>	.....
<b>OTHER (Full detail)</b>	.....	.....
	.....	.....
	.....	.....
<b>TOTAL:</b>		

**TOTAL AMOUNT DUE**

**ANNEXURE C**

**SECTORAL  
DETERMINATION 11:  
TAXI WORKER SECTOR,  
SOUTH AFRICA**

**Clause 30**

**READ THIS FIRST**



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

This form is proof of employment with an employer.

**WHO FILLS IN THIS  
FORM?**

The employer.

**WHERE DOES THIS FORM  
GO?**

To the employee.

**INSTRUCTIONS**

This form may be issued upon termination of employment.

**NOTE**

In terms of clause 30 (g) the reason for termination of employment must only be given if requested by the employee.

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

**CERTIFICATE OF SERVICE**

I, .....  
(name and designation of person)

Of

.....  
(full name of employer)

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

In the .....(trade)  
declare that

.....  
(full name of employee)

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

was in employment

from: .....until.....

as

.....  
(type of work/occupation)

any other information.....

On termination of service this employee was earning: R.....

..... (amount in words)

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

.....  
**Employer's signature**

.....  
**Date**

**WRITTEN PARTICULARS OF EMPLOYMENT**

**Entered Into Between :**

.....  
**(herein after referred to as "the employer"**

**Address of employer** .....  
.....  
.....  
.....

**and**

.....  
**(herein after referred to as "the employee"**

**Commencement**

This contract will begin on ..... and continue until terminated as set out in clause 4.

**Place of work**

.....

**3. Job description**

Job Title .....

Duties .....  
.....  
.....  
.....  
.....  
.....

**4. Termination of employment (See Guidelines 1 and 2)**

Termination of this contract will be ..... weeks. Notice must be given in writing. In the case where an employee is illiterate notice may be given by that employee verbally.

- The parties agree that on termination of the contract of employment, the employer shall furnish the employee with a certificate of service and the UI 19.

**5. Wage (See Guidelines 3 and 4)**

5.1 The employees` wage shall be paid in cash on the last working day of every week/month and shall be: **R.....**

5.2 The employee shall be entitled to the following Allowances/payment in kind: **R.....**

5.2.1 A weekly/monthly transport allowance of **R.....**

5.3 The total value of the above remuneration shall be  
*(The total of clauses 5.1 to 5.2.1 )*  
*(Adjust or delete clauses 5.2 to 5.2.1 as needed)*

Sample particulars of employment  
Provided free of charge  
by the Department of Labour

5.4 *The employer shall review the employee's salary/wage on or before 1 July of every year.*

**6. Hours of work (See Guidelines 5)**

6.1 Normal working hours will be ..... hours per week, made up as follows:

Monday / Tuesday / Wednesday / Thursday / Friday: .....am to .....pm

**Meal intervals** will be from:..... to .....

Other breaks:.....

Saturdays: ..... am to .....pm

**Meal interval** will be from: ..... to .....

Other breaks: .....

Sundays: ..... am to ..... pm

**Meal interval** will be from: ..... to .....

Other breaks: .....

6.2 *Overtime will only be worked as agreed from time to time and will be paid at the rate of one and a half time of the total wage as set out in clause 12.*

**7. Sunday work (See guideline 9)**

Any work on Sundays will be by agreement between the parties from time to time and will be paid according to clause 9 of the guidelines.

**8. Public Holidays (See Guideline 10)**

The employee will be entitled to all official holidays on full pay.

If an employee does not work on a public holiday, he/she shall receive normal payment for that day.

If the employee works on a public holiday he/she shall be paid double.

**9. Annual Leave (See Guideline 11).**

9.1 The employee is entitled to.....consecutive days paid leave after every 12 months of continuous service. Such leave is to be taken at times convenient to the employer and the employer may require the employee to take his/her leave at such times as coincide with that of the employer. However the employer must grant annual leave not later than six month after the end of the annual leave cycle

**10. Sick leave (See Guidelines 12).**

10.1 During every leave cycle of 36 months the employee will be 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.

10.2 During the first six months of employment the employee will be entitled to one day's paid sick leave for every 26 days worked.

10.3 The employee is to notify the employer as soon as possible in case of his/her absence from work through illness.

10.4 A medical certificate may be required if absent for more than 2 consecutive days or has been absent on more than two occasions during an eight-week period.

**11. Maternity leave (See guidelines 13)**  
*(Tick the applicable clauses in the space provided).*

11.1 The employee will be entitled to.....months maternity leave without pay; or

11.2 The employee will be entitled to.....months maternity leave on .....pay.





## **GUIDELINES.**

### **1. Notice period and termination of employment.**

In terms of the Sectoral Determination, any party to an employment contract must give written notice, except when given by an illiterate employee it, as follows:

- One week, if employed for six months or less;
- Two weeks if employed for more than six months but less than one year; and
- Four weeks if employed for one year or more.

Notice must be explained orally by or on behalf of the employer to an employee who is not able to understand it.

All monies due to an employee for any wages, allowance or other payments that have not been paid, paid time-off not taken and pro-rata leave must be paid.

### **2. Procedure for termination of employment.**

Whilst the contract of employment makes provision for termination of employment, it must be understood that the services of an employee may not be terminated unless a valid and fair reason exists and fair procedure is followed. If an employee is dismissed without a valid reason or without a fair procedure, the employee may approach the CCMA for assistance.

Pro-rata leave and severance pay might be payable.

In the event of an employee being unable to return to work due to disability, the employer must investigate the nature of the disability and ascertain whether or not it is permanent or temporary. The employer must try to accommodate the employee as far as possible, for example, amending or adapting their duties to suit the disability. However, in the event of it not being possible for the employer to adapt the employee and/or to find alternatives, then such employer may terminate the services of the employee.

The Labour Relations Act, 66 Of 1995, sets out the procedures to be followed at the termination of services in the Code of Good Practice, in Schedule 8

### **3. Wage/remuneration/Payment**

There is a prescribed minimum rate of remuneration. Additional payments (such as for overtime or work on Sundays or Public Holidays) are calculated from the total remuneration as indicated in clause 5 of the contract.

### **4. Transport allowances, bonuses, increases**

These are open to negotiation between the parties unless prescribed by the Sectoral Determination (Boarding allowance, night work allowance e.t.c)

### **5. Hours of work**

#### **1.1 Normal hours (excluding overtime)**

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

- 5.1.1 48 hours in any week; and
- 5.1.2 ten hours on any day if the employee works for five days or less in a week;<sup>8</sup> or
- 5.1.3 eight hours in any day if the employee works for more than five days in any week.

### **6. Overtime**

An employee may not work more than 10 hours overtime per week and may not work more than 12 hours on any day, including overtime.

Overtime must be paid at 1.5 times the employee's normal wage or an employee may agree to receive paid time off.

### **7. Daily and weekly rest periods**

A daily rest period of 12 consecutive hours and a weekly rest period of 36 consecutive hours, which must include Sunday, unless otherwise agreed, must be allowed.

### **8. Meal intervals**

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<sup>8</sup> As an employee may not work more than 48 ordinary hours of work a week, an employee who works for 10 hours on four days, for example, may not work more than 8 hours on the fifth day.

An employee is entitled to a one-hour break for a meal after not more than five hours work. Such interval may be reduced to 30 minutes, by agreement between the parties. If required or permitted to work during this period, remuneration must be paid.

The meal interval may be taken at a specific agreed time or whenever it is practicable to do so but may not be taken later than six hours after the employee began work.

#### **9. Sunday work**

Work on Sundays is voluntary and an employee can therefore not be forced to work on a Sunday.

If the employee works on a Sunday he/she shall be paid double the daily wage. If the employee ordinarily works on a Sunday he/she shall be paid one and one-half time the wage for every hour worked.

#### **10. Public Holidays**

The days mentioned in the Public Holidays Act must be granted but the parties can agree to further public holidays. Work on a public holiday is entirely voluntary and an employee may not be forced to work on such public holiday.

The official public holidays are:

New Years Day	Youth Day
Human Rights Day	National Woman's Day
Good Friday	Heritage Day
Family Day	Day of Reconciliation
Freedom Day	Christmas Day
Workers Day	Day of Goodwill

Any other day declared an official public holiday from time to time should also be granted.

These days can be exchanged for any other day by agreement.

If the employee works on a public holiday he/she shall be paid double the normal day's wage.

#### **11. Annual leave**

Annual leave may not be less than 21 consecutive days for full-time workers or by agreement, one day for every 17 days worked or one hour for every 17 hours worked.

The leave must be granted not later than six months after completion of the period of 12 consecutive months of employment. The leave may not be granted concurrent with any period of sick leave, nor with a period of notice of termination of the contract of employment.

#### **12. Sick leave**

During every sick leave cycle of 36 months an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.

During the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked.

The employer is not required to pay an employee 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.

#### **13. Maternity leave**

The employee is entitled to at least four consecutive months' maternity leave. The employer is not obliged to pay the employee for the period for which she is off work due to her pregnancy. However, the parties may agree that the employee will receive part of her entire salary/wages for the time that she is off due to pregnancy.

#### **14. Family responsibility leave**

Employees employed for longer than four months and for at least four days a week are entitled to take three days' paid family responsibility leave during each leave cycle when the employee's child is born, when the employee's child is sick or in the event of the death of the employee's spouse or life partner or parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

**15. Deduction from the remuneration**

The Sectoral Determination prohibits an employer from deducting any monies from the employee's wages without his/her written permission.

**16. Other issues**

There are certain other issues, which are not regulated by the Sectoral Determination such as probationary periods, right of entry to the employer's premises, afternoons off, week-ends-off and pension schemes, medical aid schemes, training/school fees, funeral benefits and savings account. However, the aforementioned may be negotiated between the parties and included in the contract of employment.

**17. Prohibition of Employment**

The Sectoral Determination prohibits employment of any person under the age of 15 and it is therefore important for an employer to verify the age of the employee by requesting a copy of the identity document or birth certificate.

**18. Other Conditions of Employment**

There is no provision, which prevents any other conditions of employment being included in a contract of employment but any provision, which sets conditions, which are less favorable than those set by the Act, would be invalid.

.....

**NB:** These guidelines are not meant to be a complete summary of the Basic Conditions of Employment Act and/or legal advice. Should there be any doubt as to rights and/or obligations in terms of the Act or terms of any clause of the suggested Contract of Employment, such queries can be directed to the local office of the Department of Labour, who will gladly assist.