

South Africa

Labour Relations Act, 1995

National Bargaining Council for the clothing manufacturing industry: extension to non-parties of the COVID-19 lockdown collective agreement

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National Bargaining Council for the clothing manufacturing industry: extension to non-parties of the COVID-19 lockdown collective agreement

Government Notice R403 of 2020

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I, **THEMBALANI WALTERMADE NXESI**, Minister of Employment and Labour, hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the National Bargaining Council for the Clothing Manufacturing Industry, and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry with effect from 27 March 2020 and for the period ending 28 February 2022.

1. Preamble

The parties

- 1.1 Record that the primary intention of this collective agreement is to ensure that workers are not left destitute with no income, during a lock down period, should a lockdown period be declared in South Africa as a whole or parts there-of.
- 1.2 Record their deep concern about the escalating rate of COVID-19 infections in our country and globally, and the consequential devastating effect on our domestic economy, in particular its negative consequences for the labour market.
- 1.3 Are of the firm belief that, in order to mitigate the anticipated and devastating negative implications of COVID-19, an urgent and decisive collective response is required to protect the interests of the stakeholders in our industry.
- 1.4 Wish to take pro-active steps to protect the interests of employees in our industry and country, their families and the future sustainability of all sectors in the fashion manufacturing industry and its related pipeline operations, in the event that a national lockdown is declared.
- 1.5 Are of the view that they cannot just rely on government to fight this battle alone, but that we have a patriotic duty to play a supportive role by first drawing on our own resources, meagre and difficult as it might be, as a constructive contributory effort to combat this threat to the well-being of employees in the fashion- and related industry pipeline, and in our country at large.
- 1.6 Wish to encourage and strengthen the role of our country's centralised bargaining regime, by using the current COVID-19 crises as an opportunity to expand role of the clothing industry bargaining council beyond just that of mainly being a collective bargaining- and dispute resolution institution, by demonstrating that it can deliver additional value-added services to our industry and the country at large, in moments of national crises.

- 1.7 Wish to promote greater and mutually beneficial co-operation between the various labour market institutions in our country, by practically encouraging greater sharing of their respective resources, such as infrastructure, towards the goal of greater efficiency in the execution of their core mandates and common goals (such as greater and better compliance with our country's employment laws).
- 1.8 Are of the view that we need to do whatever we can to protect jobs in our industry and country, especially during crises periods like which COVID-19 is imposing on us.
- 1.9 Agree that additional intentions of this agreement is to encourage better health and safety regulation at the workplace, provide a prevention and support environment for Council employees, strengthen the organisational rights of the trade union, promote gender equality and combat gender-based violence at the workplace, and to improve other already existing value-added services of the Council, such as its health care clinic system.
- 1.10 This document constitutes a single agreement and shall be referred to as "the COVID-19 Shutdown Collective Agreement" and/or "this agreement".
- 1.11 The parties agree to be bound by the provisions of this preamble to this agreement, which forms a substantive part of this agreement.

2. Scope and effective date

- 2.1 This Agreement shall bind the parties and their members. It shall become effective as from the date adopted by Council (irrespective of date of signature) and shall remain effective until the parties agree otherwise.
- 2.2 The scope of this Agreement shall cover all employers and employees in the registered scope of the National Bargaining Council for the Clothing Manufacturing Industry.
- 2.3 Despite the provision of sub-clause 2.2 of this agreement, the Council authorises that the UIF payment and transmission service provisions of this agreement shall be offered as a value added solidarity service to all employees in our industry pipeline, or any members of the trade union, beyond the registered scope of the Council, provided that the Unemployment Insurance Fund (UIF) funds referred to later in this agreement are sufficient to cover such an expanded service.
- 2.4 The provisions contained in this agreement, once adopted by the National Bargaining Council, will be submitted to the Department of Employment and Labour for extension to cover all non-parties and non-signatory party employer associations within the geographic scope of the areas covered by the National Bargaining Council for the Clothing Manufacturing Industry.
- 2.5 The effective date of implementation of this Agreement is 23 March 2020 and the duration of this Agreement will be for a 24 month period, from 1 March 2020 until 28 February 2022, but further subject to sub-clause 2.6 below.
- 2.6 The Main Agreement as amended by this collective agreement shall, subject to Ministerial approval, remain gazetted and extended to non-parties for a further period of six years with effect from 1 March 2020, subject to the parties retaining the right to re-negotiate variations thereto, as and when they deem it necessary to do so.

3. Access to Unemployment Insurance Fund (UIF) finance

The following provisions shall be applicable:

- 3.1 The parties agree and appreciate that should funds be received from the UIF for the purposes of this agreement, such funds constitute worker funds, and hence workers' contribution towards funding the shortfall in their income during a lockdown period (should a lockdown period be declared) and during which no wage is receivable.
- 3.2 The parties authorise the Chairperson of the Council to sign a memorandum of understanding agreement with the UIF Commissioner and/or the Minister of Employment and Labour or their respective nominee,

which sets out the terms on which UIF funds will be released to the Council for the sole purpose of executing the provisions of this agreement

- 3.3 The parties authorise the Secretary of the Council to open a dedicated bank account into which all UIF funds advanced to the council for the execution of the purpose of this agreement shall be deposited.
- 3.4 No funds shall be disbursed from the bank account referred to in sub-clause 3.2.1 above, other than that which is duly authorised and which is exclusively intended and ring-fenced for the purposes of this agreement.
- 3.5 The UIF funds are solely and exclusively intended to provide a wage subsidy for qualifying employees during a lockdown period declared by government and during which no wage payments from the execution of work is due and/or receivable.
- 3.6 The officials of the Council shall at all times ensure that proper records, including all supporting documents of all income and disbursements from the bank account referred to in sub-clause 3.3 of this agreement, are safely kept and secured.
- 3.7 The Secretary of the Council shall submit a weekly consolidated report to the UIF Commissioner of all income and disbursements pertaining to the bank account referred to in sub-clause 3.3 of this agreement.
- 3.8 The Council shall ensure that, post the lockdown period, if a lockdown period occurs, the bank account referred to in sub-clause 3.3 of this agreement is audited by no later than a 6 week period following the official termination of the lockdown period.
- 3.9 The UIF Commissioner or the Minister of Employment and Labour shall have the sole power to authorise a variation of the time period set out in sub-clause 3.8 of this agreement, on good cause.
- 3.10 The Secretary and/or Chairperson of the Council, or any other nominee of the Council, are instructed to immediately lay criminal charges against any person and/or entity who/which are suspected of abuse or corruption relating to the operations of the bank account referred to in sub-clause 3.3 of this agreement or in relation to any income or disbursements there-from.
- 3.11 The Information and supporting records which companies would be required to submit for a drawdown of funds as envisaged in clause 4 of this agreement shall be immediately made available to the UIF, on request from the UIF.
- 3.12 Any UIF funds which remain after the completion of a post-COVID 2019 lockdown shall be fully refunded to the UIF within one week following the conclusion of the audit referred to in sub-clause 3.6 of this agreement.
- 3.13 The parties agree to appoint additional Council staff at its own cost to help manage the processes required to effectively and securely manage the bank account referred to in sub-clause 3.3 of this agreement.

4. Payments to employess

- 4.1 This agreement guarantees employees who qualify for wage subsidy support in terms of this agreement, an amount equal to full pay for a period of 6 weeks with effect from the start of a lockdown period, in weekly amounts as follows:

Week 1: Deferred wages payable by the employer, for work performed during the week preceding the lockdown.

Week 2: (a) Deferred wages payable by the employer, for work already performed during the week of the lockdown, with (b) the balance made up from worker funds received from the UIF, should the start of the lockdown period have occurred before a full weeks' work was performed.

Week 3: A full week's wages, payable by the employer.

Week 4: A full week's wages, payable from worker funds received from the UIF.

Week 5: A full week's wage, payable by the employer.

Week 6: A full week's wage, payable from worker funds received from the UIF.

The payments due and receivable from employers during weeks 1 and 2 shall be paid to employees, whether or not funds are received from the UIF.

- 4.2 Normal statutory deductions and deductions prescribed by the Council's main agreement shall continue to be effected, for all payment periods referred to in sub-clause 4.1 of this agreement.

Similarly, employer contributions to statutory obligations and those prescribed by the Council's Main Agreement shall continue to be executed.

- 4.3 The parties acknowledge that there is a possibility that a lockdown period might be declared for a period of longer than 6 weeks, and commit to constructively continue to explore income support for employees, in the event of such a longer than 6 weeks lockdown period being declared.
- 4.4 The parties acknowledge that the cost implications of the provisions of clause of this agreement is unforeseen and unprecedented, and shall continue to explore means by which it could be mitigated.
- 4.5 The provisions of clause 4 of this agreement apply to companies and employees within the registered scope of the Council and who are registered with the Council, as well as those referred to in sub-clause 2.3 but provided that the latter shall not be required to register with the Council.

5. 2020 round of substantive negotiations

- 5.1 The parties acknowledge that the spread of COVID-19 has thrown the Council's normal substantive negotiations processes into disarray, through no fault of either employers or the trade union.
- 5.2 The parties accordingly agree to postpone the commencement of the 2020 round of bargaining to a date to be agreed between the parties, and confirm that any agreement reached when the 2020 round of bargaining is eventually concluded shall be backdated to 1st September 2020.

6. COVID-19 lockdown period

- 6.1 The employer parties to the Council agree to use the COVID-19 lockdown period to mainly develop and execute a program to improve the order books of companies.
- 6.2 The parties agree to establish a Rapid Response Team, to consider and resolve any unforeseen or response matters emanating from the implementation this agreement and which may arise during the COVID-19 lockdown period, with the finalisation of exemption applications receiving first priority.
- 6.3 Employers shall take such steps as may be necessary to decommission workplaces in such a manner that assets are properly secured for the duration of the lockdown period (should a lockdown period be declared).

7. COVID-19 post-lockdown period

Employers undertake to ensure, post the COVID-19 lockdown period (should a lockdown be declared) that employees are provided with the necessary and appropriate support to integrate them smoothly and safely back into production.

8. Dispute resolution

Any disputes which may arise from the interpretation and/or application of this agreement shall be resolved through expedited arbitration, unless otherwise decided by the disputing parties and using the current panel of Conciliators and Arbitrators of the Council (unless otherwise decided by the disputing parties).

9. Other conditions

- 9.1 Employers confirm that the matters listed in Annexure A to this agreement are important and legitimate.

The parties accordingly agree to set in motion a process to consider the matters listed in Annexure A to this agreement during the currency of the lockdown period (should a lockdown be declared) and to sign off on it during the lockdown period (should a lockdown be declared) or within one month from the adoption by the Council of this Agreement.

- 9.2 All other previously agreed terms and conditions not specifically varied by the provisions of this agreement shall remain in force and effect, unless otherwise agreed between the parties.
- 9.3 All terms shall have the same meaning as those set out in the Council's Main Agreement.
- 9.4 The parties accept that the terms agreed to are hereby formalised in this final written agreement concluded and signed under the auspices of the National Bargaining Council for the Clothing Manufacturing Industry of South Africa.
- 9.5 Should a lockdown be declared and government announces support measures, the content of this agreement is not intended to undermine the parties' ability to access such support measures.

Annexure A

1. Strengthening industry healthcare provisions

The parties

- 1.1 Acknowledge that healthcare provisions at workplace level in our industry require improvement.
- 1.2 Further acknowledge that its current industry healthcare facilities can play a positive contributing role to help alleviate healthcare service deficiencies of all workers in our industry pipeline; not only of clothing workers.
- 1.3 The parties commit to improve and expand healthcare service delivery healthcare provisions to all workers in our industry pipeline, and in this regard:
 - 1.3.1 Agree to expand healthcare clinic facilities to our non-metro areas by commencing, as soon as practically possible and mindful of resource shortages, the building of a new industry healthcare clinic facility in a non-metro area in the Province of KwaZulu-Natal, drawing on the surplus of the KZN Healthcare Fund.
 - 1.3.2 Take steps to allow access for all workers in our industry pipeline and SACTWU members in general, irrespective of sector, to the currently existing and future health care clinics of the Council.
 - 1.3.3 Initiate a process to fully position the current health care clinics of the Council as support infrastructure for the National Health Insurance (NHI).
 - 1.3.4 Agree to integrate the SACTWU Worker Health Care Project (SWHP) staff (who voluntarily agree) into the various Council Health Care Funds and to expand the current healthcare fund services to include additional value-added SWHP services not currently provided for by the healthcare clinics.
 - 1.3.5 Rebuild and strengthen workplace health and safety committees.
 - 1.3.6 For Council to contract industrial engineers who can advise on workflow issues to limit health risk transmissions at the workplace.
 - 1.3.7 Support the call for the ratification of ILO Convention 190, to help combat workplace gender-based violence.
 - 1.3.8 Require all companies in the industry to submit annual workplace health and safety plans to the Council, commencing immediately and urgently with the submission of customised anti-COVID-19 workplace plans.
 - 1.3.9 Agree that the submission of the annual workplace health and safety workplace plans referred to in sub-clause 5.3.7 of this agreement shall be a new requirement for the issuing of Council Compliance Certificates.

- 1.3.10 Agree that the Council should re-imburse the trade union for the costs incurred for the recent COVID-19 awareness training programmes for shop stewards and human resources personnel.
- 1.3.11 Agree to place an item called "Industry Health Care Challenges and Opportunities" as a standard item on all agenda's of Council meetings, for the consideration of Council.
- 1.3.12 Agree that staff of the Council and its Health Care Clinics shall be provided with the necessary awareness, prevention and treatment support to help combat the spread of COVID-19, and shall be paid in full during the period of a lockdown (should a lockdown occur), or isolation and/or quarantine periods in the event that isolation and/or quarantine periods are required.

2. Strengthening trade union organisational rights

The parties agree that strong trade union organisational rights are fundamental to stable industrial relations, and accordingly resolve to improve the trade union's organisational rights as follows:

- 2.1.1 Office Bearers of the trade union shall be granted paid time-off to attend constitutional meetings of the union and of the federation to which the trade union is affiliated.
- 2.1.2 Currently, the Council's Main Agreement contains a provision which reads as follows:

"The Trade Union shall have the unfettered right to embark on industrial action against any company which fails to implement the terms of this agreement."

The above clause shall be amended to read as follows:

"the trade union shall have the unfettered right to embark on industrial action against any company which fails to implement the terms of any Council agreement".