



**What Hospitality Workers and their
Employers should know about minimum
wages and basic conditions of employment?**



labour

Department:
Labour
REPUBLIC OF SOUTH AFRICA

Introduction

- The Department of Labour has made a new law, which regulates employment in the Hospitality Sector
- This law is called the Sectoral Determination for the Hospitality Sector (Sectoral Determination 14) and comes into effect on 1 July 2007
- Employers will be required to pay the prescribed minimum wage as from 1 July 2007
- This document briefly covers some of the most important provisions in the Sectoral Determination
- A copy of the Sectoral Determination is available from the Government Printer.



What does this Sectoral Determination do?

The Sectoral Determination lays down conditions of employment for employers and workers in the Hospitality Sector such as hours of work, leave, particulars of employment and termination of employment. It also prescribes the minimum wage employers are required to pay.

The Hospitality Sector has small employers that employ's 10 workers or less as defined in the Small Business Determination No. R. 1295 of 5 November 2005, and provisions such as overtime, averaging hours of work and



family responsibility leave are dealt with in terms of this Small Business Determination.



Who is included in the Sectoral Determination?

For the purposes of the Sectoral Determination, “Hospitality Sector” means any commercial business or part of a commercial business in which employers and workers are associated for the purpose of carrying on or conducting one or more of the following activities for reward:

- providing accommodation and/or prepare, serve or provide prepared food or liquid refreshments, drinks other than in sealed bottles or cans whether indoors or outdoors or in the open air, for consumption on or off the premises in a hotel, motel, inn, resort, game lodge, hostel, guest house, guest farm or bed and breakfast establishment, including short stay accommodation, self catering, time shares, camps, caravan parks, restaurants, pubs, taverns, cafes, tearooms, coffee shops, fast food outlets, snack bars, industrial or commercial caterers, function caterers, contract caterers and includes all activities or operations incidental to or subsequent on any of the activities mentioned above.



Who is excluded from the Sectoral Determination?

- All workers and employers involved in the trade of letting of flats, rooms and/or houses
- All workers and employers covered by another sectoral determination in terms of the Basic Conditions of Employment Act, 1997; or covered by a collective agreement of a bargaining council in terms of the Labour Relations Act, 1995.

The provisions of the Basic Conditions of Employment Act, 1997, apply to all workers covered by this Sectoral Determination and their employers in respect of any matter not dealt with in this Sectoral Determination.

The provisions of the Ministerial Determination for Small Business published under Government Notice No R.1295 shall apply to those employers employing less than 10 workers in respect of overtime, averaging of working hours and family responsibility leave.



What does the law say about wages?

The law says that all workers should be paid at least the minimum wage as indicated in **Table 1** and **Table 2**:



Table 1: Minimum wages for employers with 10 or less workers

Minimum rate for the period			Minimum rate for the period			Minimum rate for the period		
1 July 2007 to 30 June 2008			1 July 2008 to 30 June 2009			1 July 2009 to 30 June 2010		
Monthly	Weekly	Hourly	Monthly	Weekly	Hourly	Monthly	Weekly	Hourly
R1 480. 00	R341. 60	R7. 59	Previous minimum wage+CPIX*+2%			Previous minimum wage+CPIX*+2%		

*CPIX is the Consumer Price Index, excluding interest rates on mortgage bonds for metropolitan and other urban areas as reported by Statistics SA six weeks before the increases become effective.

Table 2: Minimum wages for employers with more than 10 workers

Minimum rate for the period			Minimum rate for the period			Minimum rate for the period		
1 July 2007 to 30 June 2008			1 July 2008 to 30 June 2009			1 July 2009 to 30 June 2010		
Monthly	Weekly	Hourly	Monthly	Weekly	Hourly	Monthly	Weekly	Hourly
R1 650. 00	R380. 80	R8. 46	Previous minimum wage+CPIX*+2%			Previous minimum wage+CPIX*+2%		

*CPIX is the Consumer Price Index, excluding interest rates on mortgage bonds for metropolitan and other urban areas as reported by Statistics SA six weeks before the increases become effective.

Will all workers get the same wage?

- All workers should at least be paid the minimum wage in the above tables, however workers earning more than the prescribed minimum will continue to earn the higher wages as conditions of employment cannot be changed unilaterally.

Other important provisions affecting wages

Annual increase:

- One year after this Sectoral Determination comes into affect, the wages will increase by **CPIX +2%**.
- Two years after this Sectoral Determination comes into



affect, the wages will increase by **CPIX** +2%.

Note:

CPIX means: The inflation index excluding the interest on mortgage bonds

Note: If the inflation rate is higher than 10% then the wage increase above will increase by CPIX.



Prohibited acts concerning pay

No employer may hold back any payment from a worker or require a worker to pay the employer or any other person for the:

- employment or training of that worker
- supply of any work equipment or tools
- supply of anything necessary to ensure compliance with health and safety requirements.



Wages are calculated using ordinary hours of work

- Daily wage divided by ordinary hours worked in a day = hourly wage
- Weekly wage divided by ordinary weekly hours = hourly wage
- Monthly wage divided by 4.333 = weekly wage.

The weekly wage of a Hospitality Sector worker whose remuneration is not calculated on the basis of time or whose remuneration fluctuates is calculated using an average over the last 13 weeks.

Wages must be paid:

- In South African currency
- Daily, weekly, fortnightly or monthly
- In cash, by cheque or by direct deposit into a worker's bank account
- At the workplace
- On a normal pay day agreed to by both parties
- At the work place during working hours
- In a sealed envelope
- On termination of employment.

Deductions

The employer may only deduct money for the reasons provided in the Sectoral Determination. Workers must agree to this in writing. Deductions of the following may be considered:

- Medical aid
- Retirement funds
- Union fees
- Home loans



- Court Orders.

Workers have a responsibility to look after the assets of the employer. Assets may include any equipment used by the worker during his or her employment.

If workers are careless in looking after the assets, the employer may deduct for the loss or damage of these assets. However, the employer:

- Must follow a fair procedure
- Must give the worker an opportunity to show why the deduction should not be made
- Should ensure that the amount claimed is not more than the actual amount of the loss or damage
- The deduction may not exceed one quarter of the worker's remuneration.

Commission payment

- An agreement in writing may allow a worker to perform commission work
- Workers must receive a minimum wage over and above commission
- The agreement must include the following:
 - worker's wage
 - basis for calculation of commission
 - period for which commission will be calculated
 - date when commission will be paid
 - type, description, number, quantity and profit for which commission will be earned.
- Such workers should not earn below the minimum wage.

Payment in kind

- If the employer requires the worker to sleep in, the employer is expected to provide the worker with food and



accommodation for free.

Conditions of employment

The rights and responsibilities of employers and workers within the Hospitality Sector are set out in such a way that it attempts to address the needs of both parties.



How many hours may a worker work per week?

- **45 hours** per week
- **Nine** hours on any day if the worker works for five days or less in a week; or
- **Eight hours** per day if the worker works **more than five days** per week.

Overtime

- Can only be worked **by agreement**
- Not more than **10 hours** overtime **per week may be worked**
- Not more than **12 hours**, including overtime on **any day** may be worked



- **Not more than 15 hours overtime per week for small employers that employ less than 10 workers may be worked.**

Payment of overtime

- Overtime should be paid at one and a half times the worker's wage for overtime worked
- An agreement may provide for an employer to pay a worker not less than the **ordinary wage for overtime worked** and give the worker at least **30 minutes time off** for each hour worked
- Give a worker at least **90 minutes paid time off for each hour worked**
- **Paid time off** should be given within **one month** of a worker becoming entitled to it, however an **agreement** in writing may **increase** this period to **12 months**
- Small employer's must pay a worker at least one and one third times the worker's wage for the first 10 hours of overtime worked in any week; and
- At least one and one half times the worker's wage for any overtime in excess of 10 hours worked in a week.

Averaging hours of work

- An employer may not permit a worker who is bound by a written agreement to work more than:
 - 45 ordinary hours of work in a week over the agreed period
 - five hours overtime in a week over the agreed period.
- This agreement lapses after 12 months.



Work on Sundays

Pay for work on Sundays:

- If a worker does not normally work on a Sunday, the employer must pay that worker at a double rate
- If a worker **normally works** on a Sunday, such a worker must be paid at **one and one-half times** the worker's **wage; or**
- If there is an **agreement**, a worker who works on a Sunday can be given **paid time-off** equal to the difference in value between the pay received by the worker working on a Sunday and the pay that the worker is entitled to
- Time worked on a Sunday by a worker who does not usually work on a Sunday is not taken into account in calculating the worker's ordinary hours of work, but is taken into account in calculating overtime worked by a worker.

Public Holidays

- Workers will only work on a Public Holiday if there is an **agreement**
- If a Public Holiday falls on a day on which a worker would **usually work**, the employer must pay the worker who **stays absent** on this day, at least the worker's normal wage for work on that day
- A worker who **works** on a Public Holiday which falls on a day that the worker would **usually work** must be paid at least **double** the worker's daily **wage**
- If a worker works on a Public Holiday on which the worker would **not normally work**, the employer must pay that worker an amount equal to the worker's **ordinary daily wage; plus** the **amount earned** by the worker for the **work performed that day**, whether calculated by reference to time worked or any other method
- An employer must pay the worker for a Public Holiday on the worker's usual payday.



Night work

- “Night work” means work performed after 18:00 and before 06:00 the next day
- Night work can only be performed **by agreement**
- Night work **must be must be paid** by an **allowance** or by **reducing working time**
- Employers must **inform workers**, who regularly do night work of **any hazards** associated with this kind of work and of the workers **rights** to undergo a **medical examination** at the workers request for the **account of the employer**
- An employer must ensure that transport is available between the worker’s place of residence and workplace at the start and end of a shift
- If the transport **cost more than** the normal rate at night, the employer **must subsidize** the transport.



Meal intervals

- For every **five hours of continuous work**, an employer must give the worker, a meal interval of at least **one continuous hour**
- A worker must be paid for a meal interval in which the worker is required to be available for work
- An agreement in writing may reduce the meal interval to not less than 30 minutes; or
- An agreement may do away with a meal interval for a worker who works less than six hours on a day.

Rest period

An employer must give the worker:

- A **daily rest period** of at least **12 consecutive hours** between ending work and starting work the next day
- A written agreement could lessen it to 10 hours if the worker lives on the premises at which the workplace is situated and whose meal interval lasts for at least three hours
- A **weekly rest period** of at least **36 consecutive hours** which, unless otherwise agreed, must include a Sunday
- A written agreement may also provide for a rest period of at least **60 consecutive hours** every second week or the reduction of a worker's weekly rest period by up to **eight hours** in any week if the rest period in the following week is extended equivalently.

Leave

What type of leave is a worker entitled to?

- Four types of leave, namely: Annual, sick, family responsibility and maternity leave.



Annual leave

How many days are workers entitled to?

- Workers are entitled to three weeks leave per annual leave cycle.

What happens if a Public Holiday falls within the annual leave cycle?

- An extra day's paid leave should be granted.

Sick leave

What is important to note regarding sick leave?

The sick leave cycle is 36 months based on the number of days worked over a 6-week period.

Example: A hospitality driver works 5 days per week.

Sick leave days per cycle are 5×6 (number of weeks) = 30 days per three-year cycle

Note: The employer may request a medical certificate when a worker is absent for more than two consecutive days, or twice during an eight-week period.

Family responsibility leave

What is family responsibility leave?

It is leave granted for specific family related matters.



Who qualifies for this type of leave?

Workers who have been employed by an employer for **longer than four months**; and who works on at least **four days a week** for that employer are entitled to **three days** family responsibility leave during an **annual leave cycle**.

When may this leave be taken?

This leave may be taken for the birth of a child, when a child is sick or when a spouse, parent, grandparent, child, grandchild, brother or sister dies.

Small employers may agree in writing with workers to reduce a worker's entitlement to annual leave by the number of family responsibility leave.



Maternity leave

What are the key issues relating to maternity leave?

- Maternity leave is a four-month period, which starts four weeks before the expected date of birth
- A worker may only resume work six weeks after the birth of a child, unless a medical practitioner certifies that the worker may begin work.



Note: Where possible, notice of leave and date of return to work must be provided before the leave begins.

Prohibition of child labour and forced labour

- No person may employ a child in the Hospitality Sector who is under 15 years of age
- No person may employ a child in any employment in the Hospitality Sector that is inappropriate for a person of that age; or that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development
- An employer must maintain for three years, a record of the name, date of birth and address of every worker under the age of 18 years employed by them.

Termination of employment

How should termination of employment be conducted?

- Either party may terminate the contract of service. If a worker worked for six months or less, one weeks' notice must be given
- If the worker has been employed for more than six months but not more than a year, two weeks' notice must be given
- If the worker has been employed for one year or more, four weeks' notice must be given.

Note: Notice must be given in writing, except when it is given by an illiterate worker.



Payments on termination

Note: The employer may not give notice during a leave period or let it run at the same time with any period of leave, except sick leave.

Payment instead of notice may be paid, provided it is equal to the period of notice.

- If the employer terminates the service of a worker **Based on Operational Requirements**, severance pay of one week for every completed year of service amongst other payments is payable
- No severance is payable if the worker resigns.

On termination an employer should pay:

- All outstanding monies due
- Accrued annual leave
- Any time-off granted
- One weeks' severance pay for every completed year of service if the employer terminates service **Based on Operational Requirements**.



Certificate of Service

The employer must give the worker a certificate of service on termination of employment.

The following should be indicated on the certificate:

- The full name of the worker
- The name and address of the employer
- The date the worker started working
- The date the work ended
- A description of the work
- Any training provided
- The wage received
- The reason for leaving (if the worker wants it included).



Records

What records must be kept?

- An employer is required to give the worker a payslip and written particulars of employment
- Attendance registers should be kept, unless there is an agreement to the contrary.

Payslip

Every worker in the Hospitality Sector must get a payslip.

Copies of payslips must be **kept for three years**, as it will serve as proof that the employer has complied with all the monetary provisions of the law.

The following information has to be on the payslip:

- the employer's name and address
- the worker's name and occupation
- the worker's wage rate, overtime rate and allowance rate
- the period in respect of which payment is made
- the number of ordinary hours worked by the worker during that period
- the number of overtime hours worked by the worker during that period
- the number of hours worked by the worker on a Public Holiday or on a Sunday
- the worker's total wage for the period
- details of any other pay arising out of the worker's employment
- details of any deductions made



- the employer's registration number with the Unemployment Insurance Fund and the employer's contribution to the Fund
- the actual amount paid to the worker.

Note:

- Employers should keep copies of payslips for three years
- Attendance registers should be kept, unless there is an agreement to the contrary.

Every employer on whom this Sectoral Determination is binding must keep a copy of the Sectoral Determination or an official summary available in the workplace in a place to which the worker has access.

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