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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 1692

20 DECEMBER 2019

**MAGISTRATES ACT, 1993 (ACT NO. 90 OF 1993)
REGULATIONS FOR JUDICIAL OFFICERS IN THE LOWER COURTS, 1993: AMENDMENT**

The Minister of Justice and Correctional Services has, under section 16 of the Magistrates Act, 1993 (Act No. 90 of 1993), on the recommendation of the Magistrates Commission, made the Regulations in the Schedule.

SCHEDULE**Definitions**

1. In this Schedule "the Regulations" means the regulations published by Government Notice No. R. 361 of 11 March 1994, as amended by Government Notices Nos. R. 644 of 1 April 1994, R. 1407 of 11 August 1994, R. 1808 of 17 October 1994, R. 1707 of 27 October 1994, R. 1791 of 17 November 1995, R. 72 of 26 January 1996, R. 331 of 1 March 1996, R. 957 of 7 June 1996, R. 1178 of 19 July 1996, R. 1242 of 2 August 1996, R. 1340 of 12 August 1996, R. 1567 of 27 September 1996, R. 1627 of 1 October 1996, R. 178 of 7 February 1997, R. 421 of 20 March 1997, R. 1081 of 8 August 1997, R. 274 of 20 February 1998, R. 997 of 7 August 1998, R. 56 of 15 January 1999, R. 1498 of 17 December 1999, R. 1339 of 26 September 2003, R. 1593 of 31 October 2003, R. 50 of 26 January 2012 and R. 933 of 7 September 2018.

Amendment of the Arrangement of the Regulations

2. The Arrangement of the Regulations in Part XII, Chapter II of the Regulations is hereby amended by—

(a) the substitution for the expressions "38. Leave", "38A. Maternity leave", "38B. Adoption leave", "38C. Family responsibility leave" and "39. Leave gratuity" of the following expressions:

- "38. Vacation leave accrued
- 38A. Vacation and sick leave provisioning
- 38B. Leave taken which affects leave provisioning
- 38C. Leave registers
- 39. Discounting of leave"; and

(b) the insertion of the following expressions after the expression "38C. Family responsibility leave":

- "38D. Recording of vacation and sick leave credits in the leave register

- 38E. Application for leave and granting thereof
- 38F. Compulsory vacation leave
- 38G. Leave gratuities
- 38H. Calculation of leave gratuities and payment thereof
- 38I. Vacation leave without remuneration
- 38J. Normal sick leave provisioning
- 38K. Special sick leave
- 38L. Special leave with remuneration
- 38M. Pre-natal leave
- 38N. Special leave for pregnancy and confinement
- 38O. Special leave for adoption
- 38P. Special leave for family responsibility
- 38Q. Special leave for resettlement as result of a transfer
- 38R. Exceptional special leave
- 38S. Waiver of right to unreduced salary or remuneration".

Substitution of regulations 38, 38A, 38B and 38C of the Regulations

3. Regulations 38, 38A, 38B and 38C of the Regulations are hereby substituted for the following regulations:

"Vacation leave accrued

38. (1) The accumulated vacation leave of a magistrate holding office immediately before the date of the commencement of the regulations contained in this Chapter (hereafter referred to as the fixed date) must remain to the credit of such a magistrate and be converted to capped leave in terms of sub-regulation (2).

(2) The vacation leave credit of a magistrate, which exists at the fixed date, consisting of calendar days, must be converted to working days by applying the following formula:

$$\frac{A \times 5}{7}$$

where –

- A: represents the magistrate's audited vacation leave credit accrued prior to the fixed date
- 5: represents the number of working days per week
- 7: represents the number of calendar days in a week.

Vacation and sick leave provisioning

38A. (1) A magistrate is entitled to 30 working days' vacation leave per calendar year, starting on 1 January each year.

(2) A magistrate's vacation leave must be taken within a three year leave cycle, as follows:

- (a) In the first year of a leave cycle, a magistrate may take all the leave that he or she is entitled to, but must take at least ten consecutive days' leave.
- (b) If a magistrate does not take all his or her leave days within the first calendar year, the remaining leave days, to a maximum of 15, are carried over to the next (second) calendar year of the cycle.
- (c) In the second year of a leave cycle, a magistrate may take all of his or her leave days, as well as the number of days carried over from the first calendar year, but must take at least ten consecutive days' leave.
- (d) If a magistrate does not take all the leave which he or she is entitled to take during the second calendar year, the remaining leave days, to a maximum of 30, are carried over to the third calendar year of the cycle.
- (e) In the third year of a leave cycle, a magistrate may take all of his or her leave days, as well as the number of days carried over from the second calendar year.
- (f) Any vacation leave not taken by the end of the third calendar year shall lapse.

(3) Except where these regulations provide otherwise, vacation and sick leave of a magistrate must be approved by an approving functionary as contemplated in regulation 38E(4).

(4) A magistrate is entitled to 86 working days' sick leave in each tri-annual sick leave cycle, as determined in regulation 38J(1) with remuneration.

(5) A magistrate who is appointed during a leave cycle, is entitled to vacation and sick leave in accordance with these regulations, as calculated on a *pro rata*-basis in accordance with the following formulae:

(a) Vacation leave

$$\frac{30}{260.714} \times \frac{A}{1} = B$$

Where-

30: represents annual accrual of working days' vacation leave

260.714: represents working days per annum

A: represents working days of service in the calendar year in question

B: represents working days accrual (a part of a day is regarded as one day).

(b) Sick leave

$$\frac{86}{260.714} \times \frac{1}{3} \times \frac{A}{1} = B$$

Where-

86: represents tri-annual accrual of working days sick leave

260.714: represents working days per annum

3: represents years in leave cycle

A: represents working days of service in the sick leave cycle

B: represents working days accrual (a part of a day is regarded as one day).

Leave taken which affects leave provisioning

38B. Leave taken without remuneration, or when a magistrate is suspended from service without remuneration, or sick leave taken without remuneration which exceeds 15 working days in the aggregate in the month in which such excess occurs, must not be regarded as service and must be negated for purposes of leave provisioning in terms of regulation 38J.

Leave registers

38C. (1) The Department must keep a leave register in respect of each magistrate in which all credits and absences from duty must be recorded.

(2) All applications for leave must be filed for audit and other purposes in the office of the Department where the leave register is kept as well as on each magistrate's personal file.

(3) The approving functionary contemplated in regulation 38E(4), must, within 10 working days of the granting of leave of a magistrate, cause such approval to be submitted to the office of the Department where the leave register is kept for recording purposes.

Insertion of regulations 38D to 38S in the Regulations

4. The following regulations are hereby inserted in the Regulations after regulation 38C of the Regulations:

"Recording of vacation and sick leave credits in leave register

38D. (1) The full complement of vacation leave credits contemplated in regulation 38A(1), must be recorded to the credit of a magistrate at the commencement of each calendar year.

(2) Vacation leave credits must, from the date of assumption of office, be recorded to the credit of a magistrate on a *pro rata* basis, as contemplated in regulation 38A(5), if a magistrate commences duty within a vacation leave cycle.

(3) Vacation leave credits must, on a *pro rata* basis, as contemplated in regulation 38A(5), be reduced if a magistrate vacates his or her office during the vacation leave cycle.

(4) The full complement of sick leave credits, contemplated in regulation 38A(4), must be recorded to the credit of a magistrate at the commencement of the sick leave cycle, or on assumption of duty within a sick leave cycle, and may not be reduced on a *pro rata* basis should a magistrate vacate his or her office during the sick leave cycle.

Application for leave and granting thereof

38E. (1) An application for leave must be made in writing.

(2) Sick leave may be granted if, owing to illness, a magistrate cannot perform his or her duties for a specified period.

(3) The granting of leave of a regional court president and of a chief magistrate is subject to approval by the Minister, as the approving functionary.

(4) Leave of a magistrate, other than a magistrate referred to in regulation 38E(3), must be approved, in the case of-

(a) a regional court magistrate, by the regional court president in question, as the approving functionary;

(b) a magistrate of a district court, by the chief magistrate concerned, as the approving functionary.

(5) A refusal of an application for vacation leave or a withdrawal of vacation or any other or special leave already granted, must be in writing, stating the reason and arrangements for the rescheduling thereof.

(6) (a) A magistrate who is aggrieved by the refusal of his or her application for vacation leave may, within five working days, lodge representations with the approving functionary in question, who must reconsider the application within five working days and inform the magistrate concerned, in writing, of his or her decision, stating the reasons therefor.

(b) If, on such reconsideration, the application is turned down, the magistrate in question may, within five working days, lodge representations with the Minister.

(c) If representations is lodged with the Minister in terms of paragraph (b), the Minister may, after obtaining the additional information that he or she considers necessary from the approving functionary and the magistrate in question, turn down or approve the application for leave.

Compulsory vacation leave

38F. All vacation leave credit in the vacation leave cycle must be utilised within the leave cycle, but not more than 10 unused leave days may be utilised within the first three months of the following leave cycle.

Leave gratuities

38G. (1) The cash value in respect of unused vacation leave accrued during the last year of service of a magistrate must be calculated in accordance with regulation 38H and be paid to a magistrate on vacating his or her office for any reason.

(2) A leave gratuity calculated in accordance with regulation 38H, must be paid to a magistrate in respect of capped vacation leave to his or her credit on vacation of office for any reason.

Calculation of leave gratuities and payment thereof

38H. (1) The amount of leave gratuity is calculated as follows:

$$\frac{A \times B}{260.714}$$

where –

A: represents the annual salary of the magistrate which is payable to him or her on the last day of his or her service

B: represents the number of vacation leave days that could not be taken as stipulated in regulation 38A, or represents the magistrate's capped vacation leave and the

- accumulated leave credit during his or her last year of service, excluding a part of a day, standing to his or her credit on the last day of his or her service
- 260.714: represents the number of working days in a year.
- (2) An adjustment of the amount of the leave gratuity paid to a magistrate must be made when an increase in salary is implemented after the termination of his or her services, with retrospective effect for the period between the date of such increase and the date of such termination.
- (3) A magistrate may, in writing, request the Department to pay leave gratuity owed to him or her upon his or her death, to a beneficiary, including a trust, identified by him or her.
- (4) Leave gratuity owed to a magistrate is payable—
- (a) directly to him or her;
- (b) upon his or her death—
- (i) to a beneficiary or trust contemplated in sub-regulation (3);
- (ii) if no beneficiary or trust was identified, to—
- (aa) the surviving spouse or a registered partner contemplated in Part XXII of these Regulations; or
- (bb) the estate of the magistrate in the event of there being no surviving spouse or partner.
- (5) The leave gratuity, which on termination of service, other than by death of the magistrate, is payable to a magistrate, may be used as a set-off against any departmental debt for which he or she is liable.

Vacation leave without remuneration

38I. (1) All vacation leave with remuneration to a magistrate's credit must first be exhausted before vacation leave without remuneration may be granted to him or her.

(2) For purposes of calculating the amount to be deducted from a magistrate's remuneration *in lieu* of vacation leave granted without remuneration, the following formula applies:

$$\frac{A \times B}{260.714}$$

260.714

Where –

A: represents the magistrate's remuneration

B: represents the number of working days annual leave without remuneration

260.714: represents the number of working days per year.

Normal sick leave provisioning

38J. (1) The sick leave cycle of a magistrate is deemed to have commenced on a fixed common date, namely on 1 January 2019, and on each third anniversary of that date.

(2) Sick leave accrues to a magistrate on the first day of a cycle and, with effect from that day, the full provision of the relative cycle may be granted to him or her if the other provisions of these Regulations are complied with.

(3) A magistrate appointed after the commencement of a sick leave cycle may be granted the full leave provisioning of that cycle.

(4) Unused sick leave in a particular cycle lapses at the end of that cycle.

(5) A magistrate may be granted the maximum number of working days of sick leave with remuneration provided for in regulation 38A(4) and (5) during a three year sick leave cycle.

(6) A magistrate may, on application in writing to the Minister, be granted vacation leave which he or she may have to his or her credit, *in lieu* of sick leave with half salary: Provided that –

- (a) such application is submitted not later than one calendar month after he or she has resumed duty;
- (b) the number of days' vacation leave so granted may not exceed 260 working days in the aggregate in any sick leave cycle; and
- (c) the Minister is satisfied that the magistrate concerned is not at that stage permanently unfit for the resumption of his or her normal duties.

(7) Sub-regulation (6) may also be applied in respect of a magistrate's absence owing to illness after steps have been taken to remove him or her from office on the grounds of ill health.

(8) Once the vacation leave referred to in sub-regulation (6) or (7) has been granted to a magistrate, and he or she has received remuneration in respect thereof, such leave may not be reconverted into sick leave with half salary.

(9) A magistrate, who—

- (a) has been granted the maximum number of working days of sick leave as contemplated in regulation 38A (4) and (5);
 - (b) has utilised vacation leave *in lieu* of sick leave as contemplated in sub-regulation (6) to (8); and
 - (c) is not yet able to resume his or her normal duties,
- may apply, in writing, stating the reasons and submitting a medical certificate to the Minister, for further sick leave with half salary.

(10) The Minister may grant further sick leave with half salary, not exceeding 86 working days in the aggregate in any one cycle, which grant may be made in respect of separate periods of absence and any illness if—

- (a) the Minister is satisfied that the magistrate, at that particular time, is not permanently unfit to resume his or her normal duties; and
- (b) the magistrate has no vacation leave, including capped leave, to his or her credit.

(11) If a magistrate has used his or her remunerated or half salaried sick leave and vacation leave provided for in these Regulations, he or she may, upon application in writing, be granted sick leave without remuneration not exceeding one year in the aggregate in any particular cycle.

(12) A magistrate may not, other than in terms of this regulation and during a particular sick leave cycle, be granted any further leave to cover his or her absence from duty owing to illness, except on the recommendation of the Commission.

(13) If a magistrate to whom vacation leave has been granted, becomes ill after the vacation leave has commenced, that portion of the said vacation leave in respect of which he or she submits a medical certificate, may be converted into sick leave, provided the necessary sick leave is available in terms of these Regulations.

(14) A magistrate who has completed at least ten years continuous service may, during the remainder of his or her service, if the sick leave provisioning in terms of these Regulations is insufficient, be granted an additional non-recurrent 86 working days sick leave with remuneration and, when granting such additional sick leave, the other provisions of these Regulations apply with the necessary changes required by the context.

(15) Any unused portion of the additional working days sick leave, contemplated in sub-regulation (14), is carried forward to the following cycle or cycles.

(16) Additional working days sick leave granted in terms of sub-regulation (14) must be recorded as such in the leave register.

Special sick leave

38K. (1) A magistrate who is absent from duty owing to an injury sustained in an accident, or owing to a disease contracted in the course of, and as a result of, his or her duties, must be granted special sick leave with remuneration, to a maximum of 130 consecutive working days, for the period that he or she is incapable to perform his or her normal duties.

(2) The Minister must, after the period referred to in sub-regulation (1) has lapsed, and the magistrate is still unable to resume his or her duties, cause an investigation to be conducted—

- (a) to determine the capacity of the magistrate to resume his or her duties within a further period of not more than 130 consecutive working days; or
- (b) in terms of Part VI of these Regulations.

(3) The Minister may grant additional special sick leave with remuneration, or half salary, or without any remuneration for a further maximum period of six calendar months if, after an investigation in terms of sub-regulation (2)(a), a magistrate will be able to resume his or her duties within such further period.

(4) Special sick leave in terms of this regulation may be granted notwithstanding the fact that the accident is attributable to the negligent conduct of the magistrate.

Special leave with remuneration

38L. Special leave with remuneration, including any period actually and necessarily utilised in travelling for the purpose for which the leave is granted, may be granted to a magistrate—

- (a) for pre-natal examinations and tests, pregnancy and confinement as provided for in regulations 38M to 38N;
- (b) for adoption as provided for in regulation 38O;
- (c) for family responsibility as provided for in regulation 38P;
- (d) for resettlement on transfer as provided for in regulation 38Q; or
- (e) when, in the case of a disabled magistrate, he or she must attend a training course related to his or her disability, or when the equipment used by him or her, in connection with his or her disability, must go for maintenance work.

Pre-Natal Leave

38M. A pregnant magistrate is entitled to eight working days pre-natal leave, per pregnancy, allowing the magistrate to attend medical examinations by a medical practitioner or midwife, and tests related to the pregnancy.

Special leave for pregnancy and confinement

38N. (1) Special leave with remuneration may be granted to a magistrate regardless of marital status, for purposes of pregnancy and confinement.

(2) A magistrate may, per confinement, be granted a maximum of four consecutive calendar months' maternity leave with remuneration, commencing at any time from four weeks before the expected date of birth, or on a prior date from which the attending medical practitioner certifies that the granting of leave from such a date is necessary for the magistrate's health or that of the unborn child.

(3) A magistrate may not commence with normal official duties for at least four weeks after the birth of her child, unless the attending practitioner certifies that she is fit to do so.

(4) Maternity leave may be utilised before and after the confinement but must, in all cases, be uninterrupted and continuous with the confinement.

(5) Notwithstanding sub-regulation (4), maternity leave may be interrupted, if—

- (a) a magistrate so chooses if the child is born prematurely and is hospitalised during the maternity leave;
- (b) a magistrate so chooses if the child becomes ill and is hospitalised for a period longer than a month during the maternity leave; or
- (c) the magistrate falls ill during the maternity leave:

Provided that if the magistrate chooses to interrupt her maternity leave, or falls ill, she may, for the period of interruption, utilise her annual leave or unpaid leave, but if the magistrate does not have enough annual leave available, or, in the event of illness, the magistrate may utilise her sick leave.

(6) A magistrate who has interrupted her maternity leave as contemplated in sub-regulation (5), and fails to return to work after the four weeks contemplated in sub-regulation (3) has expired, must cover that period with annual leave, or, if the magistrate does not have enough annual leave available, with unpaid leave.

(7) A magistrate may apply for an extension of maternity leave by the granting of—

- (a) annual leave;
- (b) unpaid leave for a period not exceeding six calendar months if the magistrate does not have enough annual leave available; or
- (c) sick leave as a result of a medical complication.

(8) (a) Sick leave may be granted due to absence from duty as a result of miscarriage, stillbirth or termination of pregnancy on medical grounds, before the third trimester of pregnancy and before a period of maternity leave commences.

(b) If the miscarriage, stillbirth or termination of pregnancy on medical grounds occurs during the third trimester of pregnancy, or after the period of maternity leave has commenced, the magistrate will be eligible for six consecutive weeks' maternity leave that will commence after the miscarriage, stillbirth or termination of pregnancy on medical grounds, whereafter sick leave as a result of a medical complication may be granted.

(c) If the miscarriage, stillbirth or termination of pregnancy on medical grounds occurs after the period of maternity leave has commenced, the period prior to the miscarriage, stillbirth or termination of pregnancy on medical grounds must be regarded as maternity leave.

Special leave for adoption

38O. (1) A magistrate who legally adopts a child that is not older than 24 months on the date of adoption, qualifies for adoption leave to a maximum of 45 working days commencing from the date that the adopted child takes up residence with the adoptive parent.

(2) Adoption leave may be extended, upon application by a magistrate, by the granting of—

(a) annual leave; or

(b) unpaid leave for a period not longer than six calendar months, if the magistrate does not have enough annual leave available.

(3) If the spouse or registered partner of a magistrate contemplated in sub-regulation (1) is also a magistrate, that spouse or partner is entitled to the family responsibility leave as contemplated in regulation 38P(1).

Special leave for family responsibility

38P. (1) A magistrate may be granted not more than five working days family responsibility leave per annual leave cycle for utilisation if—

(a) the magistrate's spouse or registered partner gives birth;

(b) the magistrate's spouse or registered partner adopts a child that is not older than 24 months on the date of adoption; or

(c) the magistrate's child, including an adopted child, spouse or registered partner, is sick.

(2) A magistrate may be granted not more than five working days family responsibility leave per year for utilisation if the magistrate's child, including an adopted child, grandchild, spouse or registered partner, parent, adoptive parent, sibling, grandparent or parent-in-law dies.

(3) A magistrate who has utilised all his or her family responsibility leave may, subject to the approval of the Minister, apply to use—

(a) available annual leave; or

(b) unpaid leave for a period not longer than six calendar months, in the event of the magistrate not having enough annual leave available.

Special leave for resettlement as result of transfer

38Q. (1) Two consecutive working days special leave with remuneration may be granted to a magistrate who is transferred to new headquarters for a single prior visit to such new headquarters.

(2) Two working days special leave with remuneration for the purpose of resettlement may be granted to a magistrate who is transferred.

Exceptional special leave

38R. If, in exceptional circumstances, the Minister is satisfied that leave for which no provision has been made in these Regulations should be granted in a specific case, the Minister may, on the recommendation of the approving functionary concerned, grant such leave on the conditions the Minister deems necessary, whether it be leave with remuneration or leave with reduced or no remuneration.

Waiver of right to unreduced salary or remuneration

38S. A magistrate may only be granted leave with half salary or without remuneration, upon waiving, in writing, his or her right to unreduced remuneration as provided for in section 12(6) of the Act."

Substitution of regulation 39 of the Regulations

5. The following regulation is hereby substituted for regulation 39 of the Regulations:

"Discounting of leave

39. (1) A magistrate may, after 20 years' uninterrupted service in the office of magistrate, discount a maximum of 10 days of his or her available vacation leave.

(2) A magistrate may, after 30 years' uninterrupted service in the office of magistrate, discount 20 days of his or her available vacation leave, or 10% of his or her available vacation leave, whichever is the most.

(3) For purposes of sub-regulations (1) and (2), 'uninterrupted service in the office of magistrate' includes service in the Public Service immediately before appointment as a magistrate."

Commencement

6. These Regulations come into operation on 1 January 2020.

DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

NO. R. 1692

20 DESEMBER 2019

**WET OP LANDDROSTE, 1993 (WET NO. 90 VAN 1993)
REGULASIES VIR REGTERLIKE BEAMPTES IN DIE LAER HOWE, 1993: WYSIGING**

Die Minister van Justisie en Korrektiewe Dienste het, kragtens artikel 16 van die Wet op Landdroshowe, 1993 (Wet No. 90 van 1993), op aanbeveling van die Landdrostekommissie, die regulasies in die Bylae uitgevaardig.

BYLAE**Woordomskrywing**

1. In hierdie Bylae beteken "die Regulasies" die regulasies gepubliseer by Goewermentskennisgewing No. R. 361 van 11 Maart 1994, soos gewysig by Goewermentskennisgewings No's. R. 644 van 1 April 1994, R. 1407 van 11 Augustus 1994, R. 1808 van 17 Oktober 1994, R. 1707 van 27 Oktober 1994, R. 1791 van 17 November 1995, R. 72 van 26 Januarie 1996, R. 331 van 1 Maart 1996, R. 957 van 7 Junie 1996, R. 1178 van 19 Julie 1996, R. 1242 van 2 Augustus 1996, R. 1340 van 12 Augustus 1996, R. 1567 van 27 September 1996, R. 1627 van 1 Oktober 1996, R. 178 van 7 Februarie 1997, R. 421 van 20 Maart 1997, R. 1081 van 8 Augustus 1997, R. 274 van 20 Februarie 1998, R. 997 van 7 Augustus 1998, R. 56 van 15 Januarie 1999, R. 1498 van 17 Desember 1999, R. 1339 van 26 September 2003, R. 1593 van 31 Oktober 2003, R. 50 van 26 Januarie 2012 en R.933 van 7 September 2018.

Wysiging van die Indeling van die Regulasies

2. Die Indeling van die Regulasies in Deel XII, Hoofstuk II van die Regulasies word hierby gewysig deur—

(a) die uitdrukkings "38. Verlof", "38A Kraamverlof", "38B. Aannemingsverlof", "38C. Gesinsverantwoordelikhedsverlof" en "39. Verlofgratifikasie" deur die volgende uitdrukkings te vervang:

- "38. Opgeloopte vakansieverlof
- 38A. Voorsiening vir vakansie- en siekverlof
- 38B. Verlof geneem wat verlofvoorsiening raak
- 38C. Verlofregisters
- 39. Verdiskontering van verlof"; en

(b) die volgende uitdrukkings na die uitdrukking "38C. Gesinsverantwoordelikhedsverlof" in te voeg:

- "38D. Aanteken van vakansie- en siekverlofkrediete in die verlofregister
- 38E. Aansoek om verlof en toestaan daarvan
- 38F. Verpligte vakansieverlof

- 38G. Verlofgratifikasie
- 38H. Berekening van verlofgratifikasie en betaling daarvan
- 38I. Vakansieverlof sonder vergoeding
- 38J. Normale siekverlofvoorsiening
- 38K. Spesiale siekverlof
- 38L. Spesiale verlof met vergoeding
- 38M. Voorgeboorteverlof
- 38N. Spesiale verlof vir swangerskap en bevalling
- 38O. Spesiale verlof vir aanneming
- 38P. Spesiale verlof vir gesinsverantwoordelikheid
- 38Q. Spesiale verlof vir hervestiging as gevolg van verplasing
- 38R. Buitengewone spesiale verlof
- 38S. Afstanddoening van reg op onverminderde salaris of vergoeding".

Vervanging van regulasies 38, 38A, 38B en 38C van die Regulasies

3. Regulasies 38, 38A, 38B en 38C van die Regulasies word hierby deur die volgende regulasies vervang:

"Opgeloopte vakansieverlof

38. (1) Die opgeloopte vakansieverlof van 'n landdros wat die amp beklee onmiddellik voor die inwerkingtredingsdatum van die regulasies in hierdie Hoofstuk vervat (hierna die vasgestelde datum genoem) bly op die krediete van daardie landdros en word ingevolge subregulasie (2) na opgehoopte verlof omgeskakel.

(2) Die vakansieverlofkrediet van 'n landdros, wat op die vasgestelde datum bestaan, bestaande uit kalenderdae, moet na werksdae omgeskakel word deur die volgende formule toe te pas:

$$\frac{A \times 5}{7}$$

waar—

- A: die landdros se geouditeerde vakansieverlofkrediete opgeloopt voor die vasgestelde datum verteenwoordig
- 5: die getal werksdae per week verteenwoordig
- 7: die getal kalenderdae in 'n week verteenwoordig.

Voorsiening vir vakansie- en siekverlof

38A. (1) 'n Landdros is geregtig op 30 werksdae vakansieverlof per kalenderjaar, wat op 1 Januarie elke jaar begin.

(2) 'n Landdros se vakansieverlof moet binne 'n driejaarverlofsiklus geneem word, soos volg:

- (a) In die eerste jaar van 'n verlofsiklus, kan 'n landdros al die verlof neem waarop hy of sy geregtig is, maar moet ten minste tien opeenvolgende dae verlof neem.
- (b) Indien 'n landdros nie al sy of haar verlofdae binne die eerste kalenderjaar neem nie, word die oorblywende verlofdae, hoogstens 15, na die volgende (tweede) kalenderjaar van die siklus oorgedra.
- (c) In die tweede jaar van 'n verlofsiklus, kan 'n landdros al sy of haar verlofdae neem, asook die getal dae uit die eerste kalenderjaar oorgedra, maar moet ten minste 10 opeenvolgende dae verlof neem.
- (d) Indien 'n landdros nie al die verlof neem waarop hy of sy in die tweede kalenderjaar geregtig is nie, word die oorblywende verlofdae, hoogstens 30, na die derde kalenderjaar van die siklus oorgedra.
- (e) In die derde jaar van 'n verlofsiklus, kan 'n landdros al sy of haar verlofdae neem, asook die getal dae uit die tweede kalenderjaar oorgedra.
- (f) Enige vakansieverlof wat teen die einde van die derde kalenderjaar nie geneem is nie, sal verval.

(3) Behalwe waar hierdie regulasies anders bepaal, moet vakansie- en siekverlof van 'n landdros deur 'n goedkeuringsfunksionaris goedgekeur word soos in regulasie 38E(4) beoog.

(4) 'n Landdros is geregtig op 86 werksdae siekverlof in elke driejaarverlofsiklus, soos in regulasie 38J(1) bepaal, met vergoeding.

(5) 'n Landdros wat tydens 'n verlofsiklus aangestel word, is geregtig op vakansie- en siekverlof ooreenkomstig hierdie regulasies, soos op 'n *pro rata*-grondslag volgens die volgende formule bereken:

(a) Vakansieverlof

$$\frac{30}{260.714} \times \frac{A}{1} = B$$

Waar-

30: jaarlikse oploping van werksdae vakansieverlof verteenwoordig

260.714: werksdae per jaar verteenwoordig

A: werksdae aan diens in die betrokke kalenderjaar verteenwoordig

B: werksdae opgeleef ('n deel van 'n dag word as een dag beskou) verteenwoordig.

(b) Siekverlof

$$\frac{86}{260.714} \times \frac{1}{3} \times \frac{A}{1} = B$$

Waar-

86: driejaarlikse oploping van werksdae siekverlof verteenwoordig

260.714: werksdae per jaar verteenwoordig

3: jare in verlofsiklus verteenwoordig

A: werksdae van diens in die siekverlofsiklus verteenwoordig

B: werksdae opgeleef ('n deel van 'n dag word as een dag beskou) verteenwoordig.

Verlof geneem wat verlofvoorsiening raak

38B. (1) Verlof sonder vergoeding geneem, of wanneer 'n landdros sonder vergoeding uit diens geskors word, of wanneer siekverlof sonder vergoeding geneem word wat altesaam 15 werksdae oorskry in die maand waarin sodanige oorskryding voorkom, moet nie as diens beskou word nie en moet afgewys word vir die doeleindes van verlofvoorsiening ingevolge regulasie 38J.

Verlofregisters

38C. (1) Die Departement moet 'n verlofregister hou vir elke landdros waarin alle krediete en afwesigheid van diens aangeteken moet word.

(2) Alle aansoeke om verlof moet vir oudit- en ander doeleindes in die kantoor van die Departement waar die verlofregister gehou word, asook op elke landdros se persoonlike lêer, geliasseer word.

(3) Die goedkeurende funksionaris soos beoog in regulasie 38E(4), moet binne 10 werksdae vanaf die toestaan van 'n landdros se verlof, sodanige goedkeuring by die kantoor van die Departement waar die verlofregister gehou word, laat indien vir opname.”.

Invoeging van regulasies 38D tot 38S in die Regulasies

4. Die volgende regulasies word hierby na regulasie 38C van die Regulasies in die Regulasies ingevoeg:

“Aantekens van vakansie- en siekverlofkrediete in die verlofregister

38D. (1) Die volle getal vakansieverlofkrediete soos in regulasie 38A(1) beoog, moet aan die begin van elke kalenderjaar op die krediet van 'n landdros aangeteken word.

(2) Vakansieverlofkrediete moet, vanaf die datum waarop die amp opgeneem is, op die krediet van 'n landdros aangeteken word op 'n *pro rata*-grondslag soos beoog in regulasie 38A(5) indien 'n landdros binne 'n vakansieverlofsiklus diens begin.

(3) Vakansieverlofkrediete moet, op 'n *pro rata*-grondslag, soos in regulasie 38A(5) beoog, verminder word indien 'n landdros sy of haar amp tydens die vakansieverlofsiklus ontruim.

(4) Die volle getal siekverlofkrediete soos in regulasie 38A(4) beoog, moet op die krediet van 'n landdros aangeteken word by die aanvang van die siekverlofsiklus, of by die opneem van diens binne 'n siekverlofsiklus en mag nie op 'n *pro rata*-grondslag verminder word indien 'n landdros sy of haar amp tydens die siekverlofsiklus ontruim nie.

Aansoek om verlof en toestaan daarvan

38E. (1) 'n Aansoek om verlof moet skriftelik gedoen word.

(2) Siekverlof kan toegestaan word indien 'n landdros nie sy of haar pligte weens siekte vir 'n bepaalde tydperk kan verrig nie.

(3) Die toestaan van verlof van 'n streekhof-president en van 'n hooflanddros is onderhewig aan goedkeuring deur die Minister, as die goedkeurende funksionaris.

(4) Verlof van 'n landdros, behalwe 'n landdros in regulasie 38E(3) bedoel, moet goedgekeur word, in die geval van-

(a) 'n streekhoflanddros, deur die betrokke streekhof-president, as die goedkeurende funksionaris;

(b) 'n landdros van 'n distrikshof, deur die betrokke hooflanddros, as die goedkeurende funksionaris.

(5) 'n Weiering van 'n aansoek om vakansieverlof of 'n terugtrekking van vakansie- of enige ander of spesiale verlof wat reeds toegestaan is, moet skriftelik wees en die rede en reëling vir die herskedulering daarvan moet voorsien word.

(6) (a) 'n Landdros wat te na gekom voel deur die weiering van sy of haar aansoek om vakansieverlof, kan binne vyf werksdae verhoë by die goedkeurende funksionaris indien, wat die aansoek om verlof binne vyf dae moet heroorweeg en die betrokke landdros skriftelik van sy of haar besluit, met redes daarvoor, moet inlig.

(b) Indien die aansoek by heroorweging afgewys word, kan die betrokke landdros binne vyf dae verhoë by die Minister indien.

(c) Indien verhoë ingevolge paragraaf (b) by die Minister ingedien word, kan die Minister, ná verkryging van bykomende inligting wat hy of sy nodig ag van die goedkeurende funksionaris en die betrokke landdros, die aansoek om verlof van die hand wys of goedkeur.

Verpligte vakansieverlof

38F. Al die vakansieverlofkrediete in die vakansieverlofsiklus moet binne die verlofsiklus gebruik word, maar nie meer as 10 ongebruikte verlofdae mag binne die eerste drie maande van die daaropvolgende verlofsiklus geneem word nie.

Verlofgratifikasie

38G. (1) Die kontantwaarde ten opsigte van ongebruikte vakansieverlof tydens die laaste diensjaar van 'n landdros, moet ooreenkomstig regulasie 38H bereken word en aan 'n landdros betaal word by ontruiming van sy of haar amp om enige rede.

(2) 'n Verlofgratifikasie wat ooreenkomstig regulasie 38H bereken is, moet aan 'n landdros betaal word ten opsigte van opgehoopte vakansieverlof op sy of haar krediet by ontruiming van sy of haar amp om enige rede.

Berekening van verlofgratifikasie en betaling daarvan

38H. (1) 'n Verlofgratifikasie se bedrag word soos volg bereken:

$\frac{A \times B}{260.714}$

waar-

A-

die jaarlikse salaris van die landdros wat op die laaste dag van sy of haar diens aan hom of haar betaalbaar is verteenwoordig

B-

die getal vakansieverlofdae wat nie geneem kon word nie soos in regulasie 38A bepaal of, die landdros se opgehoopte vakansieverlof en opgeloopte verlofkrediet tydens sy of haar laaste jaar van diens, met uitsondering van 'n deel van 'n dag, op sy of haar krediet op die laaste dag van sy of haar diens verteenwoordig

260.714: die getal werksdae per jaar verteenwoordig

(2) 'n Aanpassing van die bedrag van die verlofgratifikasie aan 'n landdros betaal, moet gedoen word wanneer 'n salarisverhoging in werking tree ná die beëindiging van sy of haar dienste terugwerkend vir die tydperk tussen die datum van sodanige verhoging en die datum van sodanige beëindiging.

(3) 'n Landdros kan die Departement skriftelik versoek om verlofgratifikasie wat aan hom of haar verskuldig is by sy of haar afsterwe, aan 'n begunstigde, met inbegrip van 'n trust, deur hom of haar geïdentifiseer, uit te betaal.

(4) Verlofgratifikasie aan 'n landdros verskuldig is betaalbaar—

(a) direk aan hom of haar;

(b) by sy of haar afsterwe —

(i) aan 'n begunstigde of trust soos in subregulasie (3) beoog;

(ii) indien geen begunstigde of trust geïdentifiseer is nie, aan—

(aa) die oorlewende gade of 'n geregistreerde lewensmaat soos beoog in Deel XXII van hierdie Regulasies; of

(bb) die boedel van die landdros indien daar geen oorlewende gade of lewensmaat is nie.

(5) Die verlofgratifikasie, wat by beëindiging van diens, behalwe by afsterwe van die landdros, aan 'n landdros betaalbaar is, kan as 'n verrekening gebruik word teen enige departementele skuld waarvoor hy of sy aanspreeklik is.

Vakansieverlof sonder vergoeding

38I. (1) Alle vakansieverlof met vergoeding op 'n landdros se krediet moet eers uitgeput word voordat verlof sonder vergoeding aan hom of haar toegestaan kan word.

(2) Vir die doeleindes van die berekening van die bedrag wat van 'n landdros se vergoeding afgetrek staan te word in die plek van vakansieverlof sonder vergoeding toegestaan, is die volgende formule van toepassing:

$\frac{A \times B}{260.714}$

260.714

Waar—

A: die landdros se vergoeding verteenwoordig

B: die getal werksdae jaarlikse verlof sonder vergoeding verteenwoordig

260.714: die getal werksdae per jaar verteenwoordig.

Normale siekverlofvoorsiening

38J. (1) Die siekverlofsiklus van 'n landdros word geag om op 'n vasgestelde gemeenskaplike datum, naamlik 1 Januarie 2019, te begin het en op elke derde verjaring van daardie datum.

(2) Siekverlof val aan 'n landdros toe op die eerste dag van 'n siklus en vanaf daardie dag kan die volle voorsiening van die tersaaklike siklus aan hom of haar toegestaan word indien aan die ander bepalings van hierdie Regulasies voldoen word.

(3) 'n Landdros wat ná aanvang van 'n siekverlofsiklus aangestel is, kan die volle verlofvoorsiening van daardie siklus ontvang.

(4) Ongebruikte siekverlof in 'n bepaalde siklus verval aan die einde van daardie siklus.

(5) Die maksimum getal werksdae siekverlof met volle vergoeding waarvoor in regulasie 38A(4) en (5) voorsiening gemaak word, kan tydens 'n driejaarsiekverlofsiklus aan 'n landdros toegestaan word.

(6) 'n Landdros kan, by skriftelike aansoek aan die Minister, vakansieverlof wat hy of sy op sy of haar krediet mag hê, met halwe salaris in die plek van siekverlof toegestaan word: Met dien verstande dat—

(a) sodanige aansoek nie later nie as een kalendermaand nadat hy of sy diens hervat het, ingedien word;

(b) die getal dae vakansieverlof aldus toegestaan nie meer mag wees as 260 werksdae in totaal in enige siekverlofsiklus nie; en

(c) die Minister tevrede is dat die betrokke landdros nie op daardie tydstip permanent vir die hervatting van sy of haar normale pligte onbevoeg is nie.

(7) Subregulasie (6) kan ook toegepas word ten opsigte van 'n landdros se afwesigheid weens siekte nadat stappe gedoen is om hom of haar op grond van swak gesondheid uit die amp te onthef.

(8) Wanneer die vakansieverlof in subregulasie (6) of (7) bedoel aan 'n landdros toegestaan is en hy of sy vergoeding ten opsigte daarvan ontvang het, kan sodanige verlof nie weer na siekverlof met halwe salaris omgeskakel word nie.

(9) 'n Landdros—

(a) aan wie die maksimum getal werksdae siekverlof soos in regulasie 38A(4) en (5) toegestaan is;

(b) wat vakansieverlof in die plek van siekverlof gebruik het soos in subregulasie (6) tot (8) beoog; en

(c) wat nog nie sy of haar normale pligte kan hervat nie, kan skriftelik, met redes, aansoek doen en 'n siekbrief aan die Minister voorlê vir verdere siekverlof met halwe salaris.

(10) Die Minister kan verdere siekverlof met halwe salaris van hoogstens 86 werksdae in totaal in enige een siklus toestaan, welke toegif gemaak kan word ten opsigte van aparte tydperke van afwesigheid en enige siekte indien—

(a) die Minister tevrede is dat die landdros op daardie besondere tydstip nie permanent onbevoeg is om sy of haar normale pligte te hervat nie; en

(b) die landdros geen vakansieverlof, met inbegrip van opgehoopte verlof, op sy of haar krediet het nie.

(11) Indien 'n landdros sy of haar siekverlof met vergoeding of met halwe salaris en vakansieverlof waarvoor in hierdie Regulasies voorsiening gemaak is, gebruik het, kan hy of sy by skriftelike aansoek, siekverlof sonder vergoeding gegee word van hoogstens een jaar in totaal in enige bepaalde siklus.

(12) 'n Landdros kan nie, behalwe ingevolge hierdie regulasie en tydens 'n bepaalde siekverlofsiklus, enige verdere verlof gegee word om sy of haar afwesigheid van diens weens siekte te dek nie, behalwe op aanbeveling van die Kommissie.

(13) Indien 'n landdros aan wie vakansieverlof toegestaan is, siek word nadat die vakansieverlof begin het, kan 'n gedeelte van die genoemde vakansieverlof waarvoor hy of sy 'n mediese sertifikaat indien, na siekverlof omgeskakel word, met dien verstande dat die nodige siekverlof ingevolge hierdie Regulasies beskikbaar is.

(14) 'n Landdros wat ten minste tien jaar ononderbroke diens voltooi het, kan tydens die res van sy of haar diens, indien die siekverlofvoorsiening ingevolge hierdie Regulasies onvoldoende is, 'n bykomende nieherhalende 86 werksdae siekverlof met vergoeding toegestaan word en by die toestaan van sodanige bykomende siekverlof, is die ander bepalinge van hierdie Regulasies, met die nodige veranderinge soos deur die samehang vereis, van toepassing.

(15) Enige ongebruikte gedeelte van die bykomende werksdae siekverlof soos in subregulasie (14) beoog, word na die volgende siklus of siklusse oorgedra.

(16) Bykomende werksdae siekverlof ingevolge subregulasie (14) toegestaan, moet as sodanig in die verlofregister opgeneem word.

Spesiale siekverlof

38K. (1) 'n Landdros wat van diens afwesig is weens 'n besering in 'n ongeluk opgedoen of 'n siekte opgedoen in die loop van en as gevolg van sy of haar pligte, moet spesiale siekverlof met vergoeding toegestaan word vir hoogstens 130 agtereenvolgende werksdae, vir die tydperk waartydens hy of sy nie in staat is om sy of haar normale pligte te verrig nie.

(2) Die Minister moet, ná die tydperk in subregulasie (1) bedoel verstryk het en die landdros steeds nie sy of haar pligte kan hervat nie, 'n ondersoek laat doen—

- (a) om die landdros se vermoë om sy of haar pligte binne 'n verdere tydperk van hoogstens 130 agtereenvolgende werksdae te hervat, te bepaal; of
- (b) ingevolge Deel VI van hierdie Regulasies.
 - (3) Die Minister kan bykomende spesiale siekverlof met vergoeding, of halwe salaris of sonder enige vergoeding vir 'n verdere tydperk van hoogstens ses kalendermaande toestaan indien, ná 'n ondersoek ingevolge subregulasie (2)(a), 'n landdros sy of haar pligte binne sodanige verdere tydperk sal kan hervat.
 - (4) Spesiale siekverlof ingevolge hierdie regulasie kan toegestaan word ondanks die feit dat die ongeluk aan die nalatige optrede van die landdros toegeskryf kan word.

Spesiale verlof met vergoeding

38L. Spesiale verlof met vergoeding, met inbegrip van enige tydperk werklik en noodwendig bestee deur te reis vir die doel waarvoor die verlof toegestaan word, kan aan 'n landdros toegestaan word—

- (a) vir voorgeboorteondersoeke en -toetse, swangerskap en bevalling soos bepaal in regulasies 38M tot 38N;
- (b) vir aanneming soos bepaal in regulasie 38O;
- (c) vir gesinsverantwoordelikheid soos bepaal in regulasie 38P;
- (d) vir hervestiging by verplasing soos bepaal in regulasie 38Q; of
- (e) wanneer, in die geval van 'n landdros met gestremdheid, hy of sy opleiding in verband met sy of haar gestremdheid moet bywoon, of wanneer die toerusting wat hy of sy in verband met sy of haar gestremdheid gebruik, vir onderhoudwerk moet gaan.

Voorgeboorteverlof

38M. 'n Swanger landdros is geregtig op agt werksdae voorgeboorteverlof, per swangerskap, wat die landdros toelaat om afsprake vir mediese ondersoeke deur 'n mediese praktisyn of vroedvrou na te kom, en om toetse wat met die swangerskap verband hou, te laat doen.

Spesiale verlof vir swangerskap en bevalling

38N. (1) Spesiale verlof met vergoeding kan aan 'n landdros, ongeag huwelikstatus, toegestaan word vir doeleindes van swangerskap en bevalling.

(2) 'n Landdros kan, per bevalling, 'n maksimum van vier agtereenvolgende kalendermaande kraamverlof met vergoeding toegestaan word, wat begin enige tyd vanaf vier werke voor die verwagte geboortedatum, of 'n datum voor dit waar die behandelende mediese praktisyn sertifiseer dat die toestaan van verlof vanaf sodanige datum nodig is vir die gesondheid van die landdros of dié van die ongebore kind.

(3) 'n Landdros mag vir ten minste vier weke ná die geboorte van haar kind nie haar normale amptelike pligte hervat nie, tensy die behandelende praktisyn sertifiseer dat sy in staat is om dit te doen.

(4) Kraamverlof kan gebruik word voor en ná die bevalling, maar moet in alle gevalle ononderbroke en aaneenlopend met die bevalling wees.

(5) Ondanks subregulasie (4), kan kraamverlof onderbreek word, indien—

- (a) 'n landdros dit verkies indien die kind vroeg gebore word en tydens die kraamverlof gehospitaliseer word;
- (b) 'n landdros dit verkies indien die kind siek word en vir 'n tydperk van meer as 'n maand tydens die kraamverlof gehospitaliseer word; of
- (c) die landdros tydens die kraamverlof siek word:

Met dien verstande dat indien die landdros besluit om haar kraamverlof te onderbreek, of siek word, sy tydens die onderbreking, haar jaarlikse verlof of onbetaalde verlof kan gebruik, maar indien die landdros nie genoeg jaarlikse verlof het nie, of, in die geval van siekte, haar siekverlof kan gebruik.

(6) 'n Landdros wat haar kraamverlof onderbreek het soos in subregulasie (5) beoog, en versuim om terug te keer werk toe ná die vier weke soos in subregulasie (3) beoog, verstryk

het, moet daardie tydperk met jaarlikse verlof, of, indien die landdros nie genoeg jaarlikse verlof beskikbaar het nie, met onbetaalde verlof, dek.

(7) 'n Landdros kan aansoek doen om 'n verlenging van kraamverlof deur die toestaan van—

- (a) jaarlikse verlof;
- (b) onbetaalde verlof vir 'n tydperk van hoogstens ses kalendermaande indien die landdros nie genoeg jaarlikse verlof beskikbaar het nie; of
- (c) siekverlof as gevolg van 'n mediese komplikasie.

(8) (a) Siekverlof kan toegestaan word weens afwesigheid van diens as gevolg van 'n miskraam, doodgeboorte of beëindiging van swangerskap op mediese gronde voor die derde trimester van swangerskap en voordat 'n tydperk van kraamverlof begin.

(b) Indien die miskraam, stilgeboorte of beëindiging van swangerskap op mediese gronde geskied tydens die derde trimester van swangerskap of nadat die tydperk van kraamverlof begin het, is die landdros geregtig op ses agtereenvolgende weke van kraamverlof wat ná die miskraam, stilgeboorte of beëindiging van swangerskap op mediese gronde sal begin, waarna siekverlof as gevolg van 'n mediese komplikasie toegestaan kan word.

(c) Indien die miskraam, stilgeboorte of beëindiging van swangerskap op mediese gronde geskied nadat die tydperk van kraamverlof begin het, moet die tydperk voor die miskraam, stilgeboorte of beëindiging van swangerskap op mediese gronde as kraamverlof beskou word.

Spesiale verlof vir aanneming

38O. (1) 'n Landdros wat 'n kind wettig aanneem wat op die datum van aanneming nie ouer as 24 maande is nie, kwalifiseer vir aannemingsverlof tot hoogstens 45 werksdae met ingang van die datum waarop die aangenome kind by die aanneemouer gaan bly.

(2) Aannemingsverlof kan op aansoek deur 'n landdros verleng word deur die toestaan van—

- (a) jaarlikse verlof; of
- (b) onbetaalde verlof vir 'n tydperk van hoogstens ses kalendermaande, indien die landdros nie genoeg jaarlikse verlof beskikbaar het nie.

(3) Indien die gade of geregistreerde lewensmaat van 'n landdros soos in subregulasie (1) beoog, ook 'n landdros is, is daardie gade of lewensmaat geregtig op die gesinsverantwoordelikeverlof soos in regulasie 38P(1) beoog.

Spesiale verlof vir gesinsverantwoordelikheid

38P. (1) 'n Landdros kan hoogstens vyf werksdae gesinsverantwoordelikeverlof per jaarlikse verlofsiklus toegestaan word om gebruik te word wanneer—

- (a) die landdros se gade of geregistreerde lewensmaat geboorte skenk;
- (b) die landdros se gade of lewensmaat 'n kind aanneem wat jonger as 24 maande is op die datum van aanneming; of
- (c) die landdros se kind, met inbegrip van 'n aangenome kind, gade of geregistreerde lewensmaat, siek is.

(2) 'n Landdros kan hoogstens vyf werksdae gesinsverantwoordelikeverlof per jaar toegestaan word om te gebruik wanneer die landdros se kind, met inbegrip van 'n aangenome kind, kleinkind, gade of geregistreerde lewensmaat, ouer, aanneemouer, sib, grootouer of skoonouer sterf.

(3) 'n Landdros wat al sy of haar gesinsverantwoordelikeverlof gebruik het kan, behoudens die goedkeuring van die Minister, aansoek doen—

- (a) om beskikbare jaarlikse verlof te gebruik; of
- (b) onbetaalde verlof vir hoogstens ses kalendermaande, indien die landdros nie genoeg jaarlikse verlof beskikbaar het nie, te gebruik.

Spesiale verlof vir hervestiging as gevolg van verplasing

38Q. (1) Twee agtereenvolgende werksdae spesiale verlof met vergoeding kan aan 'n landdros toegestaan word wat na nuwe hoofkwartiere verplaas word, vir 'n enkele voorafbesoek by sodanige nuwe hoofkwartiere.

(2) Twee werksdae spesiale verlof met vergoeding vir die doeleindes van hervestiging kan aan 'n landdros wat verplaas word, toegestaan word.

Buitengewone spesiale verlof

38R. Indien die Minister onder buitengewone omstandighede oortuig is dat verlof waarvoor geen voorsiening in hierdie regulasies gemaak is nie, in 'n spesifieke geval toegestaan moet word, kan die Minister, op aanbeveling deur die betrokke goedkeurende funksionaris, sodanige verlof toestaan op die voorwaardes wat die Minister nodig ag, hetsy dit verlof met volle vergoeding of verlof met verminderde of geen vergoeding is.

Afstanddoening van reg op onverminderde salaris of vergoeding

38S. Verlof met halwe salaris of sonder vergoeding kan slegs aan 'n landdros toegestaan word indien hy of sy skriftelik afstand doen van sy of haar reg op onverminderde vergoeding soos bepaal in artikel 12(6) van die Wet.”

Vervanging van regulasie 39 van die Regulasies

5. Regulasie 39 van die Regulasies word hierby deur die volgende regulasie vervang:

“Verdiskontering van verlof

39. (1) 'n Landdros kan na verloop van 20 jaar ononderbroke diens in die amp van landdros, hoogstens 10 dae van sy of haar beskikbare vakansieverlof verdiskonteer.

(2) 'n Landdros kan na verloop van 30 jaar ononderbroke diens in die amp van landdros, 20 dae van sy of haar beskikbare vakansieverlof, of 10% van sy of haar beskikbare vakansieverlof, welke een ook al die meeste is, verdiskonteer.

(3) Vir die doeleindes van subregulasies (1) en (2), sluit 'ononderbroke diens in die amp van landdros', diens in die Staatsdiens onmiddellik voor aanstelling as 'n landdros, in.”

Inwerkingtreding

6. Hierdie Regulasies tree op 1 Januarie 2020 in werking.

DEPARTMENT OF LABOUR

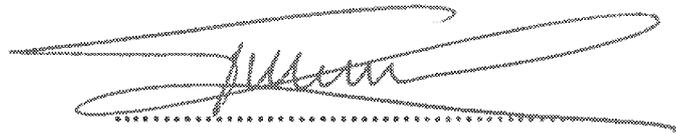
NO. R. 1693

20 DECEMBER 2019

LABOUR RELATIONS ACT, 1995

**BARGAINING COUNCIL FOR THE FURNITURE MANUFACTURING INDUSTRY
OF THE WESTERN CAPE: EXTENSION TO NON-PARTIES OF THE AGENCY
SHOP FEE COLLECTIVE AGREEMENT**

I, **THEMBELANI WALTERMADE NXESI**, Minister of Employment and Labour, hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the provisions of the collective agreement which appears in the Schedule hereto, which was concluded in the Bargaining Council for the Furniture Manufacturing Industry of the Western Cape 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 the second Monday after the date of publication of the agreement for the period of twelve months.



MR T W NXESI, MP

MINISTER OF EMPLOYMENT AND LABOUR

DATE: 29/11/2019

UMNYANGO WEZEMISEBENZI NEZABASEBENZI**UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA-1995****BARGAINING COUNCIL FOR THE FURNITURE MANUFACTURING INDUSTRY
OF THE WESTERN CAPE: UKWELULELWA KWESIVUMELWANO
SENKOKHELO YENTELE SELULELWA KULABO ABANGEYONA INGXENYE
YESIVUMELWANO**

Mina, **THEMBELANI WALTERMADE NXESI**, onguNgqongqoshe Wezemisebenzi neZabasebenzi, ngokwesigaba 32(2) soMthetho Wobudlelwano Kwezabasebenzi ka-1995, ngazisa ukuthi isiVumelwano sabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe lapha, esenziwa yi**BARGAINING COUNCIL FOR THE FURNITURE MANUFACTURING INDUSTRY OF THE WESTERN CAPE**, futhi ngokwesigaba 31 soMthetho Wobudlelwano kwezabasebenzi, ka 1995 esibopha labo abasenzayo, sizobopha bonke abanye abaqashi nabasebenzi kuleyomboni, siyokuqala ukusebenza kusukela ngomSombuluko wesibili emuva kokushicilelwa kwalesiSivumelwano esiyophela emuva kwezinyanga eziyishumi nambili.



MNUMZANE TW NXESI, MP

UNGGONGQOSHE WEZEMISEBENZI NEZABASEBENZI

USUKU:.....29/11/2019.....

SCHEDULE

**BARGAINING COUNCIL for the FURNITURE MANUFACTURING INDUSTRY
OF THE WESTERN CAPE**

AGENCY SHOP FEE COLLECTIVE AGREEMENT

In accordance with the provisions of the Labour Relations Act 1995 (Act No 66 of 1995)(as amended),
made and entered into by and between the

Cape Furniture Manufacturers Association

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

and the

National Union of Furniture and Allied Workers of South Africa

(hereinafter referred to as the "employees" or the "trade unions"), of the other part

being the parties to the Bargaining Council for the Furniture Manufacturing Industry of the Western
Cape.

CHAPTER 1

1. SCOPE OF APPLICATION

- (1) The terms of this Agreement shall be observed in the Furniture, Bedding, Upholstery and
Curtain Manufacturing Industry as defined in Paragraph A in the Provinces of the Northern
Cape and Western Cape excluding the Magisterial Districts of George, Knysna, Mossel Bay,
Plettenberg Bay and Oudtshoorn.: -

Paragraph A

"Furniture, Bedding, Upholstery and Curtain Manufacturing Industry" or "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 manufacture, either in whole or in part, of all types of components of furniture, furniture, bedding, curtains, upholstery and/or re-upholstery and will, inter alia, include but not be limited to the following:

(a) Furniture

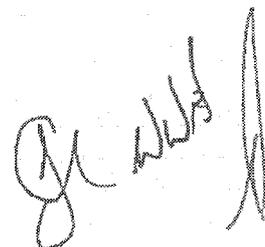
Manufacturing, assembling, repairing, staining, spraying, polishing, re-polishing, making loose covers and/or cushions, wood machining, veneering, woodturning, carving, assembling, painting, spraying, cutting, edging, drilling, wood bending, laminating and/or papering/foiling, of board.

"Board" means any type of wood or wooden or related product or any other substitute material, amongst others being: -laminated board, fibre board, chip board, block board, veneer board, pressed board.

Furniture manufacturing will also include the manufacturing, repairing, polishing, assembling, cutting, drilling, edging, re-polishing, staining, spraying either in whole or in part of: pianos, organs, kitchen cupboards, attached wall cupboards, built-in cupboards, free standing cupboards, bars or built-in bar counters, cane, wicker or grass furniture, cabinets including cabinets for musical instruments and radios, wireless or television cabinets, coffins, draw and draw fronts, doors and cupboard doors irrespective of size, bathroom cupboards, cupboard tops, and furniture for tea-rooms, restaurants, offices, churches, schools, libraries, hotels, other educational institutions, conference centres and theatres.

(b) Bedding

The manufacturing, assembling, repairing, covering, re-covering of mattress bases, mattresses, spring mattresses, overlays, bolsters, pillows, cushions for studio couches, spring units, box-spring mattresses sleeper couch and studio couches.



"Studio Couch" means an article of furniture, which is designed for seating and for conversion into a double bed or two or more beds and of which the frames may also be constructed mainly of metal and the seating and/or sleeping surfaces consist of mattresses and/or cushions.

(c) Upholstery

The upholstering or re-upholstering of any furniture, or item of furniture, bedding, seating, pelmets, mattress bases, foam mattresses and/or cushions.

(d) Curtain making

The making, altering, repairing and hanging of curtains and/or blinds made mainly of fabric, wood, cane, wicker, reed or grass.

Curtain making includes window treatment, cutting of rails and rods, fitting of pelmets, curtains, blinds and associated products.

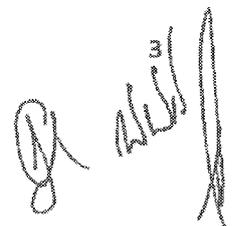
(2) Notwithstanding the provisions of sub-clause (1), the terms of this Agreement shall:-

- (a) apply only to employees for whom minimum wages are prescribed in the Main Collective Agreement and to employers of such employees.
- (b) apply to Learners in so far as the terms are not inconsistent with the Skills Development Act, 97 of 1998, or any contract entered into or any condition fixed under the Skills Development Act, 97 of 1998.

2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation:-

- (1) (a) in respect of parties to this agreement, on the date of signature;



(b) in respect of non-parties, on such date as fixed by the Minister of Labour in terms of section 32 of the Act.

(2) This Agreement shall remain in force for a 12 month period, from the date fixed by the Minister.

3. TERMS AND CONDITIONS

3.1 A separate Agency Shop Fee Agreement in terms of section 25 of the Labour Relations Act, 1995 (Act 66 of 1995)(as amended)(hereinafter referred to as the Act) is hereby agreed to and the provisions of the Act, where applicable, shall apply to this Agreement.

3.2 The object of this Agreement is to ensure that all employees in the scope of the Main Agreement who receive the benefits of collective bargaining contribute towards its costs.

3.3 This Agreement shall be subject to the respective parties being representative, as required by section 25 of the Act, of employees and employers who are covered by the Main Collective Agreement of the Bargaining Council as verified by the Department of Labour from time to time.

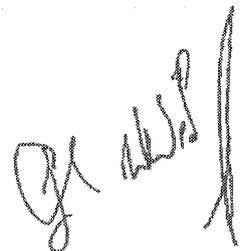
3.4 The application of this agreement to either of the parties shall be subject to that party being representative.

4. DEFINITIONS

Any expressions used in this Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act and any reference to an Act shall include any amendments to such Act, and unless the contrary intention appears, words importing the masculine gender shall also include the feminine gender and vice versa further, unless inconsistent with the context-

"Act" means the Labour Relations Act, 1995 (Act 66 of 1995)(as amended);

"Council" means the Bargaining Council for the Furniture Manufacturing Industry of the Western Cape;



5. AGENCY SHOP FEE

- 5.1 An employer must deduct an Agency Shop Fee from the wages of employees identified in this Agreement who are not members of the representative trade union, and who are not compelled to become members of the aforementioned union, but are eligible for membership thereof.
- 5.2 For the purposes of this agreement, "representative trade union" means, the same as in section 25 of the Act, a registered trade union or two or more registered trade unions acting jointly, whose members are a majority of the employees employed: -
- 5.2.1 by an employer in a workplace in the scope of the Council; or
- 5.2.2 by the members of the employers' organisation who is party to this Agreement and whose members are employers in the scope of the Council.
- 5.3 This Agency Shop Fee agreement is binding on all employees who are employed in the scope of the Council's Main Collective Agreement and who are not members of the representative trade union who are parties to this Agreement, namely the National Union of Furniture and Allied Workers of South Africa.
- 5.4 A prescribed Agency Shop Fee equal to R26-00 per week, with effect from the coming into operation of this agreement, must be deducted by all employers from all of their employees' in the scope of the Main Agreement who are not members of the party trade union National Union of Furniture and Allied Workers of South Africa.
- 5.5 The prescribed Agency Shop Fee deducted in accordance with clause 5.4 above, must be paid by the employers concerned to the Council by the 15th day of each month following the month when these deductions were required to have been made from their employees' wages.
- 5.5.1 This prescribed Agency Shop Fee received by the Council must be paid by the Council on a monthly basis to the National Union of Furniture and Allied Workers of South Africa.
- 5.6 An employer shall together with the Agency Shop Fee also submit to the Secretary of the Council, at the same time, a monthly return form reflecting the amount of the Agency Shop Fee due for each employee.
- 5.7 The Secretary of the Council shall deposit all moneys received in terms of clause 5.5. into a bank account of the Council, if not already done so by the employer.
- 5.8 The prescribed Agency Shop Fee shall be equivalent to or less than the maximum amount of the trade union subscriptions payable by any of the members of the National Union of Furniture and Allied Workers of South Africa.



- 5.9 The Secretary of the Council must transfer all moneys received in respect of Agency Shop Fees into a separate bank account administered by the party trade union.
- ~~5.10~~ Despite sub-clause 5.9, a conscientious objector may request his employer in writing, to pay the prescribed amount deducted from his wages in respect of Agency Shop Fees into a fund administered by the Department of Labour.
- 5.11 No Agency Shop Fee may be:
- 5.11.1 paid to a political party as an affiliation fee; or
 - 5.11.2 contributed in cash or kind to a political party or a person standing for election to any political office; or
 - 5.11.3 used for any expenditure that does not advance or protect collective bargaining and the socio-economic interests of employees in the scope of this Council.
- 5.12 Despite the provisions of any law or contract, an employer may deduct the Agency Shop Fee from the wages of an employee without the employee's authorisation.
- 5.13 The provisions of sections 98 and 100 (b) and (c) of the Act apply, read with the changes required by the context, to the separate account referred to in sub-clause 5.9.
- 5.14 Any person may inspect the auditor's report, in so far as it relates to an account referred to in sub-clauses 5.9.
- 5.15 The Registrar must provide a certified copy of, or an extract from, any of the documents referred to in clause 5 to any person who has paid the prescribed fees.
- 5.16 If an employee or trade union or any other interested person or organisation alleges that the trade union party to this agreement is no longer a representative trade union as envisaged in clause 5.2 it must give the trade union party written notice of this allegation, and must allow the same trade union party 90 calendar days from the date of the notice to prove that they are representative trade unions.
- 5.17 If, within the 90-day period, the trade union party fails to prove that they are a representative trade union, the employee or trade union or any other interested person or organisation making such allegation must give the trade union party who are party to this agreement notice of their intention to request the Minister of Labour to withdraw the extension of this agreement to non-party employees in the Industry.
- 5.18 If the extension of this agreement to non-party employees in the Industry is withdrawn by the Minister of Labour, the provisions of sub-clause 5.7 and 5.9 shall apply until all the Agency



Shop Fees due up until the date of withdrawal of the extension of this agreement, have been received and paid out in accordance with sub-clauses 5.7 and 5.9.

- 5.19 The Agency Shop Fee shall only be payable at the prescribed rate by an employee earning more than the equivalent of two fifths of his normal weekly wage and on the hours which would ordinarily have been worked by the employee on:
- 5.19.1 paid public holidays;
 - 5.19.2 paid trade union representative leave days;
 - 5.19.3 paid sick leave days;
 - 5.19.4 paid family responsibility leave days.

6. UNPAID AGENCY SHOP FEES

- 6.1 Should any amounts due to the Council in terms of this agreement not be received by the Council by the 15th day of the month following the month in respect of which the amounts are payable, the employer shall forthwith be liable for and be required to pay interest on such amounts or on such lesser amounts that remain unpaid at a rate which does not exceed the maximum rate as prescribed by the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975)(as amended), calculated from the 16th day of the month until the day upon which the payment is actually received by the Council and reflects in the Council's bank account. The Council shall be entitled at its absolute discretion to waive payment of such interest or part thereof in any individual instance.
- 6.2 In the event of the Council incurring any costs or becoming obliged to pay any collection costs and commission by reason of the failure of the employer to make any payment on or before the applicable due date, the employer shall then also be liable to forthwith pay all such collection costs and commission to the Council and the Council shall be entitled in its absolute discretion to allocate any payment received from such an employer firstly to such costs, collection commission and interest, and thereafter to the reduction of the unpaid Agency Fees or Bargaining Levy.
- 6.3 Disputes about the Interpretation, application or enforcement of this Agreement shall be resolved in accordance with the Dispute Resolution Procedure as described in the Council's Main Collective Agreement.

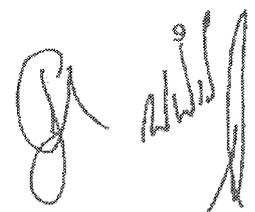
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7. EXEMPTIONS

- 1 Any person bound by this Agreement may apply for exemption.
- 2 The authority of the Bargaining Council is to consider applications for exemptions and grant exemptions.
- 3 The *Bargaining Council* must determine its exemptions policy and process all exemptions applications in terms of this policy.
- 4 All applications for exemption shall be made in writing on the appropriate application form, obtained from the *Bargaining Council*, setting out relevant information, including:
- (a) The provisions of the *agreement* in respect of which exemption is sought;
 - (b) The number of persons in respect of whom the exemption is sought;
 - (c) The reasons why the exemption is sought;
 - (d) The nature and size of the business in respect of which the exemption is sought;
 - (e) The duration and timeframe for which the exemption sought;
 - (f) The business strategy and plan of the applicant seeking the exemption;
 - (g) The applicant's past record (if applicable) of compliance with the provisions of the Collective Agreement, its amendments and exemptions certificate;
 - (h) The recorded views expressed by the trade union or workforce itself during the plant level consultation process; and
 - (i) Any other relevant supporting data and financial information the *Council* may prescribe from time to time.
- 5 An exemption application in respect of a term or provision in a *Collective Agreement*:
- (a) Concluded in the *Council* that applies throughout the *Industry* must be considered by an exemptions body appointed by the *Council*;
- 6 The Bargaining Council shall decide on an application for exemption within 30 days of receipt.

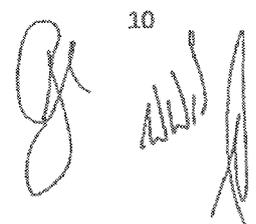
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- 7 Upon receipt of an application by the Bargaining Council, it shall immediately refer the application to the exemptions body which may, if deemed expedient, request the applicant to attend the meeting at which the application is considered, to facilitate the deliberations.
- 8 An exemption body appointed by the Council may request additional information from an applicant applying for exemption.
- 9 In scrutinising an application, the Exemption Body or the Independent Exemptions Body will consider the details of the application, the views expressed by the trade union or workforce, affected employers, any other representations received in relation to the application, and the factors and criteria as listed in clause 15 below.
- 10 The Secretary must advise the applicant in writing of the decision of the exemptions body within 15 days from the date of the decision, failing which the Bargaining Council is deemed to have refused the application for exemption.
- 11 In the event of the exemptions body granting, partially granting or refusing to grant an application, the applicant shall be informed for the reasons for the decision and have the right to appeal in writing on the appropriate appeal application form against the decision to the Independent Body, established by the Bargaining Council within 21 days from the date of being informed of the outcome.
- 12 In terms of section 32(3)(e) of the Act, the Bargaining Council must establish an Independent Body to hear and decide as soon as possible any appeal brought against the exemptions body's refusal of a non-party's application for exemption from the provisions of a collective agreement by the exemptions body or withdrawal of an exemption by the Bargaining Council.
- 13 The Independent Body shall hear and decide and inform the applicant and the Bargaining Council as soon as possible and not later than 30 days after the appeal has been lodged against the decision of the exemptions body.
- 14 No representative, office-bearer, or official of a trade union or employers' organisations party to the Bargaining Council, may be a member of, or participate in the deliberations of, the Independent Body established by the Bargaining Council.

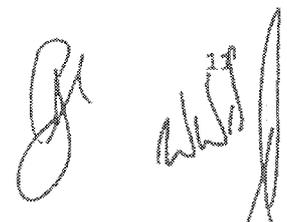


15 When considering an application, the Exemption Body or, the Independent Body whichever the case may be must consider, in addition to clause 9, the following:

- (a) Whether the granting of the exemption or appeal will prejudice the objectives of the *Bargaining Council* or contravene the provisions of any labour legislation or *Collective Agreements*;
- (b) The circumstances prevailing in the *Industry* as a whole likely to be affected by the application and / or the interest of the industry regarding unfair competition, collective bargaining, potential for labour unrest and increased employment;
- (c) The nature and size of the business in respect of which the application is made;
- (d) Whether the duration of the exemption or appeal is for a limited or specified period;
- (e) Any representations made by the employees likely to be affected by the application and interest of employee's as regard exploitation, job preservation, sound conditions of employment, possible financial benefits, health and safety of workers and infringement of basic rights;
- (f) Whether the business strategy and plan presented by the applicant demonstrates that the granting of the exemption or appeal will make a material difference to the long-term viability of the business in respect of which the exemption or appeal is sought;
- (g) Whether a refusal to grant an exemption or appeal will result in undue financial hardship to the applicant, financial instability, impact on productivity, future relationship with the employees' trade union and operational requirements;
- (h) Whether the granting of the exemption or appeal will undermine collective bargaining and be likely to cause undue financial hardship to the employees affected;
- (i) Whether the granting of the exemption or appeal will impact negatively on parity agreements;

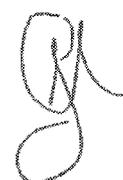
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- (j) Whether the granting of the exemption or appeal will impact negatively on local competitors who are complying with *Collective Agreements*; and
 - (k) Whether the employees or their representatives have been consulted and their views recorded, and / or any agreement reached between the applicant and the workforce.
 - (l) Any other relevant supporting data and financial information as prescribed by the Bargaining Council and supplied by the applicant.
- 16 In the event of the Independent Body granting, partially granting or refusing the grant the appeal, the applicant shall be informed in writing of the reasons for the decision within 21 days from the date of the decision.
- 17 The decision of the Independent Body is final and binding upon the applicant and the *Bargaining Council*.
- 18 If an exemption or appeal is granted or partially granted, the Exemptions Body or the Independent Body, shall issue a certificate, signed by Secretary, containing the following particulars:
- (a) The full name of the applicant(s) or enterprise concern;
 - (b) The trade name;
 - (c) The provisions of the Agreement from which exemption or appeal has been granted;
 - (d) The period for which the exemption or appeal shall operate;
 - (e) The date of issue and from which day the exemption or appeal shall operate;
 - (f) The condition(s) of the exemption or appeal granted; and
 - (g) The area in which the exemption or appeal applies.
- 19 An employer to whom a certificate has been issued shall at all times have the certificate available for inspection at the workplace.
- 20 The Secretary must maintain a register of all exemption and appeal certificates granted, partially granted or refused.



8 ENFORCEMENT OF COLLECTIVE AGREEMENT

- 1 Despite any other provisions of this Agreement, the Council may appoint one or more persons and may request the Minister of Labour to appoint such persons as designated agents in terms of Section 33 (1) of the Act to promote, monitor and enforce compliance with this Agreement.
2. In the event of non-compliance with this Agreement, a designated agent may secure compliance by –
 - (a) publicising the contents of this Agreement.
 - (b) investigate complaints.
 - (c) conduct inspections.
 - (d) issue a compliance order ; or
 - (e) adopt any other means the Council may have approved of; and
 - (f) perform any other function which is conferred on or imposed on the agent by the Council.
- 3 In the event that non-compliance prevails after the issuance of a compliance order in terms of sub-clause 2 (d) above, the agent must:
 - (a) submit a report to the Secretary of the Council, specifying that compliance had not been achieved.
- 4 Upon receipt of such report, the Secretary of the Council shall –
 - (a) Appoint an arbitrator from the list of arbitrators supplied by the CCMA to arbitrate the matter ; or
 - (b) take such steps as deemed necessary to give effect to any agreement reached after the compliance order was issued in resolving the matter.
 - (c) An arbitrator appointed in terms of this Clause shall have all the powers assigned to an arbitrator as contemplated by the Act, including but not limited to the charges and penalties as further contemplated by Section 33A of the Act read with the applicable Regulations.
- 5 The Secretary shall make application to certify the arbitration award or settlement agreement, whichever applies, as order of the Labour Court.
- 6 A designated agent appointed under Section 33 (1) of the Act, shall in addition to the powers referred to in that Section, have the powers as assigned to designated agents as set out in Schedule 10 of the Act, read with the changes required by the context.

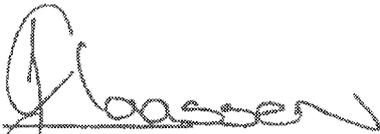
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Agreement signed at Bellville on this 15th day of October 2019.



W. DYERS
Chairman of the Council



A. CLAASSEN
Vice-Chairman of the Council



A. DAVIDS
Secretary

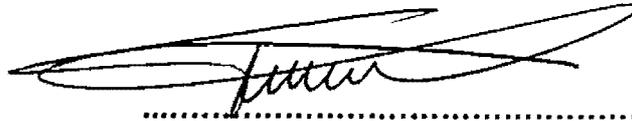
DEPARTMENT OF LABOUR

NO. R. 1694

20 DECEMBER 2019

LABOUR RELATIONS ACT, 1995**BARGAINING COUNCIL FOR THE FURNITURE MANUFACTURING INDUSTRY
OF THE WESTERN CAPE: EXTENSION TO NON-PARTIES OF THE COLLECTIVE
BARGAINING FEE COLLECTIVE AGREEMENT**

I, **THEMBELANI WALTERMADE NXESI**, Minister of Employment and Labour, hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the provisions of the collective agreement which appears in the Schedule hereto, which was concluded in the **Bargaining Council for the Furniture Manufacturing Industry of the Western Cape** 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 the second Monday after the date of publication of the agreement for the period of twelve months.

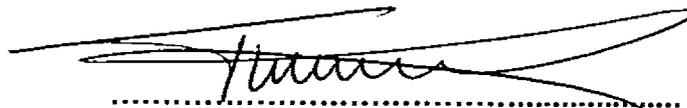
.....
MR T W NXESI, MP

MINISTER OF EMPLOYMENT AND LABOUR

DATE: 29/11/2019

UMNYANGO WEZEMISEBENZI NEZABASEBENZI**UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA-1995****BARGAINING COUNCIL FOR THE FURNITURE MANUFACTURING INDUSTRY
OF THE WESTERN CAPE: UKWELULELWA KWESIVUMELWANO
SENKOKHELO SABAQASHI SELULELWA KULABO ABANGEYONA INGXYENYE
YESIVUMELWANO**

Mina, **THEMBELANI WALTERMADE NXESI**, onguNgqongqoshe Wezemisebenzi neZabasebenzi, ngokwesigaba 32(2) soMthetho Wobudlelwano Kwezabasebenzi ka-1995, ngazisa ukuthi isiVumelwano sabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe lapha, esenziwa yi**BARGAINING COUNCIL FOR THE FURNITURE MANUFACTURING INDUSTRY OF THE WESTERN CAPE**, futhi ngokwesigaba 31 soMthetho Wobudlelwano kwezabasebenzi, ka 1995 esibopha labo abasenzayo, sizobopha bonke abanye abaqashi nabasebenzi kuleyomboni, siyokuqala ukusebenza kusukela ngomSombuluko wesibili emuva kokushicilelwa kwalesiSivumelwano esiyophela emuva kwezinyanga eziyishumi nambili.



MNUMZANE TW NXESI, MP

UNGQONGQOSHE WEZEMISEBENZI NEZABASEBENZI

USUKU: 29/11/2019

SCHEDULE
BARGAINING COUNCIL for the FURNITURE MANUFACTURING INDUSTRY
OF THE WESTERN CAPE

COLLECTIVE BARGAINING FEE COLLECTIVE AGREEMENT

In accordance with the provisions of the Labour Relations Act 1995 (Act No 66 of 1995)(as amended), made and entered into by and between the

Cape Furniture Manufacturers Association

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

and the

National Union of Furniture and Allied Workers of South Africa

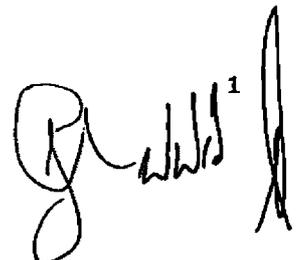
(hereinafter referred to as the "employees" or the "trade unions"), of the other part

being the parties to the Bargaining Council for the Furniture Manufacturing Industry of the Western Cape.

CHAPTER 1

1. SCOPE OF APPLICATION

- (1) The terms of this Agreement shall be observed in the Furniture, Bedding, Upholstery and Curtain Manufacturing Industry defined in Paragraph A hereunder in the Provinces of the Northern Cape and Western Cape excluding the Magisterial Districts of George, Knysna, Mossel Bay, Plettenberg Bay and Oudtshoorn. :

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Paragraph A

“Furniture, Bedding, Upholstery and Curtain Manufacturing Industry” or “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 manufacture, either in whole or in part, of all types of components of furniture, furniture, bedding, curtains, upholstery and/or re-upholstery and will, inter alia, include but not be limited to the following:

(a) Furniture

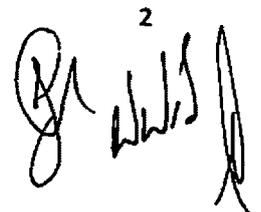
Manufacturing, assembling, repairing, staining, spraying, polishing, re-polishing, making loose covers and/or cushions, wood machining, veneering, woodturning, carving, assembling, painting, spraying, cutting, edging, drilling, wood bending, laminating and/or papering/foiling, of board.

“Board” means any type of wood or wooden or related product or any other substitute material, amongst others being: -laminated board, fibre board, chip board, block board, veneer board, pressed board.

Furniture manufacturing will also include the manufacturing, repairing, polishing, assembling, cutting, drilling, edging, re-polishing, staining, spraying either in whole or in part of: pianos, organs, kitchen cupboards, attached wall cupboards, built-in cupboards, free standing cupboards, bars or built-in bar counters, cane, wicker or grass furniture, cabinets including cabinets for musical instruments and radios, wireless or television cabinets, coffins, draw and draw fronts, doors and cupboard doors irrespective of size, bathroom cupboards, cupboard tops, and furniture for tea-rooms, restaurants, offices, churches, schools, libraries, hotels, other educational institutions, conference centres and theatres.

(b) Bedding

The manufacturing, assembling, repairing, covering, re-covering of mattress bases, mattresses, spring mattresses, overlays, bolsters, pillows, cushions for studio couches, spring units, box-spring mattresses sleeper couch and studio couches.

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"Studio Couch" means an article of furniture, which is designed for seating and for conversion into a double bed or two or more beds and of which the frames may also be constructed mainly of metal and the seating and/or sleeping surfaces consist of mattresses and/or cushions.

(c) Upholstery

The upholstering or re-upholstering of any furniture, or item of furniture, bedding, seating, pelmets, mattress bases, foam mattresses and/or cushions.

(d) Curtain making

The making, altering, repairing and hanging of curtains and/or blinds made mainly of fabric, wood, cane, wicker, reed or grass.

Curtain making includes window treatment, cutting of rails and rods, fitting of pelmets, curtains, blinds and associated products.

(2) Notwithstanding the provisions of sub-clause (1), the terms of this Agreement shall:-

- (a) apply only to employees for whom minimum wages are prescribed in the Council Main Collective Agreement and to employers of such employees.
- (b) apply to Learners in so far as the terms are not inconsistent with the Skills Development Act, 97 of 1998, or any contract entered into or any condition fixed under the Skills Development Act, 97 of 1998.

2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation:-

- (1) (a) in respect of parties to this agreement, on the date of signature;



- (b) In respect of non-parties, on such date as fixed by the Minister of Labour in terms of section 32 of the Act.
- (2) This Agreement shall remain in force for a 12 month period, from the date fixed by the Minister.

3. TERMS AND CONDITIONS

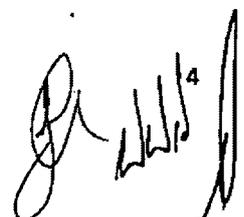
- 3.1 A separate Collective Bargaining Fee Agreement is hereby agreed to and the provisions of the Labour Relations Act, 1995 (Act 66 of 1995)(as amended)(hereinafter referred to as the Act), where applicable, shall apply to this Agreement. The object of this Agreement is to ensure that all employers in the scope of the Council's Main Agreement who receive the benefits of collective bargaining contribute towards its costs.
- 3.2 This Agreement shall be subject to the respective parties being representative, as required by section 25 of the Act, of employees and employers who are covered by the Main Collective Agreement of the Bargaining Council as verified by the Department of Labour from time to time.

4. DEFINITIONS

Any expressions used in this Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act and any reference to an Act shall include any amendments to such Act, and unless the contrary intention appears, words importing the masculine gender shall also include the feminine gender and vice versa further, unless inconsistent with the context-

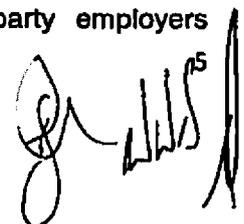
"Act" means the Labour Relations Act, 1995 (Act 66 of 1995)(as amended);

"Council" means the Bargaining Council for the Furniture Manufacturing Industry of the Western Cape



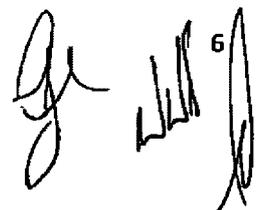
5. BARGAINING LEVY

- 5.1 An employer who is not a member of the representative employers' association party to the Council's Collective Agreement, and who are not compelled to become members of the aforementioned employers' association, but are eligible for membership thereof must make a monthly Collective Bargaining Levy contribution, payable to the Council.
- 5.2 For the purposes of this agreement, "representative employers' association" means, the same as in section 25 of the Act, a registered employers' association or two or more registered employers' association acting jointly, whose members are a majority of the employers and whose members employ the majority of employees in the scope of the Main Agreement .
- 5.3 This Agreement is binding on all employers who are in the scope of the Council and who are subject to the Council's Main Collective Agreement and who are not members of the representative employers' association party to this Agreement, namely the Cape Furniture Manufacturers Association.
- 5.4 A prescribed Bargaining Levy of one hundred and seventy three rand and thirty four cents per month (R173.34) is payable only by an employer who is not a member of representative employer's association.
- 5.5 The prescribed Collective Bargaining Levy payable by an employer in accordance with clause 5.4 above, must be paid by the employers concerned to the Council by the 15th day of each month following the month along with all other required employer contributions and deductions made from their employees' wages. This prescribed Collective Bargaining Levy received by the Council must be paid by the Council on a monthly basis to the Cape Furniture Manufacturers Association.
- 5.6 An employer shall together with the Collective Bargaining Levy also submit to the Secretary of the Council, at the same time, on their monthly Council return form reflecting the amount of the Collective Bargaining Levy.
- 5.7 The Secretary of the Council shall deposit all moneys received in terms of clause 5.5 into a bank account of the Council.
- 5.8 The prescribed Collective Bargaining Levy shall be equivalent to or less than the lowest amount of the employers' associations subscriptions payable by any of the members of the Cape Furniture Manufacturers Association.
- 5.9 The Secretary of the Council must transfer all moneys received in respect of Collective Bargaining Levy into a separate bank account administered by the party employers



association at month end.

- 5.10. Despite sub-clause 5.9, a conscientious objector may pay the prescribed amount payable in respect of Collective Bargaining Levy into a fund administered by the Department of Labour.
- 5.11 No Bargaining Levy may be:
- 5.11.1 paid to a political party as an affiliation fee; or
 - 5.11.2 contributed in cash or kind to a political party or a person standing for election to any political office; or
 - 5.11.3 used for any expenditure that does not advance or protect collective bargaining and the socio-economic interests of employers in the scope of this Council.
- 5.13 The provisions of sections 98 and 100 (b) and (c) of the Act apply, read with the changes required by the context, to the separate account referred to in sub-clause 5.9.
- 5.14 Any person may inspect the auditor's report, in so far as it relates to an account referred to in sub-clauses 5.9.
- 5.15 The Registrar must provide a certified copy of, or an extract from, any of the documents referred to in clause 5 to any person who has paid the prescribed fees.
- 5.16 An person, organisation, employer or trade union that alleges that the employers association party to this agreement is no longer a representative employers association as envisaged in clause 5.2 It must give the employers association party written notice of this allegation, and must allow the same employers association party 90 calendar days from the date of the notice to prove that they are a representative employers association.
- 5.17 If, within the 90-day period, the employers association party fails to prove that they are a representative employers association, the person, organisation, employer or trade union making such allegation must give the employers association party who are party to this agreement notice of their intention to request the Minister of Labour to withdraw the extension of this agreement to non-party employers in the Industry.
- 5.18 If the extension of this agreement to non-party employers in the Industry is withdrawn by the Minister of Labour, the provisions of sub-clause 5.7 and 5.9 shall apply until all the bargaining levies due up until the date of withdrawal of the extension of this agreement, have been received and paid out in accordance with sub-clauses 5.7 and 5.9.

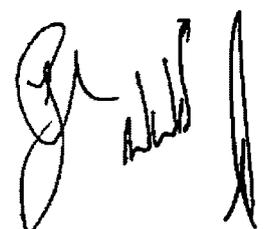
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6. UNPAID BARGAINING LEVY

- 6.1 Should any amounts due to the Council in terms of this agreement not be received by the Council by the 15th day of the month following the month in respect of which the amounts are payable, the employer shall forthwith be liable for and be required to pay interest on such amounts or on such lesser amounts that remain unpaid at a rate which does not exceed the maximum rate as prescribed by the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975)(as amended), calculated from the 16th day of the month until the day upon which the payment is actually received by the Council and reflects in the Council's bank account. The Council shall be entitled at its absolute discretion to waive payment of such interest or part thereof in any individual instance.
- 6.2 In the event of the Council incurring any costs or becoming obliged to pay any collection costs and commission by reason of the failure of the employer to make any payment on or before the applicable due date, the employer shall then also be liable to forthwith pay all such collection costs and commission to the Council and the Council shall be entitled in its absolute discretion to allocate any payment received from such an employer firstly to such costs, collection commission and interest, and thereafter to the reduction of the unpaid Collective Bargaining Levy.
- 6.3 Disputes about the interpretation, application or enforcement of this Agreement shall be resolved in accordance with the Dispute Resolution Procedure as described in the Council's Main Collective Agreement.

7. EXEMPTIONS

- 1 Any person bound by this Agreement may apply for exemption.
- 2 The authority of the Bargaining Council is to consider applications for exemptions and grant exemptions.
- 3 The *Bargaining Council* must determine its exemptions policy and process all exemptions applications in terms of this policy.

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- 4 All applications for exemption shall be made in writing on the appropriate application form, obtained from the *Bargaining Council*, setting out relevant information, including:
- (a) The provisions of the *agreement* in respect of which exemption is sought;
 - (b) The number of persons in respect of whom the exemption is sought;
 - (c) The reasons why the exemption is sought;
 - (d) The nature and size of the business in respect of which the exemption is sought;
 - (e) The duration and timeframe for which the exemption sought;
 - (f) The business strategy and plan of the applicant seeking the exemption;
 - (g) The applicant's past record (if applicable) of compliance with the provisions of the Collective Agreement, its amendments and exemptions certificate;
 - (h) The recorded views expressed by the trade union or workforce itself during the plant level consultation process; and
 - (i) Any other relevant supporting data and financial information the *Council* may prescribe from time to time.
- 5 An exemption application in respect of a term or provision in a *Collective Agreement*:
- (a) Concluded in the *Council* that applies throughout the *Industry* must be considered by an exemptions body appointed by the *Council*;
- 6 The Bargaining Council shall decide on an application for exemption within 30 days of receipt.
- 7 Upon receipt of an application by the Bargaining Council, it shall immediately refer the application to the exemptions body which may, if deemed expedient, request the applicant to attend the meeting at which the application is considered, to facilitate the deliberations.
- 8 An exemption body appointed by the *Council* may request additional information from an applicant applying for exemption.
- 9 In scrutinising an application, the Exemption Body or the Independent Exemptions Body will consider the details of the application, the views expressed by the trade union or workforce, affected employers, any other representations received in relation to the application, and the factors and criteria as listed in clause 15 below.



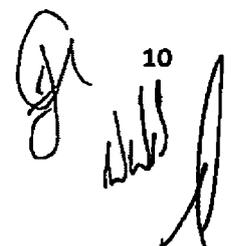
- 10 The *Secretary* must advise the applicant in writing of the decision of the exemptions body within 15 days from the date of the decision, failing which the *Bargaining Council* is deemed to have refused the application for exemption.
- 11 In the event of the exemptions body granting, partially granting or refusing to grant an application, the applicant shall be informed for the reasons for the decision and have the right to appeal in writing on the appropriate appeal application form against the decision to the Independent Body, established by the Bargaining Council within 21 days from the date of being informed of the outcome.
- 12 In terms of section 32(3)(e) of the Act, the Bargaining Council must establish an Independent Body to hear and decide as soon as possible any appeal brought against the exemptions body's refusal of a non-party's application for exemption from the provisions of a collective agreement by the exemptions body or withdrawal of an exemption by the Bargaining Council.
- 13 The Independent Body shall hear and decide and inform the applicant and the *Bargaining Council* as soon as possible and not later than 30 days after the appeal has been lodged against the decision of the exemptions body.
- 14 No representative, office-bearer, or official of a trade union or employers' organisations party to the Bargaining Council, may be a member of, or participate in the deliberations of, the Independent Body established by the Bargaining Council.
- 15 When considering an application, the Exemption Body or, the Independent Body whichever the case may be must consider, in addition to clause 9, the following:
- (a) Whether the granting of the exemption or appeal will prejudice the objectives of the *Bargaining Council* or contravene the provisions of any labour legislation or *Collective Agreements*;
 - (b) The circumstances prevailing in the *Industry* as a whole likely to be affected by the application and / or the interest of the industry regarding unfair competition, collective bargaining, potential for labour unrest and increased employment;
 - (c) The nature and size of the business in respect of which the application is made;

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- (d) Whether the duration of the exemption or appeal is for a limited or specified period;
- (e) Any representations made by the employers likely to be affected by the application and interest of employer's;
- (f) Whether the business strategy and plan presented by the applicant demonstrates that the granting of the exemption or appeal will make a material difference to the long-term viability of the business in respect of which the exemption or appeal is sought;
- (g) Whether a refusal to grant an exemption or appeal will result in undue financial hardship to the applicant, financial instability, impact on productivity, future relationship with the employees' trade union and operational requirements;
- (h) Whether the granting of the exemption or appeal will undermine collective bargaining and be likely to cause undue financial hardship to the employers affected;
- (i) Whether the granting of the exemption or appeal will impact negatively on parity agreements;
- (j) Whether the granting of the exemption or appeal will impact negatively on local competitors who are complying with *Collective Agreements*; and
- (k) Whether the employees or their representatives have been consulted and their views recorded, and / or any agreement reached between the applicant and the workforce.
- (l) Any other relevant supporting data and financial information as prescribed by the Bargaining Council and supplied by the applicant.

16 In the event of the Independent Body granting, partially granting or refusing the grant the appeal, the applicant shall be informed in writing of the reasons for the decision within 21 days from the date of the decision.

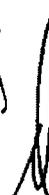


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- 17 The decision of the Independent Body is final and binding upon the applicant and the *Bargaining Council*.
- 18 If an exemption or appeal is granted or partially granted, the Exemptions Body or the Independent Body, shall issue a certificate, signed by Secretary, containing the following particulars:
- (a) The full name of the applicant(s) or enterprise concern;
 - (b) The trade name;
 - (c) The provisions of the Agreement from which exemption or appeal has been granted;
 - (d) The period for which the exemption or appeal shall operate;
 - (e) The date of issue and from which day the exemption or appeal shall operate;
 - (f) The condition(s) of the exemption or appeal granted; and
 - (g) The area in which the exemption or appeal applies.
- 19 An employer to whom a certificate has been issued shall at all times have the certificate available for inspection at the workplace.
- 20 The Secretary must maintain a register of all exemption and appeal certificates granted, partially granted or refused.

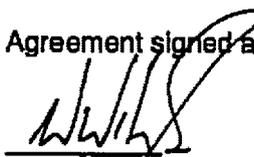
8 ENFORCEMENT OF COLLECTIVE AGREEMENT

- 1 Despite any other provisions of this Agreement, the Council may appoint one or more persons and may request the Minister of Labour to appoint such persons as designated agents in terms of Section 33 (1) of the Act to promote, monitor and enforce compliance with this Agreement.
2. In the event of non-compliance with this Agreement, a designated agent may secure compliance by –
- (a) publicising the contents of this Agreement.
 - (b) Investigate complaints.
 - (c) conduct inspections.
 - (d) issue a compliance order ; or
 - (e) adopt any other means the Council may have approved of; and

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- (f) perform any other function which is conferred on or imposed on the agent by the Council.
- 3 In the event that non-compliance prevails after the issuance of a compliance order in terms of sub-clause 2 (d) above, the agent must:
- (a) submit a report to the Secretary of the Council, specifying that compliance had not been achieved.
- 4 Upon receipt of such report, the Secretary of the Council shall –
- (a) Appoint an arbitrator from the list of arbitrators supplied by the CCMA to arbitrate the matter ; or
- (b) take such steps as deemed necessary to give effect to any agreement reached after the compliance order was issued in resolving the matter.
- (c) An arbitrator appointed in terms of this Clause shall have all the powers assigned to an arbitrator as contemplated by the Act, including but not limited to the charges and penalties as further contemplated by Section 33A of the Act read with the applicable Regulations.
- 5 The Secretary shall make application to certify the arbitration award or settlement agreement, whichever applies, as order of the Labour Court.
- 6 A designated agent appointed under Section 33 (1) of the Act, shall in addition to the powers referred to in that Section, have the powers as assigned to designated agents as set out in Schedule 10 of the Act, read with the changes required by the context.

Agreement signed at Bellville on this 15th day of October 2019.


W. DYERS
Chairman of the Council


J. CLAASSEN
Vice-Chairman of the Council


A. DAVIDS
Secretary