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LEGAL NOTICE NO. 114 OF 2013

THE WAGES ACT, 1964
(Act No. 16 of 1964)

THE REGULATION OF WAGES (BUILDING AND CONSTRUCTION)
INDUSTRY ORDER, 2013
(Under section 11)

In exercise of powers conferred by Section 11 of the Wages Act, 1964, the Minister for Labour and Social Security makes the following Order-

Citation and Commencement

1. This Order may be cited as the Regulation of Wages (Building and Construction Industry) Order 2013, and shall be deemed to have come into force on the 1st August 2013.

Interpretation

2. In this Order, unless the context otherwise requires;

“clerk (without certificate)” means an employee who does not hold a senior certificate of education or its equivalent and who is engaged in general clerical duties;

“clerk (with certificate)” means an employee who holds a senior certificate of education and who is engaged in general clerical duties;

“cook” means an employee engaged in the preparation, cooking and issuing of food to other employees;

“crane driver (with certificate)” means an employee who operates a self propelled crane who is in possession of a recognised certificate;

“crane driver (without certificate)” means an employee who operates a self propelled crane;

“typist” means an employee mainly engaged in typing, checking figures and filing, and who is capable of typing a minimum of 30 words per minute;

“continuous service” means service in the employment of the employee interrupted only by death, retirement, completion of fixed term task or discharge of the employee concerned and an employee who is re-engaged within seven days of his discharge shall be deemed to be in the continuous service of that employer;

“driver (light vehicle)” means an employee who holds a light duty driver’s licence whose duties, in addition to being in charge of a motor vehicle of under 5 tons laden weight, include handling of cargo to and from the tailboard and the daily maintenance and cleaning of such vehicle;

“driver (heavy duty)” means an employee who holds a heavy duty driver’s licence and a high up crane certificate whose duties, in addition to being in charge of a motor vehicle of between 5 tons and 10 tons laden weight, include the handling of cargo to and from the tailboard, operating a crane and the daily maintenance and cleaning of such vehicle;

“driver (extra heavy)” means an employee who holds a heavy duty driver’s licence and who is in charge of a vehicle in excess of 10 tons laden weight including articulated vehicles and is responsible for the safety of the load;

“driver (tractor)” means an employee who holds a tractor driver’s licence and who operates a tractor;

“earth mover operator” means an employee who operates an earthmoving machine;

“family” means in relation to an employee, the spouse and unmarried children under eighteen(18) years, of such employee;

“general labourer” means an employee who performs unskilled work;

“general tradesman” means an employee who does not hold a trade test certificate but has recognised ability to perform the duties of any one of the following-

- (a) block layer or plasterer
- (b) brick layer or tiller;
- (c) joiner or cabinet maker;
- (d) shutter hand or carpenter;
- (e) painter or glazier;
- (f) plumber or drain layer;
- (g) welder;
- (h) reinforcement steel fixer;
- (i) electrician;
- (j) wireman;

- (k) mechanic;
- (l) plant fitter;
- (m) structural steel erector;
- (n) boiler maker;
- (o) pipe fitter; and
- (p) scaffolding erector;

“normal place of work” means a place where an employee reports for duty on a daily basis;

“normal place of engagement” means a work station where an employee was first engaged;

“induna” means an employee in charge of unskilled employees;

“plant” means any machinery used in the construction industry other than hand held small tools;

“plant operator” means an employee who is in charge of operating either a concrete mixer, concrete dumper, walk-behind roller, plate compactor, power float machine and compressor or any other plant used by the operator;

“tea maker/ cleaner” means an employee who is engaged to routinely clean offices and to prepare refreshments;

“survey and soil technician assistant” means an employee who assists surveyors and soil technicians with surveying earth surfaces, topography and man made structures, underground areas, and prepares maps and charts;

“storeman” means an employee who apart from carrying out the duties of stores clerk is responsible for ordering certain items on behalf of his employer;

“first aid officer” means an employee who provides adequate first aid support material and equipment at employer’s premises including workplaces outside the normal place of work;

“registered nurse” means a nurse registered under the Nurses and Midwives Act, 1965 or its successor;

“steel erector” means an employee who erects a steel structure including scaffolding;

“trade tested person or tradesman” means a person who holds a craft certificate indicating a degree of proficiency attained by the person as indicated by a trade test conducted by a trade testing officer duly appointed as such in the public service;

“watchman or security guard” means an employee who is engaged during the day or night to guard the premises, workplace or other property of the employer;

Application

3. (1) Subject to sub-regulation (2) this Order shall apply to employees specified in the First Schedule who are employed in any undertaking or part of an undertaking which carries one or more of the following activities-

- (a) the construction, structural alteration, maintenance of any railway line, siding, public or private road, thoroughfare, airfield, tunnel bridge, viaduct, waterworks, lattice work, or other structure designed solely for the support of electric lines and or earth moving and any building and civil engineering works;
- (b) the construction, structural alteration, maintenance repair or demolition of any building, fencing and preparing or laying the foundation of a building or an intended building;
- (c) the construction, structural alteration, maintenance, repair or demolition of any electrical work, plumbing, fire protection, sewerage reticulation and purification or other services related to structures;

(2) This Order shall not apply to persons employed in any undertaking or part thereof operated by-

- (a) the Government
- (b) a local authority; and
- (c) such charitable or religious organization, educational or medical institution as may be specified in writing by the Minister.

Basic Minimum wage (First Schedule)

4 (1) The employees specified in the First Schedule shall be paid a basic minimum wage calculated at a rate not less than that specified in that schedule;

(2) Nothing prevents an employer from paying an employee more than the basic minimum wage stipulated in the First schedule.

Normal working hours

5. (1) The normal working week (other than for a watchman or security guard) shall be from Monday to Friday and shall consist of forty-five hours made up of nine working hours per twenty-four hour day;

(2) The normal working week for a watchman or security guard shall be seventy two hours spread over six shifts, each of twelve hours, inclusive of meal breaks;

(3) No employee, other than a watchman or security guard shall be required to work for more than five hours with no break of thirty minutes.

Public holidays

6. (1) The following shall be public holidays with full pay-

- (a) Ascension day;
- (b) Independence (Somhlolo) day;
- (c) Good Friday;
- (d) Christmas day;
- (e) Umhlanga (Reed Dance) day;
- (f) King's birthday;
- (g) Incwala day;
- (h) Easter Monday;
- (i) May/Worker's day;
- (j) National Secondary Elections' day; and
- (k) National Flag day

(2) Where a public holiday, specified in sub regulation (1) falls on a Sunday, the following day shall be deemed to be a public holiday;

(3) An employee who is absent without official leave on the working day before or working day after a public holiday shall not be entitled to any payment in respect of that public holiday in terms of this regulation.

Payment of overtime

7 (1) An employee, other than a watchman or security guard, shall be paid for overtime worked at the following rates;

- (a) during the normal working week for overtime worked before midnight in excess of the normal working hours, at one and one third times the normal hourly rate of wages;

- (b) during the normal working week for overtime worked after midnight in continuation of normal working hours or other overtime worked, at twice his normal hourly rate of wages;
- (c) for any time worked on Saturday before 1.00 pm at one and half times his normal hourly rate of wages;
- (d) for anytime worked on a public holiday specified in regulation 6 (1), Sunday or after 1.00 pm on Saturday at twice his normal hourly rate of wages;

(2) Overtime in respect of a watchman or security guard shall be calculated at twice the normal hourly rate for all time worked on a public holiday specified in regulation 6 or any time worked in excess of twelve hours on any working day, and that any watchman or security guard who has been absent from work during any week without reasonable cause shall not be entitled to overtime in that week until the watchman or security guard has completed seventy-two hours of work.

Annual Leave

8. (1) On completion of three months of continuous employment with the same employer, an employee shall be entitled to accrue one day of paid leave per month to a maximum of thirteen(13) days in a twelve month period.

(2) In each year of continuous employment, an employee shall be entitled to eleven (11) days paid leave for eleven (11) months and two (2) days paid leave for the twelfth month of each year of employment.

(3) An employer and its employee(s) may agree, where it appears to them to be suitable, or convenient, on the time or period in which annual leave is to be taken.

(4) Where the employment of an employee is terminated after a period exceeding three months but not amounting to a one (1) year from the date of its commencement the employer shall pay to the employee a sum not less than one (1) day's wages for each completed month of such period.

Sick Leave

9. (1) After three consecutive months of continuous service with an employer and subject to the production of a medical certificate signed by a Medical Practitioner, as defined under the Medical and Dental Practitioners Act, 1970, an employee shall be entitled to sick leave of up to a maximum of fourteen (14) days on full wages and thereafter to a maximum of fourteen (14) days on half wages in that period of twelve months' continuous service.

(2) Notwithstanding sub-regulation (1) a certificate issued by a registered nurse shall be accepted in place of a medical certificate if a Medical Practitioner is not available.

Maternity Leave

10. After twelve months of continuous service with an employer, and subject to the production of a medical certificate signed by a registered nurse or midwife recommending that an employee should refrain from work because she is pregnant, an employee shall be entitled to thirty (30) working days maternity leave on full pay thereafter thirty (30) days without pay in respect of that pregnancy.

Compassionate Leave

11. An employee shall be entitled to a total of one month compassionate leave annually but nothing in this section shall be construed as requiring an employer to pay an employee for any time spent on such leave.

Written Particulars of Employment to be provided

12. An employer shall within six weeks of engaging an employee give such employee a completed copy of the Form found in the Second Schedule of this Order.

Continuous service

13. Where, following upon a sale or takeover of an establishment or undertaking an employee enters the service of the new owner without interruption, his service shall be deemed to be in continuous service in the employment of the new owner unless otherwise agreed in writing by all the parties.

Travelling and Subsistence Allowances

14 (1) Where an employee is temporarily employed at a place which is separated from his normal place of work by a distance of more than five kilometers by road his employer shall provide him with transport free of charge to and from his normal place of work and the place of temporary employment.

(2) An employee required to travel on duty, other than in the circumstances set out in sub- regulation (1), shall be provided either with free transport or be paid by his employer the cost of travel by public transport.

(3) An employee who is absent on duty away from his normal place of employment for longer than twelve hours, and who returns to his normal place of residence without staying overnight shall be paid a subsistence allowance of E 30.00 for each period of twelve hours or part there of such absence.

(4) An employee who is absent on duty overnight away from his normal place of employment shall in respect of each night's absence be provided by his employer with;

- (a) free food and accommodation or night allowance of E55.00 in lieu thereof,
or

(b) free accommodation and an allowance of E35.00 in lieu of food; or

(c) free food and an allowance which is adequate or suitable to cater for the accommodation needs of the employee;

(5) An entitlement to free food, accommodation or allowances under sub regulation (4) and (9) shall not cease until the employee is back to his normal place of employment.

(6) An employee entitled to subsistence allowance under sub-regulation (4) shall not be entitled to subsistence allowance under sub-regulation (3) in respect of the same period of absence.

(7) Where an employee is transferred to another project site and such transfer prevents him from returning to his normal place of residence, the employer shall provide him with free accommodation and transfer allowance of E140.00

(8) An employee who is provided by his employer with accommodation at his place of permanent employment in which his family is residing with the consent of the employer shall if so required by his employer to transfer to another place of employment other than for the purpose of seasonal employment, be moved at the expense of that employer

(9) An employee who is absent on duty outside the country for a period not exceeding 5 days at a time shall be provided with free food, accommodation and shall be entitled to out of country allowance of E120.00 a day.

Lay- off

15. (1) where an employer is unable to provide work for any employee due to-

(a) unavailability of working material; or

(b) temporary cessation of work;

the employer may, subject to that employer giving the employee not less than twenty four hours notice, lay-off the employee without pay for a maximum period of thirty (30) calendar days, not more than three times within a period of twelve months, in the circumstances mentioned in (a) and (b).

(2) At the expiry of thirty (30) calendar days the employer shall either provide work for a minimum of 5 days for the employee, or terminate his employment under the provisions of the Employment Act, 1980 or its successor.

(3) An employee who is engaged for a duration of a specific project shall upon commencement of work be notified of the date upon which it is estimated the project shall terminate and the notification of such date of termination shall constitute an adequate notice by the employer to the employee of the date of notice of termination of such contract of service.

Lay-off due to weather

16. (1) An employee who reports for work at his place of employment at the normal time but who is unable to start work due to inclement weather, shall be entitled to a minimum of one and one half hours pay for that day.

(2) Where the employer, on consideration of inclement weather, orders an employee not to report for duty for a specific number of days shall reduce such order into writing and the employee shall be entitled to pay as specified under sub-section (1).

(3) An employee who on any day commences work and who in the opinion of his employer is unable to continue work due to inclement weather, shall be paid for the hours he has worked plus an additional one and half hours wages.

Protective clothing

17. (1) If it is necessary to protect an employee from physical, electrical or chemical injury which may arise from the work he is required to do, the employer shall supply free of charge that employee with adequate protective clothing, equipment and appliances where necessary and such employee shall use the protective clothing or equipment or appliances as instructed.

(2) The employer of a watchman or security guard shall provide him free of charge with boots or shoes, a police whistle, a club and a torch, and where the watchman or security guard is required to work in inclement weather during the night (from 6pm to 7 am the following day), the employer shall in addition, provide him with a hat, overcoat and rain coat.

(3) An employee other than a watchman or security guard who is required to work in direct contact with mass concrete or similar matter which is likely to cause injury to his feet shall be provided by his employer, without charge with a pair of gumboots or safety shoes.

(4) An employee other than a watchman who is required to work outdoors in inclement weather shall be provided by his employer, free of charge with a waterproof coat and cap or similar garment.

(5) The clothing appliance and equipment supplied to the employee under this regulation shall be of high quality and shall remain the property of the employer.

(6) Where protective clothing, supplied to an employee under this regulation is damaged or lost through the negligence of the employee, the employer may deduct the cost thereof, after due consideration of ordinary wear and tear, from wages due to the employee.

(7) Each employee who works on a section of a project where there is overhead activity shall be issued with a hard-hat when the work proceeds into the sections above first floor.

Uniform and non-protective clothing

18. (1) An employer shall issue an employee with two sets of overalls at least twice a year at half the cost price.

(2) The issuance of uniform shall not be mandatory to employees

Retirement

19. An employee shall retire at the age of 60 years.

Revocation of Legal Notice No. 184 of 2010

20. The Regulation of Wages (Building and Construction Industry) Order, No. 184 of 2010 is hereby revoked.

FIRST SCHEDULE
(Regulation 3 & 4)

	Emalangeni per hour
Clerk (without a certificate)	E6.90
Clerk (with a certificate)	E7.10
Cook	E7.00
Crane driver (mobile without a certificate)	E13.25
Crane driver(mobile with a certificate)	E14.55
Crane driver (tower without a certificate)	E12.25
Crane driver(tower with a certificate)	E13.55
Driver (light duty)	E7.50
Driver (heavy duty)	E9.25
Driver (heavy duty with high up crane).....	E10.50
Driver (extra heavy)	E10.10

Emalangeneni per hour

Earthmover operator	E14.20
Reinforcement fixer	E7.10
General Labourer	E6.90
General Trademan	E7.10
Grade III tested	E7.10
Grade II tested	E10.05
Grade I tested	E15.00
Induna	E7.60
Small Plant operator	E7.60
Storeman	E7.20
Tea maker/ cleaner	E4.30
Typist	E7.10
Watchman/ Security guard	E60.45 per shift
Watchman/ Security guard supervisor.....	E62.20 per shift
Survey and soil assistant	E7.10
Structure steel erector	E11.00
Scaffolding erector	7.10
Tractor driver	E7.50
First aid officer	E 7.10

SECOND SCHEDULE**(WRITTEN PARTICULARS OF EMPLOYMENT FORM)**

1. Name of Employer
2. Name of Employee
3. Date Employment began
4. Wage and method of calculation
5. Interval at which wages are paid
6. Normal hours of work
7. Short description of employee's work
.....
.....
8. Probation Period
9. Annual Holiday Entitlement
10. Paid Public Holiday
11. Payment during sickness
12. Maternity Leave (if employee female)
13. Nursing Break Entitlement (for female employee)
14. Notice employee entitled to receive
15. Notice employer required to give
16. Pension Schedule, Provident Fund Gratuity Schedule etc. (if any, other than
SNPF)
17. Any other matter either party wishes to include
.....

Notes:

- (a) An employee is free to join a trade union or staff association, which is recognized by the undertaking. The address of the Trade Union of Staff Association is:

.....

- (b) The grievance procedure and disciplinary procedure in this undertaking requires to be followed when a grievance arises or disciplinary action that needs to be taken.

.....

- (c) When any heading is inapplicable enter NIL.

.....
Employer's Signature

.....
Witness

.....
Employee's Signature

.....
Witness

.....
Date

.....
Date

LUTFO E. DLAMINI
MINISTER OF LABOUR & SOCIAL SECURITY