

**No. R.**

**Date:**

**BASIC CONDITIONS OF EMPLOYMENT ACT NO. 75 OF 1997**  
**SECTORAL DETERMINATION 13: FARM WORKER SECTOR, SOUTH AFRICA**

I, Mildred Nelisiwe Oliphant, Minister of Labour, in terms of Section 56(1) of the Basic Conditions of Employment Act, No. 75 of 1997, make a Sectoral Determination establishing conditions of employment for employees in the Farm Worker Sector, South Africa, which appears in the schedule hereto and fix 1 March 2013 as the date from which the provisions of the said Sectoral Determination shall become binding.

**M.N. OLIPHANT, MP**  
**MINISTER OF LABOUR**

## **PART A: APPLICATION**

### **1. SCOPE OF APPLICATION**

- (1) The determination applies to the employment of farm workers in all farming activities in the Republic of South Africa.
- (2) Without limiting its meaning, 'farming activities' includes primary and secondary agriculture, mixed farming, horticulture, aqua farming and the farming of animal products or field crops excluding the Forestry Sector.
- (3) For the purposes of this determination, a farm worker includes –
  - (a) a domestic worker employed in a home on a farm;
  - (b) a security guard employed to guard a farm or other premises where farming activities are conducted, who is not employed in the private security industry; and
- (4) Subject to clause (3), this determination does not apply to any person employed in activities covered by another sectoral determination or by a bargaining council agreement in terms of the Labour Relations Act, 1995.
- (5) The provisions of the Basic Conditions of Employment Act apply to all farm workers covered by this determination and their employers in respect of any matter that is not regulated by this sectoral determination.

## **PART B: MINIMUM WAGES**

### **2. MINIMUM WAGE LEVELS**

- (1) With effect from 1 March 2013 an employer must pay a farm worker at least the minimum wage prescribed in clause 3.
- (2) An employer must pay a farm worker –
  - (a) who works less than 45 ordinary hours of work per week at least the hourly rate as set out in Table 1;

### 3. MINIMUM WAGES FOR FARM WORKERS UNDER 18 YEARS OF AGE

- (1) An employer must pay a farm worker who is 15 years of age or older, but less than 18 and who works for 35 hours per week or less at least the hourly rate, specified in Table 1

<b>Table 1: Minimum wages for employees in the farm worker sector</b>									
<b>Minimum rate for the period</b>				<b>Minimum rate for the period</b>			<b>Minimum rate for the period</b>		
<b>1 March 2013 to 28 February 2014</b>				<b>1 March 2014 to 28 February 2015</b>			<b>1 March 2015 to 28 February 2016</b>		
<b>Monthly</b>	<b>Weekly</b>	<b>Daily</b>	<b>Hourly</b>	<b>Monthl y</b>	<b>Weekly</b>	<b>Hou rly</b>	<b>Monthly</b>	<b>Week ly</b>	<b>Hou rly</b>
R2273.52	R524.70	R105.00*	R11.66	Previous year's minimum wage + CPI** + 1.5%			Previous year's minimum wage + CPI** + 1.5%		
<p>* For an employee who works 9 hours per day  ** The CPI to be utilized is the available CPI for the lowest quintile as released by Statistics South Africa six weeks prior to the increment date.</p>									

#### 4. CALCULATION OF WAGES OR REMUNERATION

- (1) The wage or remuneration of a farm worker is calculated by reference to the farm worker's ordinary hours of work.
- (2) For the purposes of any calculation in terms of this determination –
  - (a) the hourly wage or remuneration of a farm worker is obtained by –
    - (i) dividing the weekly wage or remuneration by the ordinary number of hours worked in a week;
  - (b) the daily wage or remuneration of a farm worker is obtained by–
    - (i) multiplying the hourly wage or remuneration by the number of ordinary hours worked in a day; or
    - (ii) dividing the weekly wage or remuneration by the number of days worked in a week.
  - (c) the weekly wage or remuneration of a farm worker is obtained by –
    - (i) multiplying the hourly wage or remuneration by the number of ordinary hours worked in a day multiplied by the number of days worked in a week; or
    - (ii) multiplying the daily wage or remuneration by the number of days worked in a week; or
    - (iii) dividing the monthly wage or remuneration by four and one-third ( $13/3$ )
  - (d) the monthly wage or remuneration of a farm worker is obtained by multiplying the weekly wage or remuneration by four and a third ( $13/3$ )

## **5. PAYMENT OF REMUNERATION**

- (1) An employer must pay a farm worker –
  - (a) in South African currency;
  - (b) daily, weekly, fortnightly or monthly; and
  - (c) in cash, by cheque or by direct deposit into an account designated by the farm worker.
  
- (2) Any payment in cash or by cheque must be given to each farm worker-
  - (a) at the workplace;
  - (b) during the farm worker's working hours; and
  - (c) in a sealed envelope which becomes the property of the farm worker.
  
- (3) An employer must pay a farm worker on the normal payday agreed to in writing by the farm worker.

## **6. INFORMATION CONCERNING PAY**

- (1) On every pay day, the employer must give the farm worker a statement showing –
  - (a) the employer's name and address;
  - (b) the farm worker's name and occupation;
  - (c) the period in respect of which payment is made;
  - (d) the farm worker's wage rate and overtime rate;
  - (e) the number of ordinary hours worked by a farm worker during that period;
  - (f) the number of overtime hours worked by the farm worker during that period;
  - (g) the number of hours worked by the farm worker on a paid holiday or on a Sunday;
  - (h) the farm worker's wage;

- (i) details of any other pay arising out of the farm worker's employment;
  - (j) details of any deductions made;
  - (k) the employer's registration number with the Unemployment Insurance Fund and the employee's contribution to the Fund; and
  - (l) the actual amount paid to the farm worker.
- (2) An employer must retain a copy or record of each statement for three years.

## **7. PROHIBITED ACTS CONCERNING PAY**

- (1) An employer may not withhold any payment from a farm worker or require a farm worker to pay the farmer or any other person in respect of –
- (a) the employment or training of that farm worker;
  - (b) the supply of any work equipment or tools; or
  - (c) the supply of any work clothing.<sup>1</sup>
- (2) An employer may not require a farm worker to purchase any goods from the employer or from any person, shop or other business nominated by the employer.
- (3) An employer may not levy a fine against a farm worker.
- (4) An employer may not require or permit a farm worker to –
- (a) repay any amount or remuneration paid except for overpayments previously made by the employer resulting from an error in calculating the farm worker's wage; or
  - (b) acknowledge receipt of an amount greater than the wage or remuneration actually received.

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<sup>1</sup> An employer may not make any deduction from remuneration or require or permit a farm worker to make any payment to the employer or any other person in respect of anything that the employer is required to do in the interests of the health and safety of a farm worker (section 23 of the Occupational Health and Safety Act, 85 of 1993).

## 8. DEDUCTIONS

- (1) An employer may not make any deduction from a farm worker's wage except –
  - (a) a deduction not exceeding 10 percent of the farm worker's wage made in accordance with sub-clause (2) for food supplied to the farm worker;
  - (b) a deduction not exceeding 10 percent of the farm worker's wage made in accordance with sub-clause (4) for accommodation in which the farm worker ordinarily resides;
  - (c) at the written request of a farm worker, a deduction of an amount which the employer has paid or undertaken to pay to a third party contemplated by sub-clause (7);
  - (d) a deduction, not exceeding one-tenth of the wage due to the farm worker on the pay-day concerned, towards the repayment of any amount loaned or advanced to the farm worker by the employer; and
  - (e) a deduction of any amount which the employer is required to make by law or in terms of a court order or arbitration award.
  
- (2) An employer may only make a deduction in respect of accommodation and/ or food in terms of sub-clause (2)(a) or (2)(b) respectively if –
  - (a) the food or accommodation is provided free of charge by the employer to the farm worker at the employer's cost;
  - (b) the food or accommodation is provided on a consistent and regular basis as a condition of employment;
  - (c) no additional deduction is made from the farm worker's remuneration for food or accommodation;
  - (d) in the case of accommodation, no deduction is made by the employer for electricity, water or other services; and
  - (e) the deduction does not exceed the cost to the employer of supplying food or accommodation, as the case may be.

- (3) A deduction in terms of sub-clause (1)(b) may only be made for a house that meets the following requirements:
- (a) the house has a roof that is durable and waterproof ;
  - (b) the house has glass windows that can be opened;
  - (c) electricity is available inside the house if the infrastructure exists on the farm;
  - (d) safe water is available inside the house or in close proximity, which is not more than 100m, from the house;
  - (e) a flush toilet or pit latrine is available in, or in close proximity, to the house; and
  - (f) the house is not less than 30 square meters in size.
- (4) An employer may not make any deduction for accommodation in terms of sub-clause (1)(b) in respect of a farm worker who is under 18 years of age.
- (5) An employer may only make a deduction in terms of sub-clause (1)(b) in respect of one farm worker residing in any house.
- (6) (a) Subject to sub-clause (1)(b) where more than two farm workers reside in communal accommodation, the maximum deduction that the employer may make in total in respect of all the farm workers who reside in that accommodation is 25% of the applicable minimum wage payable to an individual farm worker.<sup>2</sup>
- (b) An equal amount must be deducted in respect of each of the farm workers residing in accommodation contemplated by paragraph (a).
- (7) A deduction may only be made in respect of clause 8(1)(c) in respect of a payment made or to be made to –
- (a) any holiday, sick, medical, insurance, savings, provident fund or pension fund of which the farm worker is a member,
  - (b) any registered trade union in respect of subscriptions;

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<sup>2</sup> If the applicable minimum wage is R994.00 per month, the maximum deduction that may be made in total from the workers living in communal accommodation as a whole is R248.50 per month. The deduction to be made from an individual farm worker may not exceed 10% of that workers wage.



- (c) any bank, building society, insurance business, registered financing institution, local authority in respect of a payment on a loan granted to the farm worker to acquire a dwelling;
  - (d) the owner or agent in respect of the rent of a dwelling or accommodation occupied by the farm worker.
- (8) An employer may not make any deduction in respect of the grazing of a farm worker's livestock;
- (9) A deduction may be made to reimburse an employer for loss or damage only if—
  - (a) the loss or damage occurred in the course of employment and was due to the fault of the farm worker;
  - (b) the employer has followed a fair procedure and has given the farm worker a reasonable opportunity to show why the deductions should not be made;
  - (c) the total amount of the debt does not exceed the actual amount of the loss or damage; and
  - (d) the total deductions from the farm worker's remuneration in terms of this subsection do not exceed one-quarter of the employee's remuneration in money.
- (10) A deduction of any goods purchased by the employee must specify the nature and quantity of the goods and the amount that correlates with a proof of purchase.
- (11) An employer who deducts an amount from an employee's remuneration for payment to a third party must pay the amount to that party in accordance with the time period and other requirements specified in the deed of purchase agreement, law, court order or arbitration award.
- (12) An employer may not require or permit an employee to—

- (a) repay any remuneration except for overpayments previously made by the employer resulting from an error in calculating the employee's remuneration; or
- (b) acknowledge receipt of an amount greater than the remuneration actually received.

## **PART C: PARTICULARS OF EMPLOYMENT**

### **9. WRITTEN PARTICULARS OF EMPLOYMENT**

- (1) An employer must supply a farm worker, when the farm worker starts work with the following particulars in writing-
  - (a) the full name and address of the employer;
  - (b) the name and occupation of the farm worker, or a brief description of the work for which the farm worker is employed;
  - (c) the place of work, and where the farm worker is required or permitted to work at various places, an indication of this;
  - (d) the date on which employment began;
  - (e) the farm worker's ordinary hours of work and days of work;
  - (f) the farm worker's wage or the rate and method of payment;
  - (g) the rate of pay for overtime work;
  - (h) any other cash payments that the farm worker is entitled to;
  - (i) any food or accommodation payment that the farm worker is entitled to and the value of the food or accommodation calculated in accordance with clause 8;
  - (j) any other payment in kind received by the farm worker;
  - (k) how frequently wages will be paid;
  - (l) any deductions to be made from the farm worker's wages;
  - (m) the leave to which the farm worker is entitled to; and

- (n) the period of notice required to terminate employment, or if employment is for a specific period, the date when employment is to terminate.
- (2) If a farm worker is not able to understand the written particulars, the employer must ensure that they are explained to the farm worker in a language and in a manner that the farm worker understands.
- (3) The employer must revise the written particulars if there is any change in the farm worker's terms of employment.
- (4) An employer must retain a copy of the written particulars while the farm worker is employed and for three years thereafter.

## **PART D: HOURS OF WORK**

### **10. EMERGENCY WORK**

- (1) Clauses 11, 13, 16(1), 17(1), 18(1) and 19(1) do not apply to work which is required to be done without delay owing to circumstances for which the employer could not reasonably have been expected to make provision and which cannot be performed by farm workers during their ordinary hours of work.<sup>3</sup>
- (2) Sub-clause (1) does not affect the obligation of an employer to pay a farm worker for any work performed at the farm worker's ordinary rate of pay or overtime rate, as the case may be.

### **11. ORDINARY HOURS OF WORK**

- (1) An employer may not require or permit a farm worker to work more than –
  - (a) 45 hours in any week<sup>4</sup>; and
  - (b) nine hours on any day if the farm worker works for five days or less in a week; or
  - (c) eight hours in any day if the farm worker works for more than five days in any week.

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<sup>3</sup> Where an 'emergency' situation such as a veld-fire or the outbreak of a disease among livestock persists, it will be reasonable to expect the employer to rotate work or to obtain additional temporary workers to assist to deal with the emergency.

<sup>4</sup> A farm worker who is under 18 years of age may not work more than 35 hours in any week.

## **12. EXTENSION OF ORDINARY HOURS OF WORK FOR FARM WORKERS**

- (1) A worker and an employer may conclude a written agreement in terms of which the farm worker's ordinary hours of work—
  - (a) are extended by not more than five hours per week for a period of not more than four months in any continuous period of twelve months; and
  - (b) are reduced by the same number of hours during a period of the same duration in the same twelve month period.
- (2) An agreement in terms of sub-clause (1) may not extend the farm worker's ordinary hours of work to more than ten hours on any day.
- (3) During any period of extended or reduced ordinary hours of work in terms of sub-clause (1), the employer must pay the farm worker the wage the farm worker would have received for the farm worker's normal ordinary hours of work.
- (4) If a farm worker's employment terminates for any reason at a time when the farm worker has worked a great number of extended ordinary hours than reduced ordinary hours, the employer must pay the worker for the extended ordinary hours worked at the overtime rate in terms of clause 13.
- (5) An employer who concludes a contract in terms of this clause must—
  - (a) supply the farm worker with a copy of the contract; and
  - (b) record any extended or reduced hours work in terms of the contract on the statement supplied to the worker in terms of clause 6.

## **13. OVERTIME**

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

#### **14. PAYMENT OF OVERTIME**

- (1) An employer must pay a farm worker at least one and one-half times the farm worker's wage for overtime worked.
- (2) Despite sub-clause (1), an agreement may provide for an employer to -
  - (i) pay a farm worker not less than the farm worker's ordinary wage for overtime worked and grant the farm worker at least 30 minutes' time off on full pay for every hour of overtime worked; or
  - (ii) grant a farm worker at least 90 minutes' paid time off for each hour of overtime worked.
- (3)
  - (a) An employer must grant paid time off in terms of sub-clause (2) within one month of the farm worker becoming entitled to it.
  - (b) An agreement in writing may increase the period contemplated by paragraph (a) to twelve months.
  - (c) An agreement concluded in terms of paragraph (b) with a farm worker when the farm worker commences employment, or during the first three months of employment, is only valid for one year.
- (4) Any overtime worked on a Sunday or public holiday must be paid in accordance with the provisions for Sundays and public holidays in clauses 16 and 20.

#### **15. COMPRESSED WORKING WEEK**

- (1) An agreement in writing may require or permit a farm worker to work up to twelve hours in a day, inclusive of the meal intervals required in terms of clause 18, without receiving overtime pay.
- (2) An agreement in terms of sub-clause (1) may not require or permit an farm worker to work -
  - (a) more than 45 ordinary hours of work in any week;
  - (b) more than ten hours' overtime in any week; or
  - (c) on more than five days in any week.

## 16. WORK ON SUNDAYS

- (1) An employer must pay a farm worker who works on a Sunday in accordance with the following table:

<b>Time worked on a Sunday</b>	<b>Payment</b>
One hour or less	Double the wage for one hour
More than one hour but not more than two hours	Double the ordinary wage for time worked
More than two hours but not more than five hours	The ordinary daily wage.
More than five hours	The greater of double the wage payable in respect of time worked (excluding overtime) or double the ordinary daily wage.

- (2) For the purposes of sub-clause (1), a farm worker who does not reside on the employer's farm who works on a Sunday must be regarded as having worked at least two hours on that day.
- (3) Any time worked on a Sunday by a farm worker is not taken into account in calculating a farm worker's ordinary hours of work in terms of clause 11, but is taken into account in calculating the overtime worked by the farm worker in terms of clause 13.
- (4) If a shift worked by a farm worker falls on a Sunday and another day, the whole shift is deemed to have been worked on the Sunday, unless the greater portion of the shift was worked on the other day, in which case the whole shift is deemed to have been worked on the other day.

## 17. NIGHT WORK

- (1) In section, "night work" means work performed after 20:00 and before 04:00 the next day.
- (2) An employer may only require or permit a farm worker to perform night work, if so agreed, and if -
- (a) the employer pays the farm worker an allowance of at least 10% of the farm worker's ordinary daily wage; and
  - (b) transportation is available between the farm worker's place of residence and the workplace at the commencement and conclusion of the farm worker's shift.

- (3) An employer who requires a farm worker to perform work on a regular basis after 20:00 and before 04:00 the next day must –
- (a) inform the farm worker in writing, or orally if the farm worker is not able to understand a written communication, in a language that the farm worker understands-
    - (i) of any health and safety hazards associated with the work that the farm worker is required to perform; and
    - (ii) of the farm worker's rights to undergo a medical examination in terms of paragraph (b).
  - (b) at the request of the farm worker, enable the farm worker to undergo a medical examination, for the account of the employer, concerning those hazards-
    - (i) before the farm worker starts, or within a reasonable period of the farm worker starting, such work;
    - (ii) at appropriate intervals while the farm worker continues to perform such work; and
  - (c) transfer the farm worker to suitable day work within a reasonable time if-
    - (i) the farm worker suffers from a health condition associated with the performance of night work; and
    - (ii) it is practicable for the employer to do so.
- (4) Sub-clause (3) applies to farm workers who work after 20:00 and before 04:00 at least five times per month or 50 times per year.

## **18. MEAL INTERVALS**

- (1) An employer must give a farm worker who works continuously for more than five hours, a meal interval of at least one continuous hour.
- (2) During a meal interval, a farm worker may be required or permitted to perform only duties that cannot be left unattended and cannot be performed by another farm worker.
- (3) A farm worker must be paid -

- (a) for a meal interval in which the farm worker is required to be available for work; and
  - (b) for any portion of a meal interval that is in excess of 75 minutes, unless the farm worker lives on the farm or at the workplace.
- (4) For the purpose of sub-clause (1), work is continuous unless it is interrupted by a meal interval in accordance with this clause.
- (5) An agreement in writing may-
- (a) reduce the meal interval to not less than 30 minutes; and
  - (b) dispense with a meal interval for a farm worker who works fewer than six hours on a day.
- (6) Whenever an employer is required to give a farm worker a second meal interval because of overtime worked, that interval may be reduced to not less than 15 minutes.

## **19. REST PERIOD**

- (1) An employer must grant a farm worker –
- (a) a daily rest period of at least twelve consecutive hours between ending work and starting work the next day;
  - (b) weekly rest period of at least thirty-six consecutive hours which, unless otherwise agreed, must include a Sunday.
- (2) A daily rest period in terms of sub-clause (1)(a) may, by written agreement, be reduced to 10 hours for a farm worker -
- (a) who lives where the workplace is situated; and
  - (b) whose meal interval lasts for at least three hours.
- (3) despite sub-clause (1)(b), an agreement in writing may provide for a rest period of at least sixty consecutive hours every second week.

## **20. PUBLIC HOLIDAYS**

- (1) An employer may not require a farm worker to work on a public holiday, except in accordance with an agreement.



- (2) If a public holiday falls on a day on which a farm worker would ordinarily work, an employer must pay-
- (a) a farm worker who does not work on the public holiday, at least the wage that the farm worker would ordinarily have received for work on that day;
  - (b) a farm worker who does work on the public holiday-
    - (i) at least double the daily wage; or
    - (ii) if it is greater, the amount referred to in sub-clause(2)(a) plus the amount earned by the employee for the time worked on that day.
- (3) If a farm worker who works on a public holiday on which the farm worker would not normally work, the employer must pay that farm worker an amount equal to -
- (a) the farm worker's daily wage; plus
  - (b) the farm worker's hourly wage for each hour worked on the public holiday.
- (4) An employer must pay a farm worker for a public holiday on the farm worker's normal payday.
- (5) If a shift worked by a farm worker falls on a public holiday and another day, the whole shift is deemed to have been worked on the public holiday, but if the greater portion of the shift was worked on the other day, the whole shift is deemed to have been worked on the other day.

## **PART E: LEAVE**

### **21. ANNUAL LEAVE**

- (1) An employer must grant a farm worker-
- (a) at least three weeks leave on full pay in respect of each twelve months of employment (the 'annual leave cycle');
  - (b) by agreement, at least one day of annual leave on full pay for every 17 days on which the farm worker worked or was entitled to be paid; or
  - (c) by agreement, one hour of annual leave on full pay for every 17 hours on which the farm worker worked or was entitled to be paid.

- (2) An employer must grant a farm worker an additional day of paid leave if a public holiday falls on a day during a farm worker's annual leave on which the farm worker would otherwise have worked.
- (3) An employer may reduce a farm worker's entitlement to annual leave by the number of days of occasional on full pay granted to the farm worker at the farm worker's request in that annual leave cycle.
- (4) An employer must grant -
  - (a) at least three weeks annual leave on full pay in respect of each 12 months of employment (the 'annual leave cycle') not later than six months after the end of the annual leave cycle or the year in which leave was earned.
  - (b) The leave earned in one year over a continuous period, if requested by the farm worker.
- (5) Annual leave must be taken -
  - (a) in accordance with an agreement between the employer and the farm worker; or
  - (b) if there is no agreement in terms of paragraph (a), at a time determined by the employer in accordance with this sub-clause.
- (6) An employer may not require or permit a farm worker to take annual leave during -
  - (a) any other period of leave to which the farm worker is entitled in terms of this chapter; or
  - (b) any period of notice of termination of employment.
- (7) An employer may not require or permit a farm worker to work for the employer during any period of annual leave.
- (8) An employer may not pay a farm worker instead of granting paid leave in terms of the clause except on termination of employment in terms of clause 26.
- (9) An employer must pay a farm worker leave pay at least equivalent to the remuneration the farm worker would have received for working for a period equal to the period of leave, calculated at the farm worker's rate of remuneration immediately before the beginning of the period of leave.

- (10) An employer must pay a farm worker leave pay before the beginning of the period of leave.

## **22. SICK LEAVE**

- (1) For the purpose of this clause “sick leave cycle” means the period of 36 months employment with the same employer immediately following –
- (a) when the farm worker commenced work; or
  - (b) the end of the farm worker’s prior sick leave cycle.
- (2) During every sick leave cycle, the farm worker is entitled to an amount of paid sick leave equal to the number of days the farm worker would normally work during a period of six weeks.
- (3) Despite sub-clause (2) during the first six months of work, the farm worker is entitled to one day’s sick leave for every 26 days worked.
- (4) An employer may, during the farm worker’s first leave cycle, reduce the farm worker’s entitlement to sick leave in terms of sub-clause (2) by the number of days’ sick leave taken in terms of sub-clause (3).
- (5) Where an employer, at the request of the farm worker, pays fees for a farm worker’s hospital or medical treatment, the fees paid may be set off against the worker’s pay.
- (6) An employer is not required to pay the farm worker in terms of this clause if the farm worker has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate stating that the farm worker was unable to work for the duration’s absence on account of sickness or injury.
- (7) Within the scope of their professional expertise, a medical certificate in terms of sub-clause (6) may be provided by -
- (a) a medical practitioner;
  - (b) a clinic nurse practitioner;
  - (c) a traditional healer;
  - (d) a community health worker;
  - (e) a psychologist;

- (f) any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament; or
  - (g) any other health professional authorized to diagnose medical conditions.
- (8) If it is not reasonably practicable for a farm worker who lives on the employer's premises to obtain a medical certificate, the employer may not withhold payment in terms of sub-clause (1) unless the employer provides reasonable assistance to the farm worker to obtain the certificate.

### **23. FAMILY RESPONSIBILITY LEAVE**

- (1) This clause applies to a farm worker –
- (a) who has been employed by an employer for longer than four months; and
  - (b) who works on at least four days a week for that employer.
- (2) An employer must grant a farm worker, during each 12 months of employment, at the request of the farm worker, three days' paid leave, which the farm worker is entitled to take -
- (a) when the farm worker's child is born;
  - (b) when the farm worker's child is sick; or
  - (c) in the event of the death of –
    - (i) the farm worker's spouse or life partner; or
    - (ii) the farm worker's parent, adoptive parent, grandparent, child, adopted child, grandchildren or sibling.
- (3) A farm worker may take family responsibility leave in respect of the whole or part of the day.
- (4) Subject to sub-clause (5), an employer must pay a farm worker for a day's family responsibility leave-
- (a) the wage the farm worker would normally have received for work on that day; and
  - (b) on the farm worker's usual payday.

- (5) Before paying a farm worker for leave in terms of this clause, an employer may require reasonable proof of an event contemplated in sub-clause (2) for which the leave was required.
- (6) A farm worker's unused entitlement to leave in terms of this clause lapses at the end of the annual leave cycle in which it accrues.

## **24. MATERNITY LEAVE<sup>5</sup>**

- (1) A farm worker is entitled to at least four consecutive month's maternity leave.
- (2) A farm worker may commence maternity leave -
  - (a) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
  - (b) on a date from which a medical practitioner or a midwife certifies that it is necessary for the farm worker's health or that of her unborn child.
- (3) A farm worker may not work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
- (4) A farm worker who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the farm worker had commenced maternity leave at the time of the miscarriage or stillbirth.
- (5) A farm worker must notify an employer in writing, unless the farm worker is unable to do so, of the date on which the farm worker intends to -
  - (a) commence maternity leave; and
  - (b) return to work after maternity leave.
- (6) Notification in terms of sub-clause (5) must be given -

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<sup>5</sup> In terms of section 187(1)(e) of the Labour Relations Act, 1995, the dismissal of a farm worker on account of her pregnancy, intended pregnancy, or any reason related to her pregnancy, is automatically unfair. The definition of dismissal in section 186 of the Labour Relations Act, 1995, includes the refusal to allow a farm worker to resume work after she has taken maternity leave in terms of any law, collective agreement or her contract. A farm worker may claim maternity benefits in terms of the Unemployment Insurance Act, 2001.

- (a) at least four weeks before the farm worker intends to commence maternity leave;
  - (b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- (7) No employer may require or permit a pregnant farm worker or a farm worker who is nursing her child to perform work that is hazardous to her health or the health of her child.
- (8) During a farm worker's pregnancy, and for a period of six months after birth of her child, her employer must offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if-
- (a) the farm worker is required to perform night work, as defined in clause 17 or her work poses a danger to her health or safety or that of her child; and
  - (b) it is practicable for the employer to do so

## **PART F: PROHIBITION OF CHILD LABOUR AND FORCED LABOUR**

### **25. PROHIBITION OF CHILD LABOUR AND FORCED LABOUR**

- (1) No person may employ in farming activities a child –
- (a) who is under 15 years of age; or
  - (b) who is under the minimum school leaving age in terms of any law, if this is 15 or older.<sup>6</sup>
- (2) No person may employ a child in an employment –
- (a) that is inappropriate for a person of that age;
  - (b) that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.
- (3) An employer must maintain for three years, a record of the name, date of birth and address of every farm worker under the age of 18 years employed by them.

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<sup>6</sup> Section 31(1) of the South African Schools Act (Act 84 of 1996), requires every parent to cause every learner for whom he or she is responsible to attend a school until the last day of the year in which the learner reaches the age of 15 or the ninth grade, whichever is the first.

- (4) Subject to the Constitution of the Republic of South Africa, all forced labour is prohibited.
- (5) No person may, for their own benefit or for the benefit of someone else cause, demand or impose forced labour in contravention of sub-clause (4).
- (6) A person who employs a child in contravention of sub-clause (1) and (2) or engages in any form of forced labour in contravention of sub-clauses (4) and (5) commits an offence in terms of sections 46 and 48 of the Basic Conditions of Employment Act respectively, read with section 93 of that Act.
- (7) An employer may not require or permit a child who is 15 years of age or older but younger than 18 -
  - (a) to work after 18h00 and before 6h00 the following day;
  - (b) to work more than 35 hours in any week; and
  - (c) without limiting sub-clause (2), to work with chemicals.

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

### **26. TERMINATION OF EMPLOYMENT**

- (1) A contract of employment terminable at the instance of a party to the contract may be terminated only on notice of not less than-
  - (a) one week if the farm worker has been employed for six months or less;
  - (b) four weeks, if the farm worker has been employed for more than six months.
- (2) The employer and farm worker may agree to a longer notice period, but the agreement may not require or permit a farm worker to give a period of notice longer than that required of the employer.
- (3)
  - (a) Notice of termination of contract of employment must be given in writing except when it is given by an illiterate farm worker.
  - (b) If a farm worker who receives notice of termination is not able to understand it, the notice must be explained orally by, or on behalf of, the employer to the farm worker in an official language the farm worker reasonably understands.

- (4) Notice of termination of a contract of employment given by an employer must–
  - (a) not be given during any period of leave to which the farm worker is entitled in terms of clause 21.
  - (b) not run concurrently with any period of leave to which the farm worker is entitled in terms of this determination, except sick leave.
- (5) Nothing in this clause affects the right -
  - (a) of a dismissed farm worker to dispute the lawfulness or fairness of the dismissal in terms of Chapter VIII of the Labour Relations Act, 1995, or any other law; and
  - (b) of an employer or a farm worker to terminate a contract of employment without notice for any cause recognized by law.
- (6) Nothing in clauses 26, 27, 28 and clause 29 of this determination affects the rights of farm workers accrued in terms of any land reform processes.<sup>7</sup>

## **27. PAYMENT INSTEAD OF NOTICE**

- (1) Instead of giving a farm worker notice in terms of this clause, an employer may pay the farm worker the remuneration the farm worker would have received, if the farm worker had worked during the notice period.
- (2) If a farm worker gives notice of termination of employment, and the employer waives any part of the notice, the employer must pay the remuneration referred to in sub-clause (1), unless the employer and the farm worker agree otherwise.

## **28. ACCOMMODATION, LIVESTOCK AND CROPS ON TERMINATION**

- (1) This clause applies if the employer of a farm worker terminates the contract of employment of that farm worker –
  - (a) before the date on which the employer was entitled to do so in terms of clause 26; or

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<sup>7</sup> The Land Reform (Labour Tenancy) Act No 3 of 1996, Extension of Security of Tenure Act No 62 of 1997



- (b) in terms of clause 27.
- (2) If the farm worker resides in accommodation on the premises of the employer or that is supplied by the employer, the employer is required to provide the farm worker with accommodation for a period of one month, or if it is a longer period, until the contract of employment could lawfully have been terminated.
- (3) A farm worker who keeps livestock on the land of the employer is entitled to keep that livestock for the period stipulated in the contract of employment or for one month from the date on which the contract of employment was terminated in terms of sub-clause (1).
- (4) (a) A farm worker who has standing crops on the land of the employer is entitled to tend to those crops and harvest and remove them within a reasonable time after they become ready for harvesting, unless the employer pays the farm worker an agreed amount for the crops.
- (b) Paragraph (a) applies in addition to a farm worker who terminates the contract of employment in accordance with clause 26.
- (5) If a farm worker elects to remain in accommodation in terms of sub-clause (2) after the employer has terminated the farm worker's contract of employment in terms of sub-clause (1), the employer may deduct an amount calculated in accordance with clause 8 from the amount that the employer is required to pay the farm worker in terms of clause 29.

## **29. PAYMENTS ON TERMINATION**

- (1) On termination of employment, an employer must pay a farm worker all monies due to the farm worker including –
  - (a) any remuneration that has not been paid;
  - (b) any payment owing in respect of extended ordinary hours of work in terms of clause 11;
  - (c) any paid time off that the farm worker is entitled to in terms of clause 14 or 16 that the farm worker has not taken;
  - (d) remuneration calculated in accordance with clause 21(9) for any period of annual leave due in terms of clause 21(1) that the farm worker has not taken; and

- (e) if the farm worker has been in employment longer than four months, in respect of the farm worker's annual leave entitlement during an incomplete annual leave cycle as defined in clause 21(1) –
  - (i) one day's remuneration in respect of every 17 days on which the farm worker worked or was entitled to be paid; or
  - (ii) remuneration calculated on any basis that is at least as favourable to the farm worker as that calculated in terms of subparagraph (i).

### **30. SEVERANCE PAY**

- (1) For the purpose of this clause, "operational requirements" means requirements based on the economic, technological, structural or similar needs of an employer.
- (2) An employer must pay a farm worker who is dismissed for reasons based on the employer's operational requirements, severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer.
- (3) A farm worker who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer is not entitled to severance pay in terms of sub-clause (2).
- (4) The payment of severance pay in compliance with this clause does not affect a farm worker's right to any other amount payable according to law.
- (5) If there is a dispute only about the entitlement to severance pay in terms of this clause, the farm worker may refer the dispute in writing to the CCMA.

### **31. CERTIFICATE OF SERVICE**

- (1) On termination of employment, a farm worker is entitled to a certificate of service stating –
  - (a) the farm worker's full name;
  - (b) the name and address of the employer;
  - (c) a description of any council or sectoral employment standards by which the employers business is covered;

- (d) the date of commencement and date of termination of employment;
- (e) the title of the job or brief description of the work for which the farm worker was employed at the date of termination;
- (f) the remuneration at the date of termination;
- (g) any relevant training received by the farm worker;
- (h) the pay at date of termination; and
- (i) if the farm worker requests, the reason for termination of employment.

### **32. KEEPING OF SECTORAL DETERMINATION**

- (1) Every employer on whom this sectoral determination is binding must keep a copy of the sectoral determination or a summary, available in the workplace in a place to which the farm worker has access.

### **33. TEMPORARY EMPLOYMENT SERVICES**

- (1) In this clause, “temporary employment service” means any person who, for reward, procures for or provides farm workers to a client if that person remunerates the farm workers.
- (2) For the purpose of this Determination, a farm worker whose services have been procured for, or provided to, a client by a temporary employment service is employed by of that temporary employment service, and the temporary employment service is that person’s employer.
- (3) The employment service and the client are jointly and severally liable to comply with this determination in respect of its farm workers.
- (4) If the employment service is in default of its obligation to make any payment in terms of this determination to a farm worker for a period of thirty days, the client concerned becomes liable to make payment.
- (5) A client that in terms of this clause makes any payment that is owing to a farm worker is entitled to recover such amount from the employment service

### **34. PRESUMPTION AS TO WHO IS A FARM WORKER**

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

### **35. WHAT WORDS MEAN IN THIS DETERMINATION**

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

“agreement” includes a collective agreement;

“Basic Conditions of Employment Act” means the Basic Conditions of Employment Act, 1997 (Act 75 of 1997)

“child” means a person who is under 18 years of age;

“day” means, for the purposes of measuring hours of work, a period of 24 hours, measured from the time when a farm worker normally commences work;

“dispute” includes an alleged dispute;

“employee” means – (a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is

entitled to receive, any remuneration; and (b) any other person who in any manner assists in carrying on or conducting the business of an employer;

“farm worker” means an employee who is employed mainly or wholly in connection with farming activities, and includes a domestic worker employed in a home on a farm and a security guard employed on a farm or other agricultural premises, excluding a security guard, employed in the private security industry;

“forestry sector” refers to forestry operations related to the planting, growing, tending and harvesting of trees. Forestry operations end at the gate to the plantation.

“incapacity” means inability to work owing to sickness or injury;

“ordinary hours of work” means the hours of work permitted in terms of clause 11;

“overtime” means the time that the farm worker works during a day or in a week in excess of ordinary hours of work;

“paid leave” means any annual leave, paid sick leave or family responsibility leave that a farm worker is entitled to in terms of Part E of this determination;

“payment in kind” means any payment other than cash made or owing to the farm worker, to a value agreed to in either a contract of employment, collective agreement, provided that the agreed value may not be less than the cost to the employer or farm owner of providing the payment in kind;

“public holiday” means any day that is a public holiday in terms of the Public Holiday Act, 1994 (Act No. 36 of 1994);

“remuneration” means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State;

“wage” means the amount of money paid or payable to a farm worker in respect of ordinary hours of work or, if they are shorter, the hours a farm worker normally works in a day or week;

“week” in relation to a farm worker, means the period of seven days within which the working week of that farm worker falls;

“work place” means any place where farm worker works.

**WRITTEN PARTICULARS OF EMPLOYMENT**  
**(FARM WORKER)**

**Given by:**

\_\_\_\_\_  
**(herein after referred to as "the employer")**

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

**to**

\_\_\_\_\_  
**(herein after referred to as "the employee")**

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

**1. Commencement**

Employment started/will start on ..... and  
continue until terminated in terms of clauses 1 and 2 of the guidelines.

**2. Place of work** .....

**3. Job description**

Job Title      Farm Worker : .....  
                            Tractor driver/truck driver/general worker etc.

Duties:  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

.....  
.....  
.....  
.....  
.....

**4. Hours of work**

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

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

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

Other breaks:.....

Saturdays: ..... a.m to ..... pm

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

Other breaks: .....

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

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

Other breaks: .....

4.2 Hours of work will be extended with by not more than five hours per week during ..... and reduced by the same hours during .....

4.3 Overtime will only be worked as agreed from time to time and will be paid at the rate of one and a half times of the total wage as set out in clause 5.3 of the guidelines.

**5. Wage**

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

5.2 The employee shall be entitled to the following allowances/other cash payments/payment in kind:



5.2.2 Accommodation per week/month to the value of: R.....

5.2.3 Food per week/month to the value of: R.....

5.3 The following deductions are agreed upon: R.....

..... R.....

..... R.....

.....

5.4 The total value of the above remuneration shall be \_\_\_\_\_  
*(The total of clauses 5.1 to 5.3.)* R.....  
*(Modify or delete clauses 5.2. to 5.3 as needed)*

5.5 The employer shall review the employee’s salary/wage on or before 1  
March of every year.

**6. Termination of employment**

Either party can terminate this agreement with one week’s notice during the first six months of employment and with four week’s notice there after. Notice must be given in writing except when it is given by an illiterate farm worker. In the case where the farm worker is illiterate notice must be explained orally by or on behalf of the employer.

On giving notice of termination of employment the employer is to provide the employee who resides in accommodation that belongs to the farmer accommodation for a period of a month. A farmer is also obliged to allow the farm worker who has standing crops on the land a reasonable time to harvest the crop or the farmer may pay the worker an agreed amount for that crop.

**7. Sunday work**

Any work on Sundays will be by agreement between the parties and will be paid according to clause 7 of the guidelines.

**8. Public Holidays**

Any work on public holidays will be by agreement and will be paid according to clause 8 of the guidelines.

**9. Annual Leave**

The employee is entitled to three weeks paid leave after every 12 months of continuous service. Such leave is to be taken at times convenient to the employer and the employer may require the employee to take his/her leave at such times as coincide with that of the employer.

**10. Sick leave**

- 10.1 During every sick leave cycle of 36 months the employee will be entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.
- 10.2 During the first six months of employment the employee will be entitled to one day's paid sick leave for every 26 days worked.
- 10.3 The employee is to notify the employer as soon as possible in case of his/her absence from work through illness.
- 10.4 A medical certificate may be required if absent for more than 2 consecutive days or has been absent on more than two occasions during an eight-week period.

**11. Maternity leave**

*(Tick the applicable clauses in the space provided).*

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

**12. Family responsibility leave**

The employee will be entitled to three days family responsibility leave during each leave cycle if he or she works on at least four days a week.

**13. Accommodation**

*(Tick the applicable boxes).*

- 13.1 The employee will be provided with accommodation for as long as the employee is in the service of the employer, which shall form part of his/her remuneration package.
- 13.2 The accommodation may only be occupied by the worker and his/her immediate family, unless by prior arrangement with the employer.
- 13.3 Prior permission should be obtained for visitors who wish to stay the night. However where members of the employee's direct family are visiting, such permission will not be necessary.

**14. Clothing *(Delete this clause if not applicable)***

..... sets of uniforms/protective clothing will be supplied to the employee free of charge by the employer and will remain the property of the employer.

..... sets of boots/gumboots will be supplied to the employee free of charge by the employer and will remain the property of the employer.

.....  
will be supplied to the employee free of charge by the employer and will remain the property of the employer.

**15. Other conditions of employment or benefits**

.....  
.....  
.....  
.....

**16. General**

Any changes to the written particulars will only be valid if agreed to by both parties.

.....  
EMPLOYER

Acknowledgement of receipt by employee:

.....

Date: .....

## **GUIDELINES**

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

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

- One week, if employed for six months or less
- Four weeks if employed for more than six months.

Notice must be explained orally by or on behalf of the employer to a farm worker if he/she is not able to understand it.

The employer is required to provide the farm worker who resides in accommodation that is situated on the premises of the employer or that is supplied by the employer, with accommodation for a period of one month, or if it is a longer period, until the contract of employment could lawfully have been terminated.

The farm worker is entitled to keep livestock on the premises for a period of one month or until the contract of employment could lawfully have been terminated.

The farm worker who has standing crops on the land is entitled to tend to those crops, harvest and remove them within a reasonable time after they become ready for harvesting unless the employer pays the farm worker an agreed amount for the crops.

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

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

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

Pro-rata leave and severance pay is payable.

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

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

### **3. Wage/Remuneration/Payment**

There is a prescribed minimum wage. Additional payments (such as for overtime or work on Sundays or Public Holidays) are calculated from the total wage as indicated in clause 5.3 of the contract. The total remuneration is the total of the money received by the employee and the payment in kind, which may not be more than 10% each of the wage for food and accommodation.

### **4. Transport allowances**

Sectoral Determination 13: Farm workers Sector, South Africa does not regulate this and is therefore open to negotiation between the parties.

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

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

A farm worker may not be made to:

- work more than 45 ordinary hours a week;
- work more than nine hours per day for a five day work week; and
- work more than eight hours a day for a six day work week.

#### **5.2 Extension of ordinary hours of work**

By written agreement, ordinary hours of work may be extended by not more than five hours per week for a period of not more than four months and be reduced by the same number of hours during a period of the same duration in the same twelve-month period.

The employer must pay the farm worker the wage he/she would have received for his/her normal hours worked.

Extended hours not reduced must be paid as overtime on termination.

#### **5.3 Overtime**

A farm worker may not work more than 15 hours overtime per week but may not work more than 12 hours on any day, including overtime.

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

#### **5.4 Daily and weekly rest periods**

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

5.4.2 The daily rest period may by agreement be reduced to 10 hours for an employee who lives on the premises whose meal interval lasts for at least three hours.

5.4.3 The weekly rest period may by agreement be extended to 60 consecutive hours every two weeks or be reduced to eight hours in any week if the rest period in the following week is extended equivalently.

## **5.5 Night work**

5.5.1 Night work means work performed after 20:00 and before 04:00

5.5.1 Only worked if agreed to in writing and must be compensated by an allowance of at least 10% the ordinary daily wage and if transport is available.

## **6. Meal intervals**

A farm worker is entitled to a one-hour break for a meal after not more than five hours work. Such interval may be reduced to 30 minutes, by agreement between the parties. When a second meal interval is required because of overtime worked, it may be reduced to not less than 15 minutes. If required or permitted to work during this period, remuneration must be paid.

## **7. Work on Sundays**

Must be paid as follows:

<b>Time worked on a Sunday</b>	<b>Payment</b>
One hour or less	Double the wage for one hour
More than one hour but not more than two hours	Double the ordinary wage for time worked
More than two hours but not more than five hours	The ordinary daily wage.
More than five hours	The greater of double the wage payable in respect of time worked (excluding overtime) or double the ordinary daily wage.

A farm worker who does not reside on the farm who works on a Sunday must be regarded as having worked at least two hours on that day.

## **8. Public Holidays**

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

The official public holidays are:

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

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

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

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

### **9. Annual Leave**

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

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

### **10. Sick leave**

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

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

The employer is not required to pay an employee if the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury.

### **11. Maternity leave**

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

## **12. Family responsibility leave**

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

## **13. Deductions from the remuneration**

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

A deduction of not more than 10% each of the wage may be deducted for food and accommodation provided on a consistent and regular basis and provided the house has a roof that is durable and waterproof, has a glass window that can be opened, electricity and water on tap is available inside the house and a flush toilet or pit latrine is available insider or in close proximity to the house.

## **14. Other issues**

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

## **15 Prohibition of Employment**

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

## **16. Other conditions of employment**

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

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These guidelines are not meant to be a complete summary of the Sectoral Determination and/or legal advice. Should there be any doubt as to rights and/or obligations in terms of the Act or terms of any clause of the suggested Contract of Employment, such queries can be directed to the local offices of the Department of Labour, that will gladly assist.