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- (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) Sub-clause (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 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;

- (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 sub clause (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 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 forestry 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.

**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.

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**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 twelve 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 sub-clause (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 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 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 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 forestry 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 forestry worker to obtain the certificate.

## **26. FAMILY RESPONSIBILITY LEAVE**

(1) This clause applies to a forestry worker –



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- (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 sub-clause (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 sub-clause (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<sup>3</sup>**

- (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

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<sup>3</sup> 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.

- (b) return to work after maternity leave.
- (6) Notification in terms of sub-clause (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.<sup>4</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 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 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 18:00 and before 06:00 the following day;
  - b) to work more than 35 hours in any week

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<sup>4</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.

- c) without limiting sub-clause (2), to work with agro-chemicals.

## **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 recognized 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 sub-clause (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.