

# BASIC CONDITIONS OF EMPLOYMENT ACT

Act 75 of 1997.

## SECTORAL DETERMINATION 12: FORESTRY SECTOR, SOUTH AFRICA

[Updated to 3 February 2016]

GoN R219, G. 28598 (c.i.o 1 April 2006),  
GoN R362, G. 32060 (c.i.o 1 April 2009),  
GoN 30, G. 34947 (c.i.o 1 April 2012),  
GoN 168, G. 36224 (c.i.o 1 April 2013),  
GoN 208, G. 38562 (c.i.o 1 April 2015),  
GoN 138, G. 39648 (c.i.o 1 March 2016).

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 51(1) of the Basic Conditions of Employment Act, 1997, make a Sectoral Determination establishing conditions of employment and wages for employers and employees in the Forestry Sector, South Africa, in the schedule hereto and determine 1st April 2006 as the date from which provisions of the said Sectoral Determination shall become binding.

(Signed)

**MMS MDLADLANA, MP**  
**MINISTER OF LABOUR**

### SCHEDULE

#### TABLE OF CONTENTS

##### PART A APPLICATION

1. Scope of application

##### PART B MINIMUM WAGES

2. Minimum wages
3. ...
4. Minimum wages for forestry workers under 18 years of age
5. Task-based payment
6. Calculation of wages or remuneration
7. Payment of remuneration
8. Information concerning pay

9. Prohibited acts concerning pay
10. Deductions and other acts concerning remuneration

**PART C  
PARTICULARS OF EMPLOYMENT**

11. Written particulars of employment

**PART D  
HOURS OF WORK**

12. Emergency work
13. Ordinary hours of work
14. Extension of ordinary hours of work for forestry workers
15. Overtime
16. Payment of overtime
17. Compressed working week
18. Work on Sundays
19. Night work
20. Stand-by
21. Meal intervals
22. Rest period
23. Public holidays

**PART E  
LEAVE**

24. Annual leave
25. Sick leave
26. Family responsibility leave
27. Maternity leave

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

28. Prohibition of child labour and forced labour

**PART G  
TERMINATION OF EMPLOYMENT**

29. Termination of employment
30. Payment instead of notice
31. Accommodation, livestock and crops on termination
32. Payments on termination

- 33. Severance pay
  - 34. Certificate of service
  - 35. Keeping of sectoral determination
  - 36. Temporary employment services
  - 37. Presumption as to who is a forestry worker
  - 39. What words mean in this determination
- Written Particular of Employment (Forestry Worker)  
Guidelines

## **PART A APPLICATION**

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

- (1) The determination applies to the employment of forestry workers in all forestry activities in the Republic of South Africa—
- (2) For the purpose of this determination Forestry Sector refers to forestry operations related to planting, growing, tending and harvesting of trees. Without limiting its meaning, 'forestry activities' includes—
  - (a) commercial timber growers;
  - (b) emergent timber growers;
  - (c) contractors where the majority of time is spent in relation to forestry contracting activities;
  - (d) all transportation within the sector not covered by the Road Freight Bargaining Council;
  - (e) a domestic worker employed in a home on a plantation where forestry activities take place;
  - (f) a security guard employed to guard a plantation or other premises where forestry activities are conducted, who is not employed in the private security sector.
- (3) The determination does not apply to—
  - (a) mixed farming employers where majority of the time is spent in relation to farming activities;
  - (b) community forestry employers and employees;
  - (c) employers where the majority of the time is spent in relation to conservation forestry activities;

- (d) any person employed or engaged in forestry activities covered by another sectoral determination or by a bargaining council agreement in terms of the Labour Relations Act, 1995 and includes but is not limited to—
- (i) transportation covered by the Road Freight Bargaining Council;
  - (ii) the forest products sector, which includes all primary and secondary timber processing activities including the pulp and paper sector and whose operations are currently covered by bargaining council agreements.

**PART B  
MINIMUM WAGES**

**2. MINIMUM WAGES**

- (1) With effect from 01 March 2016, an employer must pay a forestry worker at least the minimum wage prescribed in terms of table 1.

<b>Table 1: Minimum wages for employees in the Forestry 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 2016 to 28 February 2017</b>			<b>1 March 2017 to 28 February 2018</b>			<b>1 March 2018 to 28 February 2019</b>		
<b>Monthly</b>	<b>Weekly</b>	<b>Hourly</b>	<b>Monthly</b>	<b>Weekly</b>	<b>Hourly</b>	<b>Monthly</b>	<b>Weekly</b>	<b>Hourly</b>
<b>R2778.83</b>	<b>R641.32</b>	<b>R14.25</b>	<b>Previous year's minimum wage + CPI* + 1%</b>			<b>Previous year's minimum wage + CPI* + 1%</b>		
* <b>The CPI to be utilised is the available CPI excluding owners' equivalent rent as released by Statistics South Africa six weeks prior to the increment date.</b>								

[Cl 2 subs by GoN R362 in G. 32060, GoN 30 in G. 34947, GoN 168 in G. 36224, GoN 208 in G. 38562, GoN 138 in G. 39648.]

**3. ...**

[Cl 3 subs by GoN R362 in G. 32060; rep by GoN 30 in G. 34947.]

**4. MINIMUM WAGES FOR FORESTRY WORKERS UNDER 18 YEARS OF AGE**

- (1) An employer must pay a forestry 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 or remuneration, specified in Table 1.

**5. TASK-BASED PAYMENT**

- (1) An employer and forestry worker may agree in writing that the forestry worker will perform task-based work on a regular basis.
- (2) An employer must pay a forestry worker who is employed on such a task-based system, remuneration at not less than the wage prescribed in clause 2(2), plus the rates applicable under such system.
- (3) An employer shall not require or permit a forestry worker to undertake any work for him or her solely on the basis of the quantity of work done. Any amount payable to a forestry worker for task-based work in terms of subclause (2) shall be aside from and in addition to his or her wage, which shall not be less than the wage prescribed in clause 2(2).
- (4) An agreement to perform task-based work in terms of this clause must be concluded before the work is commenced and must include—
  - (a) the forestry worker's wage and rate per task;
  - (b) the basis for calculating task-based payments;
  - (c) the period over which task-based payments are calculated which may not be longer than one month;
  - (d) when the employer must pay task-based payments to the forestry worker which may not be longer than seven days after the end of the period in which the payment is earned; and
  - (e) the type, description, number, quantity, margin, profit, or orders (individual, weekly, monthly or otherwise) for which the forestry worker is entitled to earn wages.
- (5)
  - (a) An employer must ensure that a schedule reflecting the wage and rates referred to in clause 5(2) is accessible to the forestry workers at all times.
  - (b) The employer must supply the forestry worker with a copy of the agreement to perform task-based work.
- (6) An employer who intends to cancel or amend any task-based system in operation or the rates applicable there under shall give the affected forestry workers not less than one month notice of such intention. The parties may agree in writing on a longer notice period.
- (7) A forestry worker who performs task-based work, or otherwise, his / her ordinary hours of work may be reduced on account of short-time provided that—

- (a) A deduction made in the case of short time should not exceed one-third of the forestry worker's weekly wage, irrespective of the number of hours by which the ordinary hours of work were reduced.
- (b) Short time is applicable when unforeseen circumstances such as machinery breakdowns, weather fluctuations, and slackness of trade or shortage of raw materials exist.
- (c) No deductions shall be made in the case of short time arising from machinery breakdowns, slackness of trade or shortage of raw materials unless the employer has given notice on the previous working day.
- (d) Whenever short time is worked due to inclement weather, forestry workers should be paid for at least four hours if work has not started for the day or was stopped within the first four hours. Should work be stopped after the first four hours forestry workers should be paid for hours worked. The one-third provision will apply if the employer has given notice the previous working day.

## **6. CALCULATION OF WAGES OR REMUNERATION**

- (1) The wage or remuneration of a forestry worker is calculated by reference to the forestry 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 forestry 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 forestry 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 forestry 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 forestry worker is obtained by multiplying the weekly wage or remuneration by four and a third ( $13/3$ ).

## **7. PAYMENT OF REMUNERATION**

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

## **8. INFORMATION CONCERNING PAY**

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

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

## **9. PROHIBITED ACTS CONCERNING PAY**

- (1) An employer may not withhold any payment from a forestry worker or require a forestry worker to pay the employer or any other person in respect of—
- (a) the employment or training of that forestry worker;
  - (b) the supply of any work equipment or tools; or
  - (c) the supply of any work clothing.\*

\* An employer may not make any deduction from remuneration or require or permit a forestry 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 forestry worker (section 23 of the Occupational Health and Safety Act 85 of 1993).

- (2) An employer may not require a forestry 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 forestry worker.
- (4) An employer may not require or permit a forestry worker to—
- (a) repay any amount paid except for overpayments previously made by the employer resulting from an error in calculating the forestry worker's pay; or
  - (b) acknowledge receipt of an amount greater than the pay actually received.

## 10. DEDUCTIONS AND OTHER ACTS CONCERNING REMUNERATION

- (1) An employer may not make any deduction from a forestry worker's remuneration except—
  - (a) a deduction not exceeding 10 per cent of the forestry worker's wage for accommodation in which the forestry worker ordinarily resides;
  - (b) a deduction not exceeding 10 per cent of the forestry worker's wages made in accordance with clause 10(1)(a) for food supplied to the forestry worker "on a payment in kind" basis except where a written agreement has been signed as contemplated in clause (10)(1)(d);
  - (c) at the written request of a forestry worker, a deduction of an amount which the employer has paid or undertaken to pay to a third party contemplated by subclause (7);
  - (d) where a written agreement has been signed by the employer and forestry worker in respect of the repayment of monies owed to the employer by the forestry worker in respect of—
    - (i) loans;
    - (ii) the provision of food over and above the 10% allowable deduction requested by the forestry worker; or
    - (iii) credit extended to the forestry worker in respect of purchases freely made by the forestry worker;
  - (e) the deduction is required or permitted in terms of a law, collective agreement, Court order or arbitration award;
  - (f) 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 or food in terms of clause 10(1)(a) or (b) respectively if—
  - (a) the food or accommodation is provided free of charge by the employer to the forestry 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 forestry worker's remuneration for food or accommodation except in the case of a written agreement in respect of food as is contemplated in clause 10(1)d;
  - (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 clause 10(1)(a) 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) safe water is available inside the house, or in close proximity which is not more than 100m from the house;
  - (d) electricity, if the infrastructure exists on the farm or plantation;
  - (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 metres in size.
- (4) An employer may not make any deduction for accommodation in terms of subclause (1)(a) in respect of a forestry worker who is under 18 years of age.
- (5) An employer may only make a deduction in terms of subclause (1)(a) in respect of one forestry worker residing in any house.
- (6)
- (a) Subject to clause 10(1)(a) where more than two forestry workers reside in communal accommodation, the maximum deduction that the employer may make in total in respect of all the forestry workers who reside in that accommodation is 25% of the applicable minimum wage payable to an individual forestry worker.
  - (b) An equal amount must be deducted in respect of each of the forestry workers residing in accommodation contemplated by paragraph (a).

- (7) A deduction may only be made in respect of clause 10(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 forestry worker is a member;
  - (b) any registered trade union in respect of subscriptions;
  - (c) any bank, building society, insurance business, registered financial institution, local authority in respect of a payment on a loan granted to the forestry worker to acquire a dwelling;
  - (d) the owner or agent in respect of the rent of a dwelling or accommodation occupied by the forestry worker.

**PART C**  
**PARTICULARS OF EMPLOYMENT**

**11. WRITTEN PARTICULARS OF EMPLOYMENT**

- (1) An employer must supply a forestry worker, when the forestry worker starts employment, with the following particulars in writing—
- (a) the full name and address of the employer;
  - (b) the name and occupation of the forestry worker, and a brief description of the work for which the forestry worker is employed;
  - (c) the place of work, and where the forestry worker is required or permitted to work at various places, an indication of this;
  - (d) the date on which employment began;
  - (e) the forestry worker's ordinary hours of work and days of work;
  - (f) the forestry 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 forestry worker is entitled to;
  - (i) any food or accommodation payment that the forestry worker is entitled to and the value of the food or accommodation calculated in accordance;

- (j) any other payment in kind received by the employer;
  - (k) how frequently wages will be paid;
  - (l) any deductions to be made from the forestry worker's wages;
  - (m) the leave to which the forestry worker is entitled to;
  - (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 forestry worker is not able to understand the written particulars, the employer must ensure that they are explained to the forestry worker in a language and in a manner that the forestry worker understands.
- (3) The employer must revise the written particulars if there is any change in the forestry worker's terms of employment.
- (4) An employer must retain a copy of the written particulars while the forestry worker is employed and for three years thereafter.

**PART D**  
**HOURS OF WORK**

**12. EMERGENCY WORK**

- (1) Clauses 13, 15(1), 18(1), 19(1), 21(1) and 22(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 forestry workers during their ordinary hours of work.
- (2) Subclause (1) does not affect the obligation of an employer to pay a forestry worker for any work performed at the forestry worker's ordinary rate of pay or overtime rate, as the case may be.

**13. ORDINARY HOURS OF WORK**

- (1) An employer may not require or permit a forestry worker to work more than—
- (a) 45 hours in any week\*;

\* A forestry worker who is under 18 years of age may not work more than 35 hours in any week.

- (b) nine hours on any day if the forestry worker works for five days or less in a week; or
- (c) eight hours in any day if the forestry worker works for more than five days in any week.

#### **14. EXTENSION OF ORDINARY HOURS OF WORK FOR FORESTRY WORKERS**

- (1) A forestry worker and an employer may conclude a written agreement in terms of which the forestry 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 12 months; and
  - (b) are reduced by the same number of hours during a period of the same duration in the same 12-month period.
- (2) An agreement in terms of subclause (1) may not extend the forestry worker's ordinary hours of work to more than 10 hours on any day.
- (3) During any period of extended or reduced ordinary hours of work in terms of subclause (1), the employer must pay the forestry worker the wage the forestry worker would have received for the forestry worker's normal ordinary hours of work.
- (4) If a forestry worker's employment terminates for any reason at a time when the forestry worker has worked a greater number of extended ordinary hours than reduced ordinary hours, the employer must pay the forestry worker for the extended ordinary hours worked at the overtime rate in terms of clause 15.
- (5) An employer who concludes a contract in terms of this clause must—
  - (a) supply the forestry worker with a copy of the contract; and
  - (b) record any extended or reduced hours worked in terms of the contract on the statement supplied to the forestry worker in terms of clause 5.

#### **15. OVERTIME**

- (1) An employer may not require or permit a forestry worker—
  - (a) to work overtime except in accordance with an agreement concluded by the employer and the forestry worker;
  - (b) to work more than 15 hours' overtime a week; or

- (c) to work more than 12 hours, including overtime, on any day.
- (2) An agreement concluded in terms of subclause (1)(a) with a forestry worker when the forestry worker commences employment, or during the first three months of employment, is only valid for one year.

## **16. PAYMENT OF OVERTIME**

- (1) An employer must pay a forestry worker at least one and one-half times the forestry worker's wage for overtime worked.
- (2) Despite subclause (1), an agreement may provide for an employer to—
  - (a) pay a forestry worker not less than the forestry worker's ordinary wage for overtime worked and grant the forestry worker at least 30 minutes' time off on full pay for every hour of overtime worked; or
  - (b) grant a forestry worker at least 90 minutes' paid time off for each hour of overtime worked.
- (3) An employer must grant paid time off in terms of subclause (2) within one month of the forestry worker becoming entitled to it.
- (4) An agreement in writing may increase the period contemplated by subclause (3) to 12 months.
- (5) Any overtime worked on a Sunday or public holiday must be paid in accordance with the provisions for Sundays and public holidays in clauses 18 and 23.

## **17. COMPRESSED WORKING WEEK**

- (1) An agreement in writing may require or permit a forestry worker to work up to 12 hours in a day, inclusive of the meal intervals required in terms of clause 21, without receiving overtime pay.
- (2) An agreement in terms of subclause (1) may not require or permit a forestry worker to work—
  - (a) more than 45 ordinary hours of work in any week;
  - (b) more than 10 hours' overtime in any week; or
  - (c) on more than five days in any week.

## **18. WORK ON SUNDAYS**

- (1) An employer must pay a forestry 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) Any time worked on a Sunday by a forestry worker is not taken into account in calculating a forestry worker's ordinary hours of work in terms of clause 12, but is taken into account in calculating the overtime worked by the forestry worker in terms of clause 14.
- (3) If a shift worked by a forestry 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.

## **19. NIGHT WORK**

- (1) In this clause, “**night work**” means work performed after 18:00 and before 06:00 the next day.
- (2) An employer may only require or permit a forestry worker to perform night work if so agreed and if—
- (a) the employer pays the forestry worker an allowance of at least 10% of the forestry worker's ordinary daily wage; and
  - (b) transportation is available between the forestry worker's place of residence and the workplace at the commencement and conclusion of the forestry worker's shift.
- (3) An employer who requires a forestry worker to perform work on a regular basis after 23:00 and before 06:00 the next day must—
- (a) inform the forestry worker in writing, or orally if the forestry worker is not able to understand a written communication, in a language that the forestry worker reasonably understands—
    - (i) of any health and safety hazards associated with the work that the forestry worker is required to perform; and
    - (ii) of the forestry worker's right to undergo a medical examination in terms of paragraph (b);

- (b) at the request of the forestry worker, enable the forestry worker to undergo a medical examination, for the account of the employer, concerning those hazards—
    - (i) before the forestry worker starts, or within a reasonable period of the forestry worker starting such work;
    - (ii) at appropriate intervals while the forestry worker continues to perform such work; and
  - (c) transfer the forestry worker to suitable day work within a reasonable time if—
    - (i) the forestry 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) Subclause (3) applies to a forestry worker who works after 23:00 and before 06:00 at least five times per month or 50 times per year.

## **20. STAND-BY**

- (1) The employer shall pay the forestry worker on standby as follows—
  - (a) stand-by allowance of at least 10% of the forestry worker's ordinary daily wage.

## **21. MEAL INTERVALS**

- (1) An employer must give a forestry worker who works continuously for more than five hours a meal interval of at least one continuous hour.
- (2) During a meal interval, a forestry worker may be required or permitted to perform only duties that cannot be left unattended and cannot be performed by another forestry worker.
- (3) A forestry worker must be paid—
  - (a) for a meal interval in which the forestry worker is required to be available for work.
  - (b) for any portion of a meal interval that is in excess of 75 minutes, unless the forestry worker lives on the plantation or at the workplace.
- (4) For the purpose of subclause (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;
  - (b) dispense with a meal interval for a forestry worker who works fewer than six hours on a day.
- (6) If the forestry worker is not able to understand the written agreement contemplated by subclause (5) above, the employer must ensure that the agreement is explained to the forestry worker in a language that the forestry worker reasonably understands.
- (7) Whenever an employer is required to give a forestry worker a second meal interval because of overtime worked, that interval may be reduced to not less than 15 minutes.

## **22. REST PERIOD**

- (1) An employer must grant a forestry worker—
  - (a) a daily rest period of at least 12 consecutive hours between ending work and starting work the next day;
  - (b) weekly rest period of at least 36 consecutive hours which, unless otherwise agreed, must include a Sunday.
- (2) A daily rest period in terms of subclause (1)(a) may, by written agreement, be reduced to 10 hours for a forestry worker—
  - (a) who lives where the workplace is situated; and
  - (b) whose meal interval lasts for at least three hours.
- (3) Despite subclause (1)(b), an agreement in writing may provide for a rest period of at least 60 consecutive hours every second week.

## **23. PUBLIC HOLIDAYS**

- (1) An employer may not require a forestry 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 forestry worker would otherwise have worked, an employer must pay—

- (a) a forestry worker who does not work on the public holiday the forestry worker's daily wage or task rate;
  - (b) a forestry worker who does work on the public holiday at least double the daily wage or double the task rate.
- (3) If a forestry worker works on a public holiday on which the forestry worker would not normally work, the employer must pay the forestry worker an amount equal to—
- (a) the forestry worker's daily wage; plus
  - (b) the forestry worker's hourly wage for each hour worked on the public holiday.
- (4) An employer must pay a forestry worker for a public holiday on the forestry worker's normal payday.
- (5) If a shift worked by a forestry 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.
- (6) In accordance with section 2(2) of the Public Holidays Act, 1994 the parties can exchange a public holiday for any other day.

## **PART E LEAVE**

### **24. ANNUAL LEAVE**

- (1) An employer must grant a forestry worker—
- (a) at least three weeks (21 consecutive days) leave on full pay in respect of each 12 months of employment (the 'annual leave cycle'); or
  - (b) by agreement, at least one day of annual leave on full pay for every 17 days on which the forestry 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 forestry worker worked or was entitled to be paid.
- (2) An employer must grant a forestry worker an additional day of paid leave if a public holiday falls on a day during a forestry worker's annual leave on which the forestry worker would otherwise have worked.

- (3) An employer may reduce a forestry worker's entitlement to annual leave by the number of days of occasional leave on full pay granted to the forestry worker at the forestry worker's request in that annual leave cycle.
- (4) An employer must grant—
  - (a) the annual leave not later than six months after the end of the annual leave cycle in which leave was earned;
  - (b) the leave earned in one year over a continuous period, if requested by the forestry worker.
- (5) Annual leave must be taken—
  - (a) in accordance with an agreement between the employer and the forestry worker; or
  - (b) if there is no agreement in terms of paragraph (a), at a time determined by the employer in accordance with this section.
- (6) An employer may not require or permit a forestry worker to take annual leave during—
  - (a) any other period of leave to which the forestry worker is entitled in terms of this Part E; or
  - (b) any period of notice of termination of employment.
- (7) An employer may not require or permit a forestry worker to work for the employer during any period of annual leave.
- (8) An employer may not pay a forestry worker instead of granting paid leave in terms of the clause except on termination of employment in terms of clause 29.
- (9) An employer must pay a forestry worker leave pay at least equivalent to the remuneration the forestry worker would have received for working for a period equal to the period of leave, calculated at the forestry worker's wage immediately before the beginning of the period of leave.
- (10) An employer must pay a forestry worker leave pay before the beginning of the period of leave or, by agreement, on the forestry worker's usual pay day.

## **25. 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 forestry worker commenced work; or
  - (b) the end of the forestry worker's prior sick leave cycle.
- (2) During every sick leave cycle, the forestry worker is entitled to an amount of paid sick leave equal to the number of days the forestry worker would normally work during a period of six weeks.
- (3) Despite subclause (2), during the first six months of work, the forestry worker is entitled to one day's sick leave for every 26 days worked.
- (4) An employer may, during the forestry worker's first leave cycle, reduce the forestry worker's entitlement to sick leave in terms of subclause (2) by the number of days' sick leave taken in terms of subclause (3).
- (5) Where an employer, at the request of the forestry worker, pays fees for a forestry worker's hospital or medical treatment, the fees paid may be set off against the forestry worker's pay.
- (6) An employer is not required to pay the forestry worker in terms of this clause if the forestry 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 forestry worker was unable to work for the duration of the forestry worker's absence on account of sickness or injury.
- (7) Within the scope of their professional expertise, a medical certificate in terms of subclause (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 authorised to diagnose medical conditions.

- (8) If it is not reasonably practicable for a forestry worker who lives on the employer's premises to obtain a medical certificate, the employer may not withhold payment in terms of subclause (1) unless the employer provides reasonable assistance to the forestry worker to obtain the certificate.

## **26. FAMILY RESPONSIBILITY LEAVE**

- (1) This clause applies to a forestry 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 forestry worker, during each 12 months of employment, at the request of the forestry worker, three days' paid leave, which the forestry worker is entitled to take—
- (a) when the forestry worker's child is born;
  - (b) when the forestry worker's child is sick; or
  - (c) in the event of the death of—
    - (i) the forestry worker's spouse or life partner; or
    - (ii) the forestry worker's parent, adoptive parent, grandparent, child, adopted child, grandchildren or sibling.
- (3) A forestry worker may take family responsibility leave in respect of the whole or part of the day.
- (4) Subject to subclause (5), an employer must pay a forestry worker for a day's family responsibility leave—
- (a) the wage the forestry worker would normally have received for work on that day; and
  - (b) on the forestry worker's usual payday.
- (5) Before paying a forestry worker for leave in terms of this clause, an employer may require reasonable proof of an event contemplated in subclause (2) for which the leave was required.
- (6) A forestry worker's unused entitlement to leave in terms of this clause lapses at the end of the annual leave cycle in which it accrues.

## **27. MATERNITY LEAVE\***

\* In terms of section 187(1)(e) of the Labour Relations Act, 1995, the dismissal of a forestry 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 forestry worker to resume work after she has taken maternity leave in terms of any law, collective agreement or her contract. A forestry worker may claim maternity benefits in terms of the Unemployment Insurance Act, 2001.

- (1) A forestry worker is entitled to at least four consecutive month's maternity leave.
- (2) A forestry 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 forestry worker's health or that of her unborn child.
- (3) A forestry 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 forestry 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 forestry worker had commenced maternity leave at the time of the miscarriage or stillbirth.
- (5) A forestry worker must notify an employer in writing, unless she is unable to do so, of the date on which the forestry worker intends to—
  - (a) commence maternity leave; and
  - (b) return to work after maternity leave.
- (6) Notification in terms of subclause (5) must be given—
  - (a) at least four weeks before the forestry 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 forestry worker or a forestry worker who is nursing her child to perform work that is hazardous to her health or the health of her child, including operating dangerous machinery or handling and / or using spray chemicals.
- (8) During a forestry worker's pregnancy, and for a period of six months after the birth of her child, her employer must offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if—

- (a) the forestry worker is required to perform night work, as defined in clause 15 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**

**28. PROHIBITION OF CHILD LABOUR AND FORCED LABOUR**

(1) No person may employ in forestry 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.\*

\* 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.

(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 wellbeing, 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 forestry worker under the age of 18 years employed by them.

(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 subclause (4).

(6) A person who employs a child in contravention of subclause (1) and (2) or engages in any form of forced labour in contravention of subclauses (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 18:00 and before 06:00 the following day;

- (b) to work more than 35 hours in any week;
- (c) without limiting subclause (2), to work with agrochemicals.

**PART G**  
**TERMINATION OF EMPLOYMENT**

**29. 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 forestry worker has been employed for six months or less;
  - (b) four weeks, if the forestry worker has been employed for six months or more.
- (2) The employer and forestry worker may agree to a longer notice period, but the agreement may not require or permit a forestry worker to give a period of notice longer than that required of the employer.
- (3) Notice of termination of contract of employment must be given in writing except when it is given by an illiterate forestry worker. If a forestry 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 forestry worker in an official language the forestry 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 forestry worker is entitled in terms of clause 24(1);
  - (b) not run concurrently with any period of leave to which the forestry worker is entitled in terms of this determination, except sick leave.
- (5) Nothing in this clause affects the right—
  - (a) of a dismissed forestry 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 forestry worker to terminate a contract of employment without notice for any cause recognised by law.

**30. PAYMENT INSTEAD OF NOTICE**

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

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

- (1) This clause applies if the employer of a forestry worker terminates the contract of employment of that forestry worker—
  - (a) before the date on which the employer was entitled to do so in terms of clause 29; or
  - (b) in terms of clause 30.
- (2) If the forestry worker resides in accommodation on the premises of the employer or that is supplied by the employer, the employer is required to provide the forestry 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 forestry 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 subclause (1).
- (4)
  - (a) A forestry 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 forestry worker an agreed amount for the crops.
  - (b) Paragraph (a) applies in addition to a forestry worker who terminates the contract of employment in accordance with clause 29.
- (5) If a forestry worker elects to remain in accommodation in terms of subclause (2) after the employer has terminated the forestry worker's contract of employment in terms of subclause (1), the employer may deduct an amount calculated in accordance with clause 10(1)(a) from the amount that the employer is required to pay the forestry worker in terms of clause 30.

### **32. PAYMENTS ON TERMINATION**

- (1) On termination of employment, an employer must pay a forestry worker all monies due to the forestry 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 13;
  - (c) any paid time-off that the forestry worker is entitled to in terms of clause 16 that the forestry worker has not taken;
  - (d) remuneration calculated in accordance with clause 24(9) for any period of annual leave due in terms of clause 24(1) that the forestry worker has not taken; and
  - (e) if the forestry worker has been in employment longer than four months, in respect of the forestry worker's annual leave entitlement during an incomplete annual leave cycle as defined in section 24(1)—
    - (i) one day's remuneration in respect of every 17 days on which the forestry worker worked or was entitled to be paid; or
    - (ii) remuneration calculated on any basis that is at least as favourable to the forestry worker as that calculated in terms of subparagraph (i).

### **33. 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 forestry 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 forestry 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 subclause (2).
- (4) The payment of severance pay in compliance with this clause does not affect a forestry 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 forestry worker may refer the dispute in writing to the CCMA.

### **34. CERTIFICATE OF SERVICE**

- (1) On termination of employment, a forestry worker is entitled to a certificate of service stating—
  - (a) the forestry worker's full name;
  - (b) the name and address of the employer;
  - (c) the date of commencement and date of termination of employment;
  - (d) the title of the job or brief description of the work for which the forestry worker was employed at the date of termination;
  - (e) any relevant training received by the forestry worker;
  - (f) the pay at date of termination; and
  - (g) if the forestry worker so requests, the reason for termination of employment.

### **35. KEEPING OF SECTORAL DETERMINATION**

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

### **36. TEMPORARY EMPLOYMENT SERVICES**

- (1) In this clause, “**temporary employment service**” means any person who, for reward, procures for or provides forestry workers to a client if that person remunerates the forestry workers.
- (2) For the purpose of this determination, a forestry worker whose services have been procured for, or provided to, a client by a temporary employment service is employed by that temporary employment service, and the temporary employment service is that person's employer.
- (3) The temporary employment service and the client are jointly and severally liable to comply with this determination in respect of its forestry workers.
- (4) If the temporary employment service is in default of its obligation to make any payment in terms of this determination to a forestry worker for a period of 30 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 forestry worker is entitled to recover such amount from the employment service.

### 37. PRESUMPTION AS TO WHO IS A FORESTRY WORKER

- (1) A person who works for, or renders services to, any other person in forestry activities is presumed, until the contrary is proved, to be a forestry 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 dependent 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.

### 39. WHAT WORDS MEAN IN THIS DETERMINATION

- (1) Any expression in this determination, which is defined in the Basic Conditions of Employment Act (the 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 15 years of age;

**“contractor”** means individuals and legal entities who render silvicultural, harvesting and transport services to the Forestry Industry for commercial gain and for whom these forestry contracting activities make up the majority of the time spent on all contracting or subcontracting activities undertaken by these businesses;

**“commercial timber growers”** a farmer who cultivates a commercially viable amount of timber for profit;

“**conservation forestry**” refers to the maintenance and protection of natural (indigenous) forests and woodlands in South Africa on a sustainable level;

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

“**dispute**” includes an alleged dispute;

“**emergent contractor**” refers to a previously disadvantaged individual or company owned by a previously disadvantaged person that has started to operate as a contractor within the past five years, sometimes with the support of another sector organisation;

“**emergent timber growers**” refers to a previously disadvantaged person who has started growing timber within the past 10 years, usually with the support of other sector organisations (e.g. corporate forestry companies). The scale of operation is generally less than 50 hectares;

“**employee**” has the corresponding meaning as “**forestry worker**”;

“**farming activities**” includes but not limiting its meaning, primary and secondary agriculture, mixed farming, horticulture, aqua farming and fanning of animal products or field crops;

“**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;

“**forestry worker**” means a worker who is employed mainly or wholly in connection with forestry activities, and includes a domestic worker employed in a home on a plantation and a security guard employed on a plantation or other premises where forestry operations are conducted, excluding a security guard, employed in the Private Security Industry Sector;

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

“**Minister**” means the Minister of Labour;

“**month**” means a calendar month;

“**monthly wage**” means an employee’s weekly wage multiplied by four and a third;

“**night work**” means work performed after 18:00 and before 06:00 the next day;

“**ordinary hours of work**” means the hours of work permitted in terms of clause 13;

“**overtime**” means the time that the forestry 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 forestry worker is entitled to in terms of Part E of this determination;

“**public holiday**” means any day that is a public holiday in terms of the Public Holiday Act, 1994 (Act 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;

“**stand by**” means when an employee is required to be at work during the night but sleeping and available for work between 20:00 and 04:00 the next day;

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

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

“**work place**” means any place where a forestry worker works.

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

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

Given by:

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

Address of employer:

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

to

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

**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 Forestry 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: ..... am 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 April 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 Forestry worker. In the case where the Forestry 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 employer accommodation for a period of a month. A employer is also obliged to allow the Forestry worker who has standing crops on the land a reasonable time to harvest the crop or the employer 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 Forestry 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 Forestry worker if he / she is not able to understand it.
- The employer is required to provide the Forestry 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 Forestry 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 Forestry 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 Forestry worker an agreed amount for the crops.
- All monies due to the Forestry 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 might be payable.

In the event of a Forestry 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 Forestry worker's duties and / or to find alternatives, then such employer may terminate the services of the Forestry 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 remuneration as indicated in clause 11 of the written particulars of employment. 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 12: Forestry 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 Forestry worker may not be made to—

- work more than 45 ordinary hours a week;
- work more than nine ordinary hours per day for a five day work week; and
- work more than eight ordinary 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 12-month period.

The employer must pay the Forestry 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 Forestry 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 live 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 Forestry 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:

Time worked on a Sunday	Payment
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 Forestry worker who does not reside on the plantation 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 Forestry 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 Forestry worker for the period for which she is off work due to her pregnancy. However the parties may agree that the Forestry 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 front the remuneration**

The Sectoral Determination prohibits an employer from deducting any monies from the Forestry 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 Forestry 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.

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.