

ANNEXURE "D"
BASIC CONDITIONS OF EMPLOYMENT ACT
SECTORAL DETERMINATION 13: FARM WORKER SECTOR

Working hours applicable to agriculture

Weekly maximum	45 hours
Daily maximum	9 hours (5 day week)
	8 hours (more than 5 day week)
Children above 15 years but younger than 18 may not work more than 35 hours per week.	

Extension of working hours

In terms of section 12 of the Sectoral Determination a farmer may agree in writing with his worker to extend the normal working hours by 5 hours per week for a period not exceeding 4 months per year. During the year the worker's working hours must be reduced for the same number of hours.

Overtime

Overtime is limited to a maximum of fifteen hours per week. Ordinary working hours and overtime together should not exceed 12 hours per day. The workers must agree. Payment for overtime is 1½ x the ordinary wage or 1 x the wage plus 30 minutes paid free time for every hour worked overtime or no extra pay but 90 minutes paid free time for every hour worked overtime.

Meal intervals

After 5 hours of continuous work, a meal interval of 60 minutes must be allowed but this may be limited to 30 minutes per written agreement. Where a worker lives on the premises (farm) the meal interval may be extend to more than 75 minutes. Meal intervals are not part of ordinary working hours.

Resting times

Workers must be allowed 12 consecutive hours' resting time per day. This may be reduced to 10 if the worker lives on the premises and has a meal interval of at least 3 hours. On a weekly basis a worker must be allowed 36 consecutive hour's resting time, Sundays included. An agreement in writing may provide for 60 hours continuous resting period every second week.

Sunday work

The sectoral determination provides for the following arrangements:

- if he/she works for less than one hour, he/she must be paid for two hours;
- if he/she works for more than one but less than two hours, he/she must be paid double for the actual hours he worked;
- if he/she works for more than two hours but less than five, he/she must receive a full day's wage;
- if he/she works more than 5 hours, he/she must be paid double the wage for the real time worked (excluding overtime) or double the ordinary wage, whichever is the greater.

Night Work

If a worker works between 20h00 and 04h00 the next day, an agreement must be reached in this regard. The worker must be compensated by way of an allowance of 10% of the ordinary wage. The worker must also be informed of any possible health risks associated with night work.

Public Holidays

A worker must receive his normal wage if he does not work on a public holiday.

However, if he does work an agreement must be reached to this effect in advance and he must be paid an additional day's wage for the day's work.

Public holidays are as follows:

New Year's Day	-	1 January
Human Rights Day	-	21 March
Good Friday	-	Varies annually
Family Day	-	Monday after Good Friday
Freedom Day	-	27 April
Labour Day	-	1 May
Youth Day	-	16 June
National Women's Day	-	9 August
Heritage Day	-	24 September
Day of Reconciliation	-	16 December
Christmas Day	-	25 December
Day of Goodwill	-	26 December

Note: If any public holiday falls on a Sunday, the following day is regarded as a holiday. Public holidays may be swapped per agreement, e.g. instead of 24 September, say 10 October.

Emergency work

The clauses regulating ordinary work hours do not apply to work which is required to be done without delay owing to circumstances for which the employer could not reasonable have been expected to make provision and which cannot be performed by farm workers during their ordinary hours of work.

Compressed working week

A farmer may agree in writing with a worker to work up to 12 hours a day, including meal intervals without paying overtime. The weekly limit of 45 hours may however not be exceeded.

Annual Leave

3 weeks per year with full pay. The 3 weeks may be reduced by the number of days taken for occasional leave.

Sick leave

In a sick leave cycle of 36 months, the worker is entitled to paid sick leave equal to the number of days he would normally have worked in 6 weeks (in practice 30 days per 5 day week and 36 days per 6 day week). During the first 6 months of service, the worker has 1 day leave for every 26 days worked. In the case of a farm worker, the certificate may also be issued by a traditional healer.

A medical certificate must be submitted if the worker is absent for more than 2 consecutive days or if he is sick for a day more than twice within eight weeks.

Farmers must provide workers with reasonable assistance to obtain a certificate.

Maternity leave

A worker is entitled to at least four consecutive months' maternity leave. The leave must start four weeks before the expected date of confinement. Although the worker is entitled to take up to 12 weeks' leave after the confinement, she may return to work voluntarily but not earlier than 6 weeks after the confinement unless she obtains a medical certificate stating that she is fit for work. The employer needs not pay the worker during maternity leave unless paid maternity leave is provided for in her service contract. She is however entitled to maternity benefits from the Unemployment Insurance Fund

Leave for family responsibility

A worker is entitled to 3 days' paid family leave per year

- for the birth of a child;
 - during illness of a child; or
 - at the death of the worker's spouse/partner or a direct family member (or adopted)
- (Note: One years leave for family responsibility cannot be carried over to the next year.)

Written particulars of employment to be given to the worker.

- 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 he/she is employed;
- c) The workplace and, where the employee is required or permitted to work at various places, an indication thereof;
- d) The date on which employment commenced;
- e) The employee's ordinary working hours and working days;
- f) The employee's wage or the rate and method of calculating his wages;
- g) The rate of overtime payment;
- h) Any other cash payment to which the employee is entitled;
- i) Any payment in kind (accommodation and food) to which the employee is entitled and the value thereof;
- j) How frequently remuneration will be paid;
- k) Any deductions that must be made from the employee's remuneration;
- l) Leave to which the employee is entitled;
- m) The notice period that is required for termination of employment or, if employment is for a specified period, the date on which such employment will end;
- n) A description of any Sectoral Determination that covers the employer's business;
- o) Any period of employment at a previous employer that counts towards the employee's period of employment;
- p) A list of any other documents which form part of the contract of employment, with an indication of a place, which is reasonably accessible to the employee, where a copy of each may be obtained.

Informing workers of their rights

A prescribed form with the workers' rights, in the language(s) used in the workplace, as well as a copy of the Sectoral Determination must be displayed in the workplace.

Record-keeping

Employers must keep a record of the following:

- The employees name and occupation;
- time worked by each employee;
- remuneration paid to each employee;
- date of birth if he is younger than 18;
- any other information that may be prescribed.

Remuneration

The Sectoral Determination prescribes the following minimum wages.

Area A

Minimum as from 1/03/2006
Per hour R5,10
Per month R994

Minimum as from 1/03/2007
Per hour R5.34
Per month R1041

Minimum as from 1/03/2008
Per hour R5.59
Per month R1090

Area B

Minimum as from 1/03/2006
Per hour R4.54
Per month R885

Minimum as from 1/03/2007
Per hour R5.07
Per month R989

Minimum as from 1/03/2008
Per hour R5.59
Per month R1090

Note: From 1 March 2008 the minimum wage levels for Areas A and B are the same, the demarcation then falls away for all practical purposes.

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Payment of wages/salary

The worker must be remunerated as follows:

- in South African currency
- daily, weekly, every two weeks or monthly as agreed upon;
- in cash, per cheque or direct deposit in the worker's account;
- paid out at the workplace;
- during working hours;
- in a sealed envelop which becomes the worker's property;
- within 7 days after completion of the remuneration period or termination of service.

Information regarding wage/salary

The following information must accompany payment (preferably printed on the envelop):

- a) The employer's name and address;
- b) the employee's name and occupation;
- c) the period of which payment is made;
- d) the employee's wage in cash;
- e) the amount and purpose of any deduction;
- f) the actual amount paid to the employee; and
- g) if relevant for calculating that employee's remuneration -
 - i) the employee's rate of pay and overtime rate;
 - ii) the number of ordinary and overtime hours worked by the employee during the period for which payment is made;
 - iii) the number of hours worked by the employee on a Sunday or public holiday during that period; and
 - iv) if an agreement was reached to calculate average working time according to section 12, the total number of ordinary and overtime hours worked by the employee during the period of calculating average working time.

Deductions

The Sectoral Determination allows only the following deductions

- 10% of wage for accommodation provided the house meets certain specifications
- 10% of wage for food
- at the written request of the worker to pay money to a third party
- in repayment of a loan but may not be more than 10% of wage
- in terms of a law or court order.

Deductions for loss or damage may only be made if:

- a) the loss or damage occurred in the course of duty and can was due to the fault of the employee;
- b) the employer has followed a fair procedure and offered the employee a reasonable opportunity to show why the deductions should not be made;
- c) the total amount of debt does not exceed the actual amount of loss or damage; and
- d) the total deduction in terms of this subsection does not exceed one quarter of the employee's cash wage.

Calculation of wages

A worker's wage must be calculated with reference to the number of hours he/she normally works.

A worker's monthly wage is $4 \frac{1}{3}$ x his/her weekly wage.

Termination of service

A worker who

- has less than 6 months' service must be given at least one week's notice of termination of service;
- has more than 6 months' service must be given at least 4 weeks' notice of termination of service.

On termination of service a farm worker

- must be allowed one month to vacate the house in which he lives (the Extension of Tenure Security Act's provisions must however be taken into account);
- must be allowed 30 days to remove his livestock; and
- be given a reasonable time to remove any crops (unless he is paid out for it).

The above are the minimum periods provided for in the Act; if longer periods have been agreed on contractually between the farmer and the farm worker, the longer period will apply.

Payment instead of notice

Instead of the prescribed period, the worker can be given immediate notice on condition that he is paid in full for a period equal to the prescribed notice period.

Termination of service must be fair

On termination of service, all conditions in respect of fair dismissal as contained in the Labour Relations Act, must be complied with.

Payments on termination of service

On termination of service, the employer must pay the worker for any outstanding vacation leave due to him/her or any unused provided he/she was employed for at least 4 months, free time due to him/her in terms of an overtime arrangement or Sunday work arrangement.

Severance pay

In terms of the provisions of the Labour Relations Act an employer who terminates a worker's service on account of business requirements, must pay that worker a severance wage equal to one week's wages for every completed year of service with the employer.

Service certificate

On termination of service, the employer must furnish the worker with a service certificate containing the following information:

- a) The employee's full name;
- b) the employer's name and address;
- c) a description of a council or sectoral service standard by which the employer's business is covered;
- d) the date of commencement and termination of employment;
- e) the job title or a short description of the work for which the worker was employed on the date of termination of service;
- f) remuneration on date of termination of service; and
- g) if requested by the employee, the reason for termination of employment.

Employment of children

Children below the age of 15 or the minimum school-leaving age may not be formally employed. (However, children may do casual jobs for pocket money, for example, but farmers are advised not to make use of any child labour). Children above 15 but younger than 18 may not work between 18:00 and 06:00 and may not work with agro-chemicals.

Prohibition on Forced Labour

Any form of forced labour (except where the Constitution allows for it) is totally prohibited.

Labour inspectors

A labour inspector may in the course of duty at any reasonable time enter any workplace, premises, or private employment office without a warrant or notice. An inspector may however only enter a home with the consent of the owner or occupier or in terms of an order of the Labour Court.

Inspectors have wide powers to interrogate and investigate and the Act compels employers to give their co-operation.

An inspector may ask an employer for an undertaking to comply with a provision of the Act which he earlier failed to comply with and may also issue a compliance order.

Rights of workers

The Act explicitly provides the worker with protection to act as follows:

- a) To lodge a complaint with a trade union representative, a trade union official or a labour inspector regarding any alleged failure or refusal on the part of the employer to comply with this Act;
- b) to discuss his/her conditions of employment with his/her co-workers, his/her employer or any other person;
- c) to refuse to carry out an instruction which is in contravention of the Act or a sectoral directive;
- d) to refuse to agree to any negotiation or condition of employment which is contrary to the Act or sectoral determination;
- e) to study any record kept in terms of the Act and which has a bearing on that worker's service;
- f) to participate in proceedings in terms of this Act;
- g) to request a trade union representative or a labour inspector to study any record kept in terms of this Act and which has a bearing on the service of that worker.

The employer may not discriminate against a worker who exercises the above-mentioned rights.

Employee or contractor

If certain factors are present in the working relationship, a presumption is created that the worker is an employee and not a contractor. This presumption can however be rebutted by the farmer (Study section 34 of the Sectoral Determination and seek expert advice if you are uncertain).

Temporary employment services

It is possible to contract with a third party to provide workers which he/she employs and pays. This is not a way to escape the provisions of the Sectoral Determination: one employer is just replaced by another. What is more, the labour service provider and the farmer are jointly and severally liable to comply with the conditions in the Sectoral Determination.

Sectoral Determination

A copy of the Sectoral Determination must be kept by the employer at the work place.