

SECTORAL DETERMINATION SEVEN: DOMESTIC WORKER SECTOR

Summary

Part A

APPLICATION OF THE SECTORAL DETERMINATION

The determination covers the following employees:

- All domestic workers in South Africa
- Persons employed by employment services
- Independent contractors
- A person doing gardening in a private home
- Persons who look after children, the aged, the sick, the frail or the disabled in a private household
- A person employed to drive the car taking the children of the household to school

Part B

MINIMUM WAGE SETTING

All domestic workers must be paid for every hour or part of an hour they have worked.

Different wage are prescribed depending on:

- where the domestic worker works
- the number of hours worked per week

Wages according to areas

Wages are prescribed for two areas, namely Area A and Area B. Municipal boundaries have been used to distinguish between the two areas.

Area A

The following municipalities

Bergrivier, Breederivier, Buffalo City, Cape Agulhas, Cederberg, City of Cape Town, City of Johannesburg, City of Tshwane, Drakenstein, Ekurhuleni, Emalahleni, Emfuleni, Ethekwini Unicity, Gamagara, George, Hibiscus Coast, Karoo Hoogland, Kgatelopele, Khara Hais, Knysna, Kungwini, Kouga, Langeberg, Lesedi, Makana, Mangaung, Matzikama, Metsimaholo, Middelburg, Midvaal, Mngeni, Mogale, Mosselbaai, Msunduzi, Mtubatuba, Nama Khoi, Nelson Mandela, Nokeng tsa Taemane, Oudtshoorn, Overstrand, Plettenbergbaai, Potchefstroom, Randfontein, Richtersveld, Saldanha Bay, Sol Plaatjie, Stellenbosch, Swartland, Swellendam, Theewaterskloof, Umdoni, uMhlathuze and Witzenberg

Area B

The rest of South Africa

Wages will be payable according to number of hours worked per week.

If a domestic worker works for 27 ordinary or less hours in any week he/she will be entitled to a slightly higher wage. This is to compensate the worker, as he/she does not have a full time job.

Applicable wages

Area A

If a worker works less than 27 ordinary hours per week his/her hourly wage is R4.51 per hour.

If a worker works more than 27 ordinary hours per week his/her hourly wage is R4.10 per hour.

Area B

If a worker works 27 ordinary hours or less per week his/her hourly wage is R3.66 per hour.

If a worker works more than 27 ordinary hours per week his/her hourly wage is R3.33 per hour.

OTHER IMPORTANT PROVISIONS AFFECTING WAGES

Guaranteed minimum rate

Depending on circumstances some domestic workers might work for less than four hours per day. Should this be the case, he/she should then be paid for four hours worked.

Annual increase

Wages will go up by 8% on 1 November 2003 and 1 November 2004 respectively.

If the inflation rate is higher than 10% then the wage increase of 8% will be adjusted by the Department of Labour.

CALCULATING THE MINIMUM WAGES

Employers who cannot afford to pay the new minimum wage have an option of reducing the hours of work, instead of retrenching the employee.

It is illegal to pay lower than the prescribed hourly rate. If you pay more than the prescribed hourly rate you may not reduce the rate because it will be an unfair labour practice.

WORKING HOURS PER WEEK

Domestic workers are allowed to work a maximum of 45 ordinary hours per week

- Maximum of 9 hours per day if working for 5 days a week
- Maximum of 8 hours per day if working more than 5 days a week

CALCULATION OF OVERTIME

Overtime is payable when the domestic worker works longer than the ordinary hours prescribed per day or per week.

When he/she is on standby and works for longer than three hours, overtime rates are payable.

Overtime payment: one and a half times the hourly wage
 (Area A – 27+ hours per week - R4.10 + R2.05 = R6.15)
 (Area B – 27+ hours per week – R3.33 + R1.66 = R4.99)

INFORMATION CONCERNING PAY

Any payment can be in cash, by cheque or direct deposit into an account designated by an employee. The payment must be given at the workplace, during working hours and in a sealed envelope, which becomes the property of the employee. A payslip must be given at all times.

The employer must keep the payslips for three years.

Details on pay slip to include:

- the employer's name and address;
- the domestic worker's name and occupation;
- the period in respect of which payment is made;
- the domestic worker's wage rate and overtime rate;
- the number of ordinary hours worked by the domestic worker during that period;
- the number of overtime hours worked by the domestic worker during that period;
- the number of hours worked by the domestic worker on a public holiday or on a Sunday;
- the domestic worker's full wage;
- details of any other pay arising out of the domestic worker's employment;
- details of any deductions made;
- the actual amount paid to the domestic worker.

PROHIBITED ACTS CONCERNING PAYMENT OF WAGES

The determination deals with deductions, which are permissible and impermissible.

Permissible deductions

- Medical insurance
- Savings

- Pension fund
- Trade union subscription
- Order of account payment to a financial institution
- Rentals
- Loan or advance (not more than 10% of total wage)

Impermissible deductions

- Amount greater than the actual remuneration received
- Breakages (crochery, electrical appliances)
- Damages (ironing)
- Meals provided during working time
- Clothing
- Work equipment

Deductions for accommodation

This may be deducted from wages (not more than 10% of total wage) on condition that

- The room is weatherproof and in good condition
- The room has at least one window and door that can be locked
- The room is fitted with a toilet, a bath/shower or has access to another bathroom

Part C

PARTICULARS OF EMPLOYMENT

The sectoral determination compels the employer to issue the domestic worker with written particulars of employment.

The determination explains what information should be contained in such a document, how to communicate the information, what happens when conditions of employment change and how long it should be kept.

An employer must supply a domestic worker, when he/she starts work, with the following particulars in writing:

- (a) The full name and address of the employer
- (b) The name and occupation of the domestic worker, or a brief description of the work for which he/she is employed
- (c) The place of work, and where he/she is required or permitted to work
- (d) Date of employment
- (e) The domestic worker's ordinary hours of work and days of work
- (f) The domestic worker's wage or rate and method of payment
- (g) The rate of pay for overtime work
- (h) Any other cash payments he/she is entitled to
- (i) Any payment in kind he/she is entitled to and the value of payment in kind
- (j) How frequently wages will be paid
- (k) Any deductions to be made from wages
- (l) The leave he/she is entitled to
- (m) The period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate

Both parties must agree and sign the particulars. The particulars should be reviewed annually.

Part D

KEY ASPECTS ON WORKING TIME

The sectoral determination refers to the following working time matters: hours of work, overtime, payment for overtime, night work, standby, meal intervals, rest periods, payment for work on Sundays and public holidays.

Key aspects to remember:

- Ordinary working hours = a maximum of 45 hours per week
- Maximum nine hours per day when working five days
- Maximum eight hours per day when working more than five days
- Overtime not more than three hours in any day
- Not more than 15 hours overtime per week (5 days x 3 hours per day)
- Standby from 20:00 – 06:00 – payment R20-00 per shift
- Meal interval of one hour if employee worked continuously for more than five hours
- Rest periods
 - daily 12 consecutive hours
 - weekly 36 consecutive hours

Part E**LEAVE PROVISION**

The different types of leave an employee is entitled to.

Annual Leave	Three weeks per year/or 1 day for 17 days worked/1 hour for 17 hours worked
Sick Leave	Cycle 36 months = number of days worked during six week period
Maternity Leave	Four consecutive months of unpaid leave
Family Responsibility Leave	Five days per year

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

The Basic Conditions of Employment Act 1997 prohibits child and forced labour and the sectoral determination enforces the same.

No child under the age of 15 years may be employed.

Part G

TERMINATION OF EMPLOYMENT

A contract of employment may be terminated only on **notice** of not less than **one week** if the domestic worker has been **employed** for **six weeks** or **less**.

Notice of **four weeks** is required if the domestic worker has been **employed** for **six months** or **more**.

Live-in domestic workers are allowed to stay on the premises for **a month** (notice period) or may agree to **pay** for the accommodation.

An employer who has to dismiss an employee due to a change in his/her economic, technological or structural set-up, called **operational** requirement in the determination is responsible for **severance** pay to the employee.

Severance pay is payable only, if there was no **alternative** employment. At least **one weeks** pay for every completed **twelve months** of continuous service.

On termination of employment an employee is entitled to a **certificate of service**.

Part H

Miscellaneous

Keeping of the sectoral determination

All employers must keep a copy of the sectoral determination or an official summary. This can be obtained from the website of the Department of Labour or the Government Printer in Pretoria.

Social Security

The Unemployment Insurance Act has been amended to include domestic workers. Once promulgated domestic workers will be expected to contribute 1% of their wage towards the fund.

The Department of Labour will investigate the implementation of a provident fund in the next few years.

Enforcement

The inspectors of the Department of Labour will handle any contraventions of the sectoral determination. They will first attempt to solve the complaint telephonically, thereafter they will try and secure an undertaking and finally issue compliance orders if he/she is of the view that the law has been contravened. If still unresolved the case will go to the labour court.

Unsatisfied employers may object to a compliance order.