

Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Regulation Gazette

No. 8842

Regulasiekoerant

Vol. 512

Pretoria, 29 February 2008
Februarie

No. 30806

CONTENTS**INHOUD**

No.		Page No.	Gazette No.	No.		Bladsy No.	Koerant No.
GOVERNMENT NOTICES				GOEWERMENSKENNISGEWINGS			
Health, Department of				Arbeid, Departement van			
<i>Government Notice</i>				<i>Goewermentskennisgewings</i>			
R. 223	Health Professions Act (56/1974): Regulations: Registration of health practitioners restricted to non-clinical practice.....	3	30806	R. 220	Labour Relations Act (66/1995): Correction Notice: Motor Industry Bargaining Council-MIBCO: Extension to Non-parties of Main Collective Amending Agreement.....	9	30806
Labour, Department of				Gesondheid, Departement van			
<i>Government Notices</i>				<i>Goewermentskennisgewing</i>			
R. 220	Labour Relations Act (66/1995): Correction Notice: Motor Industry Bargaining Council-MIBCO: Extension to Non-parties of Main Collective Amending Agreement.....	9	30806	R. 221	Wet op Arbeidsverhoudinge (66/1995): Bedindingsraad vir die Bounywerheid (Bloemfontein): Uitbreiding van Kollektiewe Ooreenkoms na Nie-partye	12	30806
R. 221	do.: Bargaining Council for the Building Industry (Bloemfontein): Extension of Collective Agreement to Non-parties	11	30806	R. 222	do.: Intrekking van Goewerments- kennisgewing: Bedingingsraad vir die Bounywerheid (Bloemfontein): Uit- breiding van Kollektiewe Ooreenkoms na Nie-partye.....	51	30806
R. 222	do.: Cancellation of Government Notice: Bargaining Council for the Building Industry (Bloemfontein): Extension of Collective Agreement to Non-parties	51	30806	R. 223	Wet op Gesondheidsberoepes (56/1974): Regulasies: Registrasie van gesond- heidspraktisyns beperk tot nie-kliniese praktyk.....	6	30806

GOVERNMENT NOTICES
GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF HEALTH
DEPARTEMENT VAN GESONDHEID

No. R. 223

29 February 2008

HEALTH PROFESSIONS ACT, 1974 (ACT 56 of 1974)

**REGULATIONS RELATING TO THE REGISTRATION OF HEALTH
PRACTITIONERS RESTRICTED TO NON-CLINICAL PRACTICE**

The Minister of Health has, in terms of section 61(1)(c) of the Health Professions Act, 1974 (Act No. 56 of 1974), in consultation with the Health Professions Council of South Africa, made the regulations in the Schedule.

SCHEDULE

Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Act shall have such meaning and, unless the context otherwise indicates –

“board” means a professional board established in terms of section 15(1) of the Act;

“health practitioner” means a person registered under the Act;

“ill-health” means a physical or mental condition falling within the international classification of disorders, which has a direct or an indirect impact on the physical and/or psychological functioning of a practitioner;

“non-clinical practice” means a practice that does not involve the management of individuals or groups by taking the medical history of a patient or group and performing any other function that falls within the scope of practice of a health practitioner engaged in clinical practice;

“section” means a section of the Act; and

“the Act” means the Health Professions Act, 1974 (Act No. 56 of 1974).

Establishment of registration category for non-clinical practice

2. A registration category for health practitioners who are restricted to non-clinical practice is hereby established.

Registration in the category non-clinical practice

3. The registrar may register any person who is registered as a health practitioner under the Act in the category non-clinical practice if such a person –

- (a) applies to be registered in that category and submits an affidavit to the satisfaction of the board that he or she is not engaged in or participate in clinical practice or clinical management of patients;
- (b) fails to comply with the requirements prescribed under section 26 of the Act;
- (c) is restricted in terms of the regulations made under section 51 of the Act by the health committee of the board to non-clinical practice due to the nature and severity of his or her impairment;

- (d) is restricted in terms of a penalty imposed by a Professional Conduct Committee in terms of section 42 of the Act, to non-clinical practice due to the nature and severity of the unprofessional conduct with which he or she was found guilty; or
- (e) is unable to practise his or her profession owing to ill health.

Limited involvement in healthcare matters

4. A health practitioner registered in the category non-clinical practice may not be involved in acts specified in the regulations defining the scope of any profession registered under the Act, but may be engaged in providing advice in healthcare matters.

Restoration to any other register

5. A health practitioner registered in the category non-clinical practice may apply to the board to have his or her name restored to a register for which he or she qualifies, subject to compliance with the requirements and conditions that may be specified by the board for such restoration.

Exemption from compliance with requirements of continuing professional development

6. A health practitioner registered in the category non-clinical practice may be exempted by the board from complying with the requirements of continuing professional development in terms of section 26 of the Act.



DR ME TSHABALALA-MSIMANG

MINISTER OF HEALTH

No. R. 223

29 Februarie 2008

WET OP GESONDHEIDSBEROEPE, 1974 (Wet 56 van 1974)
REGULASIES BETREFFENDE DIE REGISTRASIE VAN
GESONDHEIDSPRAKTISYNS BEPERK TOT NIE-KLINIESE PRAKTYK

Die Minister van Gesondheid het ingevolge artikel 61(1)(c) van die Wet op Gesondheidsberoepe, 1974 (Wet No. 56 van 1974), en in oorleg met die Raad vir Gesondheidsberoepe van Suid-Afrika, die regulasies in die Bylae uitgevaardig.

BYLAE

Woordomskrywing

1. In hierdie regulasies het 'n woord of uitdrukking waaraan daar in die Wet 'n betekenis geheg is, daardie betekenis en, tensy dit uit die samehang anders blyk, beteken –

“artikel” 'n artikel van die Wet;

“die Wet” die Wet op Gesondheidsberoepe, 1974 (Wet No. 56 van 1974);

“gesondheidspraktisyn” 'n persoon wat ingevolge die Wet geregistreer is;

“niekliniese praktyk” 'n praktyk wat nie die bestuur van individue of groepe behels nie deur die mediese geskiedenis van 'n pasiënt of groep te neem en enige ander funksie te verrig wat binne die bestek val van die praktyk van 'n gesondheidspraktisyn wat by kliniese praktyk betrokke is;

“raad” ’n beroepsraad ingestel ingevolge artikel 15(1) van die Wet; en

“swak gesondheid” ’n liggaamlike of geestestoestand wat binne die internasionale klassifikasie van ongesteldhede val, wat ’n regstreekse of onregstreekse uitwerking op die liggaamlike en/of sielkundige funksionering van ’n praktisyn het.

Instelling van registrasiekategorie vir niekliniese praktyk

2. ’n Registrasiekategorie vir gesondheidspraktisyns wat tot niekliniese praktyk beperk is, word hierby ingestel.

Registrasie in die kategorie niekliniese praktyk

3. Die registrateur kan enige persoon wat ingevolge die Wet as ’n gesondheidspraktisyn geregistreer is, in die kategorie niekliniese praktyk registreer indien sodanige persoon –

- (a) aansoek doen om in daardie kategorie geregistreer te word en ’n beëdigde verklaring voorlê dat hy of sy nie as ’n gesondheidspraktisyn in kliniese praktyk praktiseer nie;
- (b) versuim om te voldoen aan die vereistes voorgeskryf ingevolge artikel 26 van die Wet;
- (c) ingevolge die regulasies uitgevaardig kragtens artikel 51 van die Wet, deur die gesondheidskomitee van die raad tot niekliniese praktyk beperk is as gevolg van die aard en erns van sy of haar gestremdheid;
- (d) is beperk in terme van ’n straf soos bepaal deur die Professionele Gedrags/bestuur Committee in terme van artikel 42 van die Wet vir

- niekliniese praktyke as gevolg van hulle aard en erns van die onprofessionele wyse waarop hy/sy skuldig bevind is; of
- (e) as gevolg van swak gesondheid nie in staat is om sy of haar beroep te beoefen nie.

Beperkte betrokkenheid by gesondheidsorgaangeleenthede

4. 'n Gesondheidspraktisyn wat in die kategorie niekliniese praktyk geregistreer is, mag nie betrokke raak nie by handeling wat bepaal word in die regulasies oor die omvang van enige beroep wat ingevolge die Wet geregistreer is, maar kan betrokke raak by die verskaffing van advies oor gesondheidsorgaangeleenthede.

Terugplasing op enige ander register

5. 'n Gesondheidspraktisyn wat in die kategorie niekliniese praktyk geregistreer is, kan by die raad aansoek doen om sy of haar naam terug te plaas op 'n register waarvoor hy of sy kwalifiseer, behoudens voldoening aan die vereistes en voorwaardes wat die raad vir sodanige terugplasing bepaal.

Vrystelling van voldoening aan vereistes van voortgesette professionele ontwikkeling

6. 'n Gesondheidspraktisyn wat in die kategorie niekliniese praktyk geregistreer is, kan deur die raad vrygestel word van voldoening aan die vereistes van voortgesette professionele ontwikkeling ingevolge artikel 26 van die Wet.



DR ME TSHABALALA-MSIMANG
MINISTER VAN GESONDHEID

**DEPARTMENT OF LABOUR
DEPARTEMENT VAN ARBEID**

No. R. 220

29 February 2008

LABOUR RELATIONS ACT, 1995

CORRECTION NOTICE

**MOTOR INDUSTRY BARGAINING COUNCIL – MIBCO: EXTENSION TO
NON-PARTIES OF MAIN COLLECTIVE AMENDING AGREEMENT**

The following corrections to Government Notice No. R. 1146 appearing in Government Gazette No. 30538 of 7 December 2007, are hereby published for general information:

1. Substitute the expression "All Areas" for the expression "A Areas" where it appears in heading to the wage schedules on pages 75, 76, 77, 79, 81 and 82.
2. On page 78 – Substitute the following for the wage schedule containing wages to be paid from the effective date of the Agreement to **31 August 2008**:

"C. SECTOR 1 – (DIVISION C: CHAPTER II – CLAUSE 4: WAGES)

CLASS OF EMPLOYEE	Guaranteed Increases (All Areas)
Grade 1 – Char	R37,80 (R0,84 per hour)
Grade 2	R47,70 (R1,06 per hour)
Grade 3	R51,75 (R1,15 per hour)
Grade 5	R57,60 (R1,40 per hour)
Grade 6	R63,75 (R1,68 per hour)
Grade 7	R85,50 (R1,90 per hour)
Grade 8	R97,65 (R2,17 per hour)

3. On pages 79 and 80 – Substitute the following for the wage schedule containing wages to be paid from the effective date of the Agreement to **31 August 2008**:

“D. SECTOR 3 – (DIVISION C: CHAPTER IV – CLAUSE 3: WAGES)

Class of Employee	Guaranteed Increases	
	All Areas	
	Per week	Per hour
	R	R
Grade 1		
Char	37,80	0,84
Grade 2	47,70	1,06
Grade 3	51,75	1,15
Grade 4	56,70	1,26
Grade 5	57,60	1,40
Grade 6	63,75	1,68
Grade 7	85,50	1,90
Grade 8	97,65	2,17
Watchman	43,57	(No hourly rate)

4. On pages 83 and 84 – Substitute the following for the wage schedule containing wages to be paid from the effective date of the Agreement to **31 August 2008**:

“E. SECTOR 2 – (DIVISION C: CHAPTER V – CLAUSE 4: WAGES)

CLASS OF EMPLOYEE	Guaranteed Increases (All Areas)
Grade 1 – Char	R37,80 (R0,84 per hour)
Grade 2	R47,70 (R1,06 per hour)
Grade 3	R51,75 (R1,15 per hour)
Grade 4	R56,70 (R1,26 per hour)
Grade 5	R57,60 (R1,40 per hour)
Grade 6	R63,75 (R1,68 per hour)
Grade 7	R85,50 (R1,90 per hour)
Grade 8	R97,65 (R2,17 per hour)

No. R. 221

29 February 2008

LABOUR RELATIONS ACT, 1995**BARGAINING COUNCIL FOR THE BUILDING INDUSTRY (BLOEMFONTEIN):
EXTENSION OF COLLECTIVE AGREEMENT TO NON-PARTIES**

I, MEMBATHISI MPHUMZI SHEPHERD MDLADLANA, Minister of Labour, hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the collective agreement which appears in the schedule hereto, which was concluded in the Bargaining Council for the Building Industry (Bloemfontein) and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the agreement, shall be binding on the other employers and employees in that Industry, with effect from ...10 March 2008..... and for the period ending 31 October 2009.

**MMS MDLADLANA
MINISTER OF LABOUR**

No. R. 221

29 Februarie 2008

WET OP ARBEIDSVERHOUDINGE, 1995**BEDINGINGSRAAD VIR DIE BOUNYWERHEID (BLOEMFONTEIN): UITBREIDING VAN KOLLEKTIEWE OOREENKOMS NA NIE – PARTYE**

Ek, MEMBATHISI MPHUMZI SHEPHERD MDLADLANA, Minister van Arbeid, verklaar hierby kragtens artikel 32(2) van die Wet op Arbeidsverhoudinge, 1995, die kollektiewe ooreenkoms wat in die Engelse Bylae hiervan verskyn, en wat in die Bedingingsraad vir die Bounywerheid (Bloemfontein) aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die ooreenkoms aangegaan het, bindend vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van10 Maart 2008..... en vir die tydperk wat op 31 Oktober 2009 eindig.

**MMS MDLADLANA
MINISTER VAN ARBEID**

TABLE OF CONTENTS

	Page No.
1. SCOPE OF APPLICATION	1
2. PERIOD OF OPERATION	2
3. DEFINITIONS	3
4. REGISTRATION OF EMPLOYERS	4
5. LABOUR-ONLY SUB-CONTRACTORS	5
6. REGISTRATION OF EMPLOYEES	10
7. TERMS OF EMPLOYMENT	11
(1) Ordinary hours of work	11
(2) Intervals	11
(3) Statutory public holidays	12
(4) Shiftwork	12
(5) Annual leave	12
(6) Family responsibility leave	13
(7) Counselling, disciplinary and grievance procedures	13
(8) Termination of contract of employment	13
(9) Retrenchment	14
(10) Contract of employment may not disregard or waive this Agreement	14
8. REMUNERATION	15
(1) Wages	15
(2) Supplementary remuneration and contributions	15

(3) Casual employees	17
(4) Overtime	18
(5) Allowances	19
(6) Wage guarantee fund	19
9. WAGE PAYMENT PROCEDURE	20
(1) Payment of wages	20
(2) Records to be kept	21
10. SAFETY PROVISIONS	21
(2) Lock-ups and storage tools	22
(3) Shelter and ablution facilities	23
11. HOLIDAY FUND	23
12. PROVIDENT FUND	26
13. TRADE UNION RIGHTS	27
(1) Trade union organizational rights/access.....	27
(2) Trade union membership fees	27
14. DESIGNATED AGENTS	28
15. DISPUTE RESOLUTION PROCEDURE	29
16. EXPENSES OF THE COUNCIL	29
17. ACCOUNTING AND AUDITING	30
18. EXEMPTIONS	31
19. GENERAL	34
(1) Exhibition of Agreement	34
(2) Notice boards	34

1

SCHEDULE**BARGAINING COUNCIL FOR THE BUILDING INDUSTRY (BLOEMFONTEIN)****COLLECTIVE AGREEMENT**

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

Master Builders' and Allied Trades Association (Free State) (MBA) (FS)

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

Amalgamated Union of Building Trade Workers of South Africa

Noordelike Bouwerkersvakbond (NBV); and

National Union of Mine Workers (NUM)

(hereinafter referred to as the "employees" or the "trade unions"), of the other part, being parties to the Bargaining Council for the Building Industry (Bloemfontein).

1: SCOPE OF APPLICATION

- (1) The terms and conditions of the Agreement shall be observed-
 - (a) in the Magisterial District of Bloemfontein;
 - (b) by all employers who are members of the employers' organisation and by all employees who are members of the trade union(s);
 - (c) by all employers and employees to whom the Minister of Labour may extend this Agreement;
 - (d) by all employers and employees who are directly or indirectly involved in the Building Industry.
- (2) Notwithstanding the provisions of subclause (1) the terms of this Agreement shall apply to-

2

- (a) apprentices only in so far as the terms are not inconsistent with the provisions of the Manpower Training Act, 1981, or any contract entered into or any conditions fixed thereunder;
 - (b) trainees under the Manpower Training Act, 1981 and the Skills Development Act, 1998, in so far as the terms are not inconsistent with the provisions of those Acts or any conditions fixed thereunder;
 - (c) working partners, directors and owners of a building-related business.
- (3) Notwithstanding the provisions of subclause (1), the terms of this Agreement shall not apply to-
- (a) clerical and administrative employees;
 - (b) university students and graduates in Building Science and to construction supervisors, construction surveyors, architects and other persons doing practical work in the completion of their academic training;
 - (c) casual employees as defined in clause 3;
 - (d) non-parties in respect of clause 1 (1) (b) and 2.

2: PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 of the Labour Relations Act, 1995, and shall remain in force until 31 October 2009.

3: DEFINITIONS

Any expressions used in this Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in the Act, and any reference to an Act shall include any amendment of such Act; and unless inconsistent with the context-

“Act” means the Labour Relations Act, 1995 (Act No. 66 of 1995);

“actual wage” means the wage rate per hour which an employer actually pays an employee in respect of the ordinary hours of work;

“Agreement” means the collective Agreement;

“ancillary trade” means any trade defined as skilled in any other industry’

“apprentice” means an employee serving under a written contract of apprenticeship, registered or deemed to have been registered under the provisions of the Manpower Training Act, 1981, or any other relevant Act, and includes a minor employed on probation under that Act;

“area” means the magisterial district of Bloemfontein;

“artisan” means a skilled worker who has completed a trade test as determined by the Construction Education and Training Authority (C E T A);

“basis of contract” means that the contract of employment of an employee shall be on a weekly basis and such employee shall be paid in respect of the hours worked during that week at the rate as prescribed herein;

“Building Industry” means, without in any way limiting the ordinary meaning of the expression, the Industry in which employers and their employees are associated for the purposes of erecting, completing, renovating, repairing, maintaining or altering, building and structures, and/or making articles for use in the erection, completion or alteration of buildings and structures, whether the work is performed, the material is prepared, or the necessary articles are made on the site of the building or structure or elsewhere, and shall include all work executed or carried out by persons therein;

“building work” includes walls, boundary, garden and retaining walls, and supplying stone for cladding, floors, monuments and complementary items;

“casual employee” means an employee who is employed by the same employer for no longer than four consecutive weeks;

“CCMA” means the Commission for Conciliation, Mediation and Arbitration, established in terms of section 112 of the Act;

“changing rooms” means any suitable shed, room or similar satisfactory accommodation with a minimum clear floor space of seven square metres, constructed of four walls and a roof, composed of concrete, brickwork, wood, iron or any combination thereof, which is kept clean and can be securely locked to provide a suitable place for the safe keeping of employees clothing; and such changing room shall not be used for any other purpose than for the changing of clothing and the safe keeping of employees' clothing;

“code of good practice” means a code of good practice issued by the Minister of Labour in terms of Section 203(1) of the Act;

“continuous employment” means an employee's period of uninterrupted employment with the same employer or with an employer to whom the contract of employment is transferred; such continuous employment shall not be interrupted during the time that an employee is absent from work in terms of an entitlement of leave, owing to suspension pending a disciplinary hearing, a lay-off, participation in protected industrial action or a public holiday;

“continuous process of work” means a specific piece of work which once it has been started, must be completed;

“contract of service” means any of the official contracts in terms of which a trainee artisan is employed and trained by the employer as prescribed in the relevant contract;

“contributions” means any payments which the employer or employees are liable to make to the Council in terms of this Agreement, and **“levies”** has a corresponding meaning;

“Council” means the Bargaining Council for the Building Industry (Bloemfontein) as registered in terms of the Act;

“dangerous work” means any work classified as dangerous in the Occupational Health and Safety Act, 1993, and/or any municipal building regulation pertaining to the industry;

“day” means the period of 24 hours from midnight to midnight;

“Department” means the Department of Labour;

“designated agent” means any person appointed by the Minister in terms of the provision of Section 33 of the Act;

“dispute” includes an alleged dispute;

“employee” means-

- (a) any person, excluding an independent contractor, who works for another person or for the State, and who receives remuneration; and
- (b) any other person who in any manner assists in carrying on or conducting the business of an employer, and “employed” and “employment” have meanings corresponding to that of “employees”;

“employer” means any person whomsoever who employs or provides work for any person and remunerates or expressly or tacitly undertakes to remunerate him, or who permits any person whomsoever in any manner to assist him in the carrying on or conducting of his business ; and “employ” and “employment” have corresponding meanings;

“employers’ organisation” means the registered employers’ organisation as referred to in the preamble of this Agreement

“employment law” means-

- (a) the Labour Relations Act, 1995;
- (b) the Basic Conditions of Employment Act, 1997
- (c) the Unemployment Insurance Act, 1996
- (d) the Guidance and Placement Act, 1981
- (e) the Compensation for Occupational Injuries and Diseases Act, 1993; and any other Act, the administration of which has been assigned to the Minister.

“fixed term contracts” means a contract terminating on a specified date, which shall be stipulated in the contract itself;

“foreman” means an employee engaged in any one or more of the following activities:

- (a) Being primarily employed in a supervisory capacity, but who may also be doing the work of an artisan;
- (b) giving out work to other employees under his control and supervision;
- (c) being directly responsible to a general foreman or the employer’s authorised representative for efficiency and production on the site(s);

“general foreman” means an employee who gives out work to and directly co-ordinates and supervises those categories of employees covered by this Agreement, and whose duties encompass any one or more of the following activities:

- (a) Supervision;
- (b) taking charge of a contract or contracts;
- (c) maintaining discipline;
- (d) being responsible to the employer for efficiency and production on the site(s);
- (e) performing skilled work, whether in an instructional capacity or otherwise;

“general worker” means an employee engaged in any task or operation not elsewhere specified in any one of the definitions of the categories of employees referred to in the definitions of “skilled employee” and “semi-skilled employee”, but includes supervising of other general workers;

“industrial action” means any action contemplated in terms of the definitions of “strike” and “lock-out” respectively, in the Act;

“labour-only contract” means a contract, agreement, arrangement or understanding in terms of which a person undertakes to do work and to be paid only for the provision of his own labour and/or that of his employees, if any, on conditions other than laid down in clause

5, and where such person is not responsible for payment in respect of all the material to be used in the execution of the work to manufacturers or merchants who in the ordinary course of business supply material to the Building Industry;

“labour-only contractor” means a person undertaking labour-only contracting;

“levies” means any payment that the employer or employees are liable to make to the Council in terms of this Agreement; and

“contributions” has a corresponding meaning;

“lock-up” means any shed, room, workshop, factory or similar place, constructed of four walls and a roof, composed of concrete, brickwork, wood, iron or any combination thereof, which can be securely locked, all windows, fanlights and other openings to be properly burglar-proofed, the whole to be so constructed as to provide a place for the safekeeping of employees' tools and clothes at any time;

“ordinary hours of work” means the hours of work permitted in terms of clause 7 (1) of this Agreement;

“overtime” means all time worked in excess of the number of ordinary hours of work prescribed in clause 7 (1);

“person” includes-

- (a) a company that is a body corporate in its own right or registered as such under any Act; or
- (b) any body or person, whether a body corporate or not;

“piecework” means any system of work under which an employee's earnings are partly or wholly based on quantity or output of work done: Provided that such earnings shall not be less than the remuneration earned for ordinary hours worked;

“prescribed wage” means that portion of the remuneration payable to an employee in terms of clause 8(1) in respect of the ordinary hours laid down in clause 7(1)(a): Provided

8

that if an employer regularly pays an employee in respect of such ordinary hours or work as amount higher than that prescribed in clause 8, it means such higher amount; and for the purposes of this definition;

“regularly” means two consecutive payments;

“remuneration” means payment in money made or owing to any person in pursuance of such person’s employment and without limiting the ordinary meaning thereof, includes all contributions provided for in this Agreement and; and **“remunerate”** has a corresponding meaning;

“Secretary” means the General Secretary of the Council and includes any official nominated by the Council to act for the Secretary;

“semi-skilled employee” means any specified skills employee, apprentice and trainee artisan;

“skilled employee” means any general foreman, artisan and any employee engaged in an ancillary trade;

“skilled work” means any work in the Building and Monumental Stone Industries that may be performed by an employee as defined under **“skilled employee”** and **“semi-skilled employee”**;

“structure” includes walls, monuments, paving and temporary and permanent buildings;

“suitable sleeping accommodation” means a waterproof shelter, capable of being securely locked, with a suitable floor and the necessary washing facilities, stretchers and mattresses, and separate lavatory accommodation’

“wage” means the amount of money paid or payable to an employee in terms of clause 8(1) of the Agreement in respect of ordinary hours or the hours an employee ordinarily works;

“wet-weather shelter” means a shelter constructed of weather-proof materials in such manner that the occupants will be kept dry and comfortable in any circumstances;

“working week” means from Monday to Friday.

4: REGISTRATION OF EMPLOYERS

- (1) Every employer in the Building Industry to whom this Agreement is applicable, and who has not yet registered with the Council, shall, within 30 days from the date on which this Agreement becomes effective, register with the Council and furnish the Council with all such information as may be required by the Council on the specified form.
- (2) Every employer shall notify the Council in writing of any change in particulars furnished on registration or of ceasing operations in the Industry, within 14 days of such change or of ceasing operations.
- (3) A certificate of registration, signed by either the Chairman or Secretary of the Council, shall be issued to each employer after complying with the requirements of the Council. Such certificate shall be the only proof of registration.
- (4) An employer shall comply with all the terms and provisions of this Agreement and if this Agreement is silent on a certain issue, also with the terms and provisions of any employment law.
- (5) An employer shall keep employee records as prescribed in the Basic Conditions of Employment Act.
- (6) An employer who does not pay to the Council the weekly levies and contributions payable by him and his employee on or before 30 days from due date, shall pay penalties as specified by the Council from time to time, as well as interest at the prime rate charged by the Council's bank, plus 2%, calculated from due date to date of actual payment.

5: LABOUR-ONLY SUBCONTRACTORS

- (1) For the purpose of this clause, the expression “labour-only subcontract, ,means a contract agreement, arrangement or understanding in terms of which a person undertakes to provide a

service or services to a contractor for an agreed sum or sums, which entails performing work that is normally carried out by skilled employees and/or general workers, where such person is not responsible for the payment to manufacturers or suppliers, who in the ordinary course of their business supply material to the Building Industry, for all materials to be used in the execution of such work.

(2) Any person who undertakes work in the Building Industry in terms of a labour-only subcontract shall, whether he is an employer or not, register with the Council as an employer or as if he were an employer in accordance with the provisions of clause 4. The main contractor shall be held responsible for ensuring registration of all labour-only subcontractors.

(3) Any contractor shall-

(a) keep a record of the following particulars in respect of each person to whom work is given out in a labour-only subcontract

- (i) His first name and his surname;
- (ii) his trading name;
- (iii) his business address and/or residential address;
- (iv) his telephone number;
- (v) his S A R S number;
- (vi) proof of registration as well as good standing with the Workmen's Compensation Commissioner.

(c) upon being requested to do so by an agent, produce such records to the agent.

6: REGISTRATION OF EMPLOYEES

(1) All persons employed in the Building Industry shall, within four weeks from being allowed to perform work in the Industry, be registered with the Council. Employers and employees shall be jointly and severally responsible for ensuring that an employee who enters the Building Industry is duly registered with the Council.

- (2) Every employee shall notify the Council of any change in particulars furnished on registration or of ceasing to work in the Building Industry, within 14 days of such change.
- (3) The Council shall issue a registration card to each employee, which must be shown to an agent of the Council or any employer requesting proof or registration. Such registration card remains the property of the Council and the employee shall be required to retain such card at all times whilst engaged in work in the Building Industry.
- (4) The Council shall bear the initial costs of an employee's registration card, but the employee shall be liable for the costs of the replacement of any lost registration cards.
- (5) An employee shall comply with all the terms and provisions of this Agreement and if the Agreement is silent on a certain issue, also with the terms and provisions of other employment law.

7: TERMS OF EMPLOYMENT

- (1) **Ordinary hours of work:** No employer shall require an employee to work:
 - (a) for more than five days in any week, Monday to Friday;
 - (b) on a Saturday, Sunday or a statutory holiday as well as during the builders' holiday specified in this Agreement;
 - (c) in the Magisterial District of Bloemfontein, more than eight hours from Monday to Friday (40 hours per week).
- (2) **Intervals:** (a) No employer shall require or permit an employee to work more than five continuous hours without a rest/meal interval.

Such interval or intervals shall total a minimum of 30 minutes and a maximum of 60 minutes and shall not form part of ordinary working hours. The interval(s) shall be at such times as agreed between employer and employee.

- (b) an employer must allow an employee a daily rest period of at least 12 consecutive hours between ending and recommencing work, and a weekly rest period of at least 36 consecutive hours which must include Sunday.
- (3) **Statutory public holidays:** (a) Public Holidays shall be as defined in the Public Holidays Act, 1994.
- (b) An employee who is not required to work on a public holiday that would normally be a working day, shall receive his normal daily remuneration in respect of that public holiday.
- (c) An employee who works on a public holiday falling on a day that otherwise is an ordinary working day, must receive his normal daily remuneration, plus the rate equal to his actual basic wage in respect of all hours worked on that day.
- (d) An employee who is required to work on a public holiday that falls on a Saturday or a Sunday shall be paid in accordance with normal overtime rates and shall not be entitled to any additional payment on such a public holiday.
- (4) **Shiftwork:** (a) An employer may require his employees to work in shifts:
Provided that no employee shall be required to work more than one nine-hour shift during any 24-hour period.
- (5) **Annual leave:** (a) Every employee shall be entitled to 15 working days leave during the annual builders' holiday, which shall commence on the Friday prior to 16 December each year, or any such alternative date as the Council may decide upon by not later than 30 June each year. The compulsory closing time each year will be from 23 December to 3 January, which forms part of the annual leave.
- (b) Notwithstanding the terms of subclause (5) (a), an employee may agree with his employer to work during the annual builders' holidays and shall be entitled to the actual wage as well as the supplementary remuneration as prescribed in this

Agreement, for any time worked during that period: Provided that such employee shall be entitled to 15 working days leave, or the remainder thereof, at another time during the year, as may be agreed upon between the employer and employee and provided the Council is notified of such mutual agreement in writing.

(c) Employees shall receive leave pay on the last working day prior to the commencement of the builders' holiday in accordance with the contributions made on their behalf.

(d) Leave pay shall be paid in accordance with the terms and conditions of the Holiday Fund referred to in clause 11 of this Agreement.

(6) **Family responsibility leave:** Family responsibility leave shall be granted as prescribed in the Basic Conditions of Employment Act, 1997.

(7) **Counselling, disciplinary and grievance procedures:** All employers shall have a Disciplinary and Grievance Procedure in place in conformity with the Act, alternatively must follow the guidelines as specified in the Council's Counselling, Disciplinary and Grievance Procedures, copies which can be obtained from the Council's offices. Employers shall ensure that all new employees be made aware of their Disciplinary and Grievance Procedures during their initiation period.

(8) **Termination of contract of employment:** (a) Subject to the provisions set out hereunder, an employer who wishes to terminate the service of his employee shall give at least five days' notice of such termination of employment where the employee has been employed for more than 65 working days. In the case of supervisory staff, the five working days' period of notice shall become effective after more than 22 working days of service: Provided that in this instance the parties may agree to a longer period of notice, in which case such agreement shall be in writing. Where an employee has worked for a shorter period than the above-mentioned respective periods, no period of notice of termination of employment shall

be required. If an employee has been employed for a period of one year and longer a notice period of two weeks is applicable.

(b) Such notice shall be given in writing on a working day, and if the recipient of the notice is illiterate, it will be explained to him orally in a language understandable to him.

(c) Notwithstanding the provisions of paragraph (a), either party shall be entitled to terminate the contract of employment without notice by making payment in lieu of the required notice, which payment shall include wages as well as all other benefits.

(d) In the event of an employee absconding, or not making the appropriate payment in lieu of notice, and where the employer has proven such, the employer shall be entitled to deduct the appropriate notice pay from any monies due to the employee.

(e) Where notice of termination of employment has been given, the employer will afford the employee 15 minutes before the normal time of finishing off on the last day of service in order to collect and pack his tools and personal belongings.

(f) The contract of employment shall be terminated only on grounds of misconduct or incapacity, or owing to operational requirements, and an employer shall adhere to the code of good practice as set out in Schedule 8 in the Act.

(g) Where a contract of employment is terminated, the employer shall furnish the employee with all documentation due to him, including a certificate of service, and his unemployment insurance document, showing the full names of the employer and the employee, the date of commencement and the date of termination of the contract and the wage earned by the employee on the date of such termination.

(9) **Retrenchment:** See section 189 and 189A of the Act.

(10) **Contract of employment may not disregard or waive this agreement:** In terms of section 199 of the Act, no employer or employee is entitled to enter into any contract of employment that permits an employee to be paid remuneration and benefits that are less

than those specified in this Agreement or which allows working conditions that are less favourable than those specified in this Agreement. Any such contract shall be deemed invalid.

8: REMUNERATION

- (1) **Wages:** (a) General: No employer shall pay and no employee shall accept wages at rates lower than the following:

	<i>Rands</i> <i>per hour</i>
(i) Artisans	21.00
(ii) General workers	9.53

Calculation of wages: The weekly wage of an employee shall be his hourly wage multiplied by 40, in the case of artisans and all other categories of employees.

- (c) The increase for general workers shall be 12%. The "across the board" increase for all other categories shall be 7.5% of the actual wage. Nobody shall receive less than the minimum prescribed wage.

- (2) **Supplementary remuneration and contributions:** (a) Except in respect of a casual employee, every employer shall pay each week to the Secretary of the Council in respect of each category of employee, as stipulated below, the total sum prescribed in Column G hereunder: Provided that such sum shall be allocated as set out hereunder:

(i) Holiday Fund	Column A
(ii) Provident Fund	Column B
(iii) Contributions to Bargaining Council expenses	Column C
(iv) Trade Union subscriptions	Column D
(v) Wage Guarantee Fund	Column E
(vi) Funeral Benefit	Column F

(vii) TOTAL SUM Column G

Employers	Per week						
	A	B	C	D	E	F	G
	R	R	R	R	R	R	R
All employees earning R9.53 up to and including R10.12 ph	47.20	68.80	2.40	-	0.45	0.49	119.34
All employees earning R10.13 up to and including R12.35 ph	49.60	72.80	2.40	-	0.45	0.49	125.74
All employees earning R12.36 up to and including R15.06 ph	60.80	88.80	2.40	-	0.45	0.49	152.94
All employees earning R15.07 up to and including R17.74 ph	74.00	108.80	2.40	-	0.45	0.49	186.14
All employees earning R17.75 up to and including R20.99 ph	86.80	128.00	2.40	-	0.45	0.49	218.14
All employees earning R21.00 up to and including R24.80 ph	102.80	151.20	2.40	1.75	0.45	0.49	259.09
All employees earning R24.81 and more	121.60	178.40	2.40	1.75	0.45	0.49	305.09

(b) Except in respect of a casual employee who works for an employer for less than four weeks, every employer shall deduct each week from the remuneration due to each employee, as stipulated below, the amount prescribed in Column E hereunder: Provided that such sum shall be allocated as set out hereunder:

(i) Holiday Fund Column A

17

(ii)	Provident Fund	Column B
(iii)	Contributions to Bargaining Council	Column C
(iv)	Trade Unions	Column D
(iii)	TOTAL SUM	Column E

Employers	Per week				
	A	B	C	D	E
	R	R	R	R	R
All employees earning R9.53 and including R10.12.....	47.20	68.80	0.20	-	116.20
All employees earning R10.13 to and including R12.35	49.60	72.80	0.20	-	122.60
All employees earning R12.36 to and including R15.06 ph	60.80	88.80	0.20	-	149.80
All employees earning R15.07 up to and including R17.74 ph	74.00	108.80	0.20	-	183.00
All employees earning R17.75 up to and including R20.99 ph	86.80	128.00	0.20	-	215.00
All employees earning R21.00 up to and including R24.80 ph	102.80	151.20	0.20	1.75	255.95
All employees earning R24.81 and more ph	121.60	178.40	0.20	1.75	301.95

(c) Every employer shall, in addition to any remuneration to which an employee may be entitled in terms of clause 8 (1), pay such employee the total sum prescribed in Column C hereunder:

- (i) Holiday Fund Column A
(ii) Provident Fund Contributions Column B
(iii) TOTAL SUM Column C

Employers	Per hour		
	A	B	C
	C	C	C
All employees earning R9.53 up to and including R10.12 ph	1.18	0.86	2.04
All employees earning R10.13 up to and including R12.35 ph	1.24	0.91	2.15
All employees earning R12.36 up to and including R15.06 ph	1.52	1.11	2.63
All employees earning R15.07 up to and including R17.74 ph	1.85	1.36	3.21
All employees earning R17.75 up to and including R20.99 ph	2.17	1.60	3.77
All employees earning R21.00 up to and including R24.80 ph	2.57	1.89	4.46
All employees earning R24.81 and more	3.04	2.23	5.27

(3) **Casual employees:** (a) An employer shall pay a casual employee in respect of each hour or part of an hour worked by him on any day, other than a paid holiday or Sunday, not less than the prescribed minimum wage as set out in subclause (1) (a).

(b) An employer may pay an employee more than the minimum wage prescribed in subclause (1) (a) above: Provided that no party to this Agreement may embark upon industrial action to compel an employer to pay more than such minimum wage.

(4) Overtime: An employee shall be entitled to payment in respect of overtime worked in excess of eight ordinary hours per day as follows:-

(a) General: An employer shall not work or require or allow an employee to work overtime; Provided that three hours' overtime may be worked daily in excess of the ordinary hours prescribed in clause 7 (1) (a) without permission of the Council. Permission to work overtime in excess of three hours per day shall first be obtained by the employer from the Council in writing. Written permission to work overtime on essential services shall also be obtained by the employer from the Council prior to commencing such work. In the case of emergency work, overtime may be worked without prior permission of the Council: Provided that the employer shall report such work to the Council within the first four hours of the next working day after such emergency has arisen. For the purposes of this Agreement, all time worked in excess of the number of ordinary hours of work specified in clause 7 shall be deemed to be overtime. An employee shall be paid for overtime at overtime rates only after having completed 40 hours per week at his rate of wages, except in the case where an employee has started with an employer during such week and for that reason has not been able to complete 40 hours' ordinary time: Provided further that time lost with his employer's permission or covered by a medical certificate shall, for the purposes of this proviso, be deemed to be time worked: Provided further that the above shall not apply to an employee who is patrolling premises and guarding property.

(b) Payment for overtime: An employee who is required to work any time outside the hours as prescribed in clause 7 (1) (a) shall be paid-

- (i) at least one and one-half times the employee's wage, except any day which he may have worked in lieu of another day as mutually agreed; or
- (ii) 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

- (iii) grant an employee at least 90 minutes' paid time off for each hour of overtime worked.
- (c) **Payment for work on Sundays:** An employer shall pay an employee at least double the rate of his wage unless otherwise stated in the certificate of exemption, for all time worked.
- (d) **Minimum Hours:** The ordinary hours of work plus overtime shall not exceed 55 hours per week.
- (5) **Allowances:** (a) An employee who is required to work away from his/her residence and who cannot return home after each working day, shall be paid a living away allowance of R20.00 per day in respect of each night spent away from his residence.
- (6) **Wage guarantee fund:** (a) Every employer in the Building Industry shall, within seven days of his entering the Industry, lodge with the Council a guarantee of R1 000.00 cash.
- (b) The Secretary shall re-imburse such guarantee to the employer concerned after being notified in writing of the termination of the building operations or as soon as the employer is active in the Building Industry and has made contributions to the Council in respect of each employee, an amount prescribed in clause 8, subclause (2) (a)(v).
- (c) The Council shall use these contributions to guarantee the amounts payable to employees described hereunder.
- (i) Four weeks' wages as prescribed in subclause (1):
- (ii) Four weeks' supplementary remuneration and contributions payable by an employer as prescribed in subclause (2)(a) of this Clause;
- (d) The liability of the Council is limited to a maximum of R50 000.00 (fifty thousand Rand) per employer and to a total amount of R200 000.00 (two hundred thousand Rand) in a financial year starting 1 January and ending 31 December.

- (e) When an employer defaults by not making any contributions on behalf of his employees within one year, the amount paid towards the Fund shall be forfeited.
- (f) The Secretary shall maintain a register of all employers referred to in subclause (1).
- (g) The Council shall immediately deposit all monies received in terms of clause 8 subclause (6)(a).

9: WAGE PAYMENT PROCEDURE

- (1) **Payment of wages:** (a) An employee shall receive payment of his wages at the time and place specified by his employer: Provided that the payment shall be made-
- (i) in weekly, fortnightly or monthly intervals, as the case may be;
 - (ii) in South African currency in cash, by cheque or by means of an electronic banking transfer, as the case may be;
 - (iii) by no later than the close of business on the final working day of each pay interval.
- (b) With the exception of payment by means of an electronic bank transfer, an employee's remuneration shall be paid to him on the site where he is employed, or at the office or workshop of the employer.
- (c) An employee whose services are terminated by the employer shall receive payment of the appropriate wage and all additional benefits to which he is entitled on or before the end of the working day on which his services are terminated.
- (d) An employee who terminated his services with the employer, shall receive payment of the appropriate wage and all additional benefits to which he is entitled to, on the first day following the date of termination of his services.
- (e) Every employer shall provide each employee with a payslip/wage envelope indicating the employer's name, the name and occupation of the employee, the period for which payment

is made, the employer's pay number, the calculation of the employee's gross remuneration, overtime payments, deductions, allowances and net remuneration.

- (f) All payments made in cash shall be enclosed in a sealed envelope.
- (g) An employer shall at the request of an employee, provide him with proof that the contributions towards the various medium and long-term benefit funds have in fact been paid over to the Council, within 14 days from date of such request.
- (h) An employer may not, in terms of Section 199 (1)(a) of the Act, pay an employee remuneration that is less than that prescribed in this Agreement.

2. **Records to be kept:** (a) Every employer shall keep the following records for a minimum period of three years:

- (i) all time, wage and pay registers;
- (ii) Department of Finance IRP2 forms for all employees;
- (iii) grievance and disciplinary records and notices;
- (iv) a copy of this Collective Agreement and any amendments thereto;
- (v) any arbitration awards; and
- (vi) details of any protected and unprotected industrial action involving its employees.

(b) The employer shall be compelled to submit all or any of these records in their original form or a certified reproduced form in response to a demand made at any reasonable time by the Council's designated agent(s) or any person whose functions in terms of the Act include the resolution of disputes, and shall be entitled to receive a receipt for it.

10: SAFETY PROVISIONS

(1) Every employer and every employee shall comply with the provisions of the Occupational Health and Safety Act, 1993, and the regulations made thereunder.

(2) **Lock-ups and storage of tools:** (a) Except in the case of jobbing work, an employer shall-

- (i) provide a lock-up on every job and every workshop for locking up employees tools;
- (ii) be responsible for keeping lock-ups properly and or securely locked outside normal working hours;
- (iii) be responsible for any loss or damage to tools belonging to an employee, in sheds, lock-ups and workshops, or owing to fire, and such tools shall be insured by an employer against such loss or damage.

(b) If an employer-

(i) fails to provide or maintain a lock-up in terms of paragraph (a)(i) and (ii); or

(ii) fails to insure the tools of an employee against loss and/or damage by fire in terms of paragraph (a)(iii), such employer shall, if an employee loses his tools as a result of such act or omission, be responsible for the loss of such tools.

(c) An employee wishing to claim compensation from his employer for lost tools shall lodge a written application with the Council in such form as the Council may determine: Provided that no application shall be considered unless an applicant has-

(i) prior to the loss furnished the employer with a written inventory of the tools placed in the lock-up concerned;

(ii) reported the loss of his tools to the Police as soon as practicable; and

(iii) supplied the Council with such relevant information as the Council may require.

(d) The provisions of paragraph (b) in relation to the loss of tools, other than the loss or damage of tools by fire, shall not apply in respect of an employer, unless such tools are stored in a toolbox that is capable of being securely locked, and is kept properly locked at all times, except when opened for the purpose of providing access for an employee to his own tools: Provided that-

(i) the placing by an employee in lock-ups of tools that are not normally stored in boxes by reason of their length, shape, size or any other similar feature, shall be deemed to be in compliance with the requirements of this clause; and

- (ii) in the event of such tools as referred to in proviso (i) above being lost by theft, and employee shall not, by reason of the fact that he has not placed and locked such tools in a box, be deprived of his rights and privileges in terms of paragraph (b).
- (e) Subject to the foregoing provisions, an employee shall be responsible for placing his tools in a toolbox and for keeping such toolbox properly locked.
- (f) The decision of the Council under the provisions of this clause in any respect whatsoever and particularly regarding the amount of any compensation to be paid by an employer to an employee for tools lost by fire or any other cause shall be final.
- (g) An employee doing artisan's work and supplying his own tools shall ensure that his tools are properly marked with his name, and shall furnish his employer with an inventory of the said tools. These employees are required to supply their own toolboxes, which can be properly locked and in which all tools can be stored when not used, except tools which cannot fit in the toolbox because of their length, size or shape.
- (3) ***Shelter and ablution facilities:***
- (a) ***Shelter:*** The employer shall provide suitable accommodation in which employees may take shelter during inclement weather.
- (b) ***Ablution facilities:*** The employer shall provide proper and adequate ablution facilities. Such facilities shall comply with the relevant municipal by-laws and shall be supervised and cleaned on a daily basis to ensure cleanliness.

11. HOLIDAY FUND

- (1) The purpose of the Holiday Fund is to provide eligible employees with leave pay for the period of annual leave as set out in terms of clause 7(5)(a).
- (2) The Building Industry Holiday Fund (hereinafter referred to as the "Holiday Fund", established in terms of the Agreement published under Government Notice 1926 of 20 November 1959, is continued by this Agreement.

(3) An employer shall contribute and pay to the Council an amount of 15 working days' wages. An additional three weeks bonus will be added. It will all form part of the employer's weekly contributions to the Holiday Fund. One (1) week incentive bonus will be paid to an employee who has worked six (6) months and longer without being absent any day except in case where the employee can produce a sick certificate for every consecutive week. This amount must be paid directly by the employer to the employee.

All public holidays inclusive of those to fall within the builder's annual holiday period shall be paid directly by the employers to the employees.

(4) The amounts paid to the Council in terms of subclause (3) shall be paid by the Council into a special Holiday Fund account and the Council shall invest the amounts to the credit of the Holiday Fund from time to time with a bank or recognised financial institution. Any interest accruing from such investments shall be the sole property of the Council as compensation for the administration of the Holiday Fund.

(5) Notwithstanding the provisions of subclause (4) the employers' organisation(s) concerned shall be entitled to all interest earned on payments made by the members of their organisation(s), which interest shall after the completion of a proper audit, and after the deduction of a 5% collection and administration fee by the Council, be paid annually by the Council to the employers' organisation(s).

(6) Claims submitted for payment of an employee's holiday benefits later than six months after the date as set out in subclause (8) hereof, shall be accompanied by written reasons for such late claim.

(7) After payment of all claims against the Holiday Fund, including administration expenses, all the monies remaining to the credit of the Fund, including unclaimed Holiday Fund benefits, shall be paid into the general funds of the council after a period of six months. Claims received after six months shall, however, still be considered.

(8) The Council shall pay such holiday fund benefits to which the employee becomes entitled by means of a cheque or direct into their bank accounts on a date to be decided by the Council, but not later than the day prior to the commencement of the holiday period. No order or authority for payment to a third party shall be recognised, unless authorised by the employee in writing.

(9) An employee shall not be entitled to claim for any holiday benefits prior to the day prescribed in subclause (8) hereof. The Council shall, however, have the right to authorise such payment if in its discretion it is considered advisable to do so. In the case of the death of an employee, the amount due to him from the Holiday Fund shall be paid to his beneficiary or estate by cheque drawn in favour of such beneficiary or estate, upon the employee's registration card being lodged with the Council.

(10) In the event of the expiration of this Agreement by effluxion of time or cessation or for any other reason, the Holiday Fund shall continue to be administered by the Council until it is either liquidated or transferred by the Council to any other fund constituted for the same purpose as that for which the original Holiday Fund was created.

(11) In the event of the dissolution of the Council or in the event of its ceasing to function during any period in which this Agreement is binding in terms of the Act, the Registrar of Labour Relations may appoint a committee from employers and employees in the industry on the basis of equal representation on both sides, and the Holiday fund shall continue to be administered by such committee. Any vacancy occurring on the committee may be filled by the Registrar from employers or employees, as the case may be, so as to ensure an equality of employer and employee representatives on the committee. In the event of the committee being unable or unwilling to discharge its duties or in the event of a deadlock that renders the administration of the Holiday Fund impracticable or undesirable in the opinion of the Registrar, he may appoint a trustee to carry on the duties of the committee. Such trustee shall possess all the powers of the committee for such purpose. If there is no Council in existence upon the expiration of this Agreement, the

Holiday Fund shall be liquidated by the committee or the trustee, as the case may be, in a manner set forth in the Act, and if upon the expiration of the Agreement the affairs of the Council have already been wound up and its assets distributed, the balance of this Holiday Fund shall be distributed as provided for in the Act as if it formed part of the general funds of the Council.

12: PROVIDENT FUND

(1) **Provident Fund:** (a) The purpose of the Bloemfontein Building Industry Provident Fund (hereinafter referred to as the "Provident Fund") is to provide eligible employees with retirement, death, disability, withdrawal and funeral benefits.

(b) The provident fund negotiated with Fedsure Life Assurance (Registration Number 12/8/25953), which commenced on 7 January 1991, is continued herewith by ABSA Consultants and Actuaries.

(c) The Council shall from time to time appoint representatives from each party to represent the Council on the Building Industry Provident Fund Board of Trustees.

(d) Membership of the Provident Fund shall be compulsory for all employees for whom wages are prescribed in clause 8 (1)(a)(i) and (ii) of this Agreement.

(e) Benefits accruing under the Provident Fund shall not be transferable and shall not be pledged.

(f) The contributions towards the Provident Fund payable by the employer for all category employees amount to 9% of actual wages. The Provident Fund contributions shall be on a 50% employer and 50% employee basis.

(g) An additional amount of 49c per week shall be contributed by the employer towards the Funeral Fund, which forms part of the Provident Fund.

(h) The Contributions shall be paid by the employer to the Council on a weekly, fortnightly or monthly interval basis, depending on the wage interval, and the Council shall pay the

same over to ABSA Consultants and Actuaries on a monthly basis. The Council shall be entitled to a 10% collection fee to cover its administration costs.

(i) The Council shall issue a receipt in respect of contributions received, which receipt may be a combined voucher of all benefit contributions received for employees.

(j) An employee may make application for the surrender value payment of his Provident Fund contributions, six months after leaving the industry.

13: TRADE UNION RIGHTS

(1) **Trade union organisational rights/access:** Officials of trade union parties shall in the ordinary course of their duties have access to building sites and workplaces during ordinary working hours, but shall not be allowed to interfere with the continued performance of work by, or approach any employee without the prior consent of the employer or his duly authorised representative, which consent shall not unreasonably be withheld.

(2) **Trade union membership fees:** (a) Each trade union who is a party to the Council shall submit to the Council written proof of membership of each employee who is a member of that trade union, which proof shall include an annual listing of members who are in benefit.

(b) An employer shall deduct an amount of R1.75 per week from the wage of an artisan who qualifies in terms of clause 8(1)(a)(i), and pay it over to the Council. If contributions have been deducted from an employee's wage who is not a trade union member, such amount shall be refunded to the employee.

(c) The Council shall pay over to the respective trade union(s) all such amounts collected on a monthly basis, less a collection fee of 5%, which shall accrue to the general funds of the Council.

14: DESIGNATED AGENTS

(1) The Minister may appoint one or more persons as designated agents in terms of section 33(1) of the Act to help enforce this Agreement and the secretary of the Council shall

provide each designated agent with a certificate signed by the Secretary of the Council stating that the agent has been appointed in terms of the Act.

(2) A designated agent shall have all the rights and powers conferred on him in terms of section 33(3) and 33A of the Act and shall act in accordance with a code of conduct as specified by the Council from time to time.

(3) A designated agent shall have the right to enter any workplace or premises, subpoena any person for questioning, institute and complete enquiries and interviews, and examine all such documents, books, wage sheets, payment records and financial records, and to all such acts, as may be necessary for the purpose of ascertaining whether the provisions of this Agreement are being observed.

(4) The designated agent, in the course of fulfilling his duties, may take with him an interpreter to assist in the investigation.

(5) A person shall be guilty of contempt if he makes a false statement or hinders a designated agent during the course of his investigations or commits any act prohibited in terms of section 142(8) of the Act. Such contempt may be referred to the Labour Court for an appropriate order.

15: DISPUTE RESOLUTION PROCEDURE

(1) If there is a dispute about the interpretation or application, including enforcement, of any provision of this Agreement, any party to the dispute may refer the dispute in writing to the Council within 30 days from the date on which the dispute came into existence.

(2) The party who refers the dispute shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute.

(3) The Council shall attempt to resolve the dispute through conciliation, using a suitable qualified conciliator. Within 14 days of such referral, the Council shall convey its decision to the disputants, or state that the dispute remains unresolved.

(4) If the dispute remains unresolved after 30 days, or if any party is aggrieved by the Council's decision referred to in subclause (3) above, such party may request the Secretary of the Council to refer the dispute to arbitration by an accredited agency appointed by the Council in terms of section 52 of the Act.

(5) The arbitrator shall have the power to decide upon the procedure which he will follow at the hearing of the arbitration, and shall, in his discretion, be entitled to make an award in respect of the parties' and the Council's costs of the arbitration in terms of section 138(10) of the Act. The arbitrator's decision shall be final and binding on all parties.

16: EXPENSES OF THE COUNCIL

(1) The amounts paid or payable by employers in terms of clause 8(2)(a) of this Agreement and subclause (2) hereof shall accrue to the general funds of the Council, which funds shall be vested in and be administered by the Council.

(2) Subject to the provisions of subclause (3) hereof, every employer shall pay weekly to the Secretary of the Council an amount of R2.40 in respect of each of his employees for whom wages are prescribed in clause 8(1) (a) and apprentices: Provided that-

- (i) no payment shall be made in respect of an employee who has worked for an employer for less than 16 hours in any week;
- (ii) where an employee is employed by two or more employers during the same week, the payment in respect of that week shall be made by the employer by whom he was first employed during that week for not less than 16 hours.

- (3) An employer may deduct weekly from the earning of each of his employees referred to in clause 8(2)(c) an amount of 20 cents: Provided that-
- (i) not more than one such deduction shall be made from the earnings of an employee in any week;
 - (ii) no deduction shall be made from the earnings of an employee who has worked for an employer for less than 16 hours in any week;
 - (iii) where an employee is employed by two or more employers during the same week, the deduction in respect of that week shall be made by the employer by whom he was first employed during the week for not less than 16 hours.

17: ACCOUNTING AND AUDITING

(1) The Council shall ensure that proper books of account and records are kept in its financial affairs in accordance with acceptable accounting practises in respect of each of the funds administered by the Council and that an annual audit of each of the individual funds be performed in accordance with the provisions of the Act and the Council's Constitution.

(2) The Council shall ensure compliance with section 53 of the Act.

(3) All audited statements and annual reports of the Council and its various funds shall be lodged with the Registrar of Labour Relations annually and shall also be available at the offices of the Council for inspection by contributors to the various funds to ensure accountability and transparency within the administration of the Council.

(4) The members of the Council or its management committee or its officials shall not be liable for any debts and liabilities of the Council or any of its funds, and they are hereby indemnified by the Council against all losses and expenses incurred by them in the bona fide lawful discharge of their duties.

18: EXEMPTIONS

(1) In terms of section 32 of the Labour Relations Act, No. 66 of 1995, as amended, the Council hereby establishes an independent body called an "Exemptions Board" to hear and decide any appeal brought against-

(a) the Council's refusal of a non-party's application for exemption from the provision of this Agreement;

(b) the withdrawal of such an exemption by the Council.

(2) Any party to this Agreement or any member of a party to this Agreement may apply to the Council for exemption from any of the terms of the Agreement.

(3) The Council shall consider an application for exemption received from a party or a member of a Party to the Agreement, at the first meeting of the council following the receipt of the application, with the proviso that applications received within less than five (5) normal working days prior to a Council meeting, shall only be tabled at the next Council meeting.

(4) Applications for exemption referred to the Council in terms of subclause 18(2) or 18(3) shall be considered by the Council in accordance with the exemption criteria set out in subclause 18(13) hereof, and the applicant/s shall be advised, in writing, of the Council's decision within five (5) normal working days following the meeting at which the applications were considered.

(5) The Council shall, subject to the exemption criteria, only grant exemption on good cause and may determine such period and conditions of exemption as it deems fit, with the proviso that all exemptions shall lapse on 31 October of every year and may only be extended for a further period by the Council on the application for such extension by the applicant.

(6) Any non-party to which this Agreement has been extended to in terms of section 32 of the Act, may apply to the Council for exemption from any of the terms of this Agreement.

(7) Subclause 18(3) to and including (5) shall mutatis mutandis apply to any application for exemption received from a non-party.

(8) Within 14 consecutive days after having been advised of the Council's decision regarding an application for exemption, the non-party who feels aggrieved by the Council's decision, may submit a written appeal against the Council's decision to the Secretary of the Council. Such an appeal must be fully reasoned.

(9) The Secretary of the Council shall submit the appeal, together with the Council's decision regarding the application for exemption, to the Exemptions Board who shall as soon as possible, hear and decide the matter with reference to the exemption criteria set out in subclause 18(13) hereof and when requested by the applicants or objectors to do so, may interview applicants or any objectors at its following meeting; Provided that the Exemptions Board may defer a decision to a following meeting if additional motivation, information or verbal representations are considered necessary to decide on the application for exemption.

(10) Once the Exemptions Board has decided to uphold the appeal and grant an exemption it shall issue a certificate and advise the applicant/s within ten (10) normal working days of the date of the decision, clearly specifying-

- (a) the terms of exemption; and
- (b) the reporting requirements by the applicant and conitering re-evaluation processes.

(11) When the Exemptions Board decides against granting an exemption it shall issue a certificate and advise the applicant/s within ten (10) normal working days of the date of such decision and shall provide the reason or reasons for the decision not to grant an exemption.

(12) All applications for exemptions referred to in this clause shall be addressed to the Secretary of the Council and shall -

- (a) be in writing on an application form provided by the Council;
- (b) indicate the period of time for which the exemption is required;
- (c) indicate clearly the clauses or subclauses of this Agreement from which exemption is applied;

- (d) be fully reasonable and motivated and include proof that the exemption applied for has been discussed between the employer, his employee and their representatives and also include the responses resulting from such consultations whether in support or against the application;
- (e) indicate possible substitutive provisions;
- (f) indicate the specific workplaces and employees in respect of which the exemption is applied for;
- (g) include details of the total work force of the employer concerned.

(13) **Exemption criteria:** The Exemptions Board and the Council shall consider all applications of exemptions referred to in terms of this clause with reference to the following criteria:

- (a) The extent of consultation with and the petition for or against granting the exemptions as provided by employers or employees who are to be affected by the exemption if granted;
- (b) infringement of basic conditions of employment rights;
- (c) that a competitive advantage is not created by the exemption;
- (d) that exemption from any employee benefit fund or training provision be viewed in relation to the alternative comparable bona fide or provision including the cost to the employee, transferability, administration management and cost, growth and stability;
- (e) the extent to which the proposed exemption undermines collective bargaining and labour peace in the Building Industry;
- (f) the reality that the majority of employers at any time engaged in the Building Industry within the Council's area of jurisdiction as well as the majority of members of the employer parties to the Council, represent the category micro to medium enterprises and employ between one and twenty employees;

- (g) any special economic or other circumstances that exist warrant the granting of exemption;
- (h) take cognizance of the recommendations contained in the Report of the Presidential Commission to Investigate Labour Market Policy.

19: GENERAL

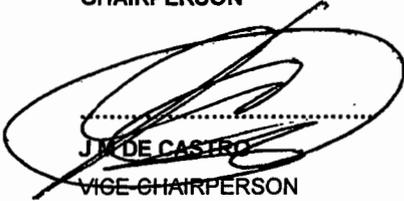
(1) ***Exhibition of Agreement:*** Every employer shall exhibit a legible copy of this Agreement on every job site of more than six months' duration and at the ordinary place of business, in a conspicuous position, easily accessible to all his employees.

(2) ***Notice Boards:*** Every employer shall wherever building operations are being carried out by him that are of more than one month's duration, display in a conspicuous place accessible to the public, a notice board of a size not less than 60 cm by 45 cm showing the business name and business address of such employer: Provided that where more than one employer operates on a site, the above particulars of all such employers may be shown on one combined notice-board.

Thus done and signed at Bloemfontein on this the 7th day of November 2007 for an on behalf of the Bargaining Council for the Building Industry (Bloemfontein).



.....
W J VAN ASWEGEN
CHAIRPERSON



.....
J H DE CASTRO
VICE-CHAIRPERSON



.....
A C M VAN VUUREN
SECRETARY

No. R. 222

29 February 2008

LABOUR RELATIONS ACT, 1995**CANCELLATION OF GOVERNMENT NOTICE
BARGAINING COUNCIL FOR THE BUILDING INDUSTRY
(BLOEMFONTEIN): EXTENSION OF COLLECTIVE AGREEMENT TO
NON-PARTIES**

I, MEMBATHISI MPHUMZI SHEPHERD MDLADLANA, Minister of Labour, hereby, in terms of section 32(7) of the Labour Relations Act, 1995, cancel Government Notice No. R. 471 of 1 June 2007, with effect from 10 March 2008.

**MMS MDLADLANA
MINISTER OF LABOUR**

No. R. 222

29 Februarie 2008

WET OP ARBEIDSVERHOUDINGE, 1995**INTREKKING VAN GOEWERMENSKENNISGEWING****BEDINGINGSRAADVIR DIE BOUNYWERHEID
(BLOEMFONTEIN): UITBREIDING VAN KOLLEKTIEWE OOREENKOMS
NA NIE-PARTYE**

Ek, MEMBATHISI MPHUMZI SHEPHERD MDLADLANA, Minister van Arbeid, trek hierby, kragtens artikel 32(7) van die Wet op Arbeidsverhoudinge, 1995, Goewermenskennisgewing No. R. 471 van 1 Junie 2007, in met ingang van 10 Maart 2008.

**MMS MDLADLANA
MINISTER VAN ARBEID**