

GUIDELINES TO THE EMPLOYMENT CONTRACT



Special Notes & Disclaimer

- This employment contract guidelines aims to assist Home Employers in formalising their employment relationship with their Employees.
- It is highly recommended that Employers keep abreast of relevant legislative changes and update your contract accordingly.
- Where necessary Employers are advised to seek legal advice.
- 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 office of the Department of Labour, who will gladly assist.

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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 domestic 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 domestic worker if he/she is not able to understand it.

The employer is required to provide the domestic 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.

All monies due to the domestic 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 approach the CCMA for assistance.

Pro-rata leave and severance pay might be payable.

In the event of a domestic 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 domestic workers duties and/or to find alternatives, then such employer may terminate the services of the domestic 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 rate of remuneration. Additional payments (such as for overtime or work on Sundays or Public Holidays) are calculated from the total remuneration as indicated in clause 5.3 of the contract. The total remuneration is the total of the money received by the employee and the payment in kind, which may not be more than 10% of the wage for accommodation.

4. Transport allowances

Sectoral Determination 7: Domestic 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 domestic worker may not be made to:

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

5.2 Overtime

A domestic 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.

5.3 Daily and weekly rest periods

5.3.1 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.

5.3.2 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.

5.3.3 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.

5.4 Standby

5.4.1 Standby means any period between 20:00 and 06:00 the next day when a domestic worker is required to be at the workplace and is permitted to rest or sleep but must be available to work if necessary.

5.4.2 May only done if it is agreed in writing and on not more than five times per month must be compensated by the payment of an allowance of at least R20,00 per shift.

5.5 Night work – after 18:00 and before 06:00

5.5.1 Worked only if agreed to in writing and must be compensated by an allowance and if the domestic resides at the workplace or transport is available.

6. Meal intervals

A domestic 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. Sunday work

Work on Sundays is voluntary and a domestic worker can therefore not be forced to work on a Sunday.

If the employee works on a Sunday he/she shall be paid double the daily wage.

If the employee ordinarily works on a Sunday he/she shall be paid one and one-half time the wage for every hour worked. Paid time off in return for working on a Sunday may be agreed upon.

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 domestic 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 should 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 days 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 domestic worker for the period for which she is off work due to her pregnancy. However the parties may agree that the domestic 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 five 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. Deduction from the remuneration

The Sectoral Determination prohibits an employer from deducting any monies from the workers wages without his/her written permission.

A deduction of not more than 10% of the wage may be deducted for a room or other accommodation provided it is kept in a good condition has at least one window and a door, which can be locked, and he/she has access to a bathroom.

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 employers 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 domestic 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.
