
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF LABOUR

NO. R. 1222

03 NOVEMBER 2017

LABOUR RELATIONS ACT, 1995**NATIONAL BARGAINING COUNCIL FOR THE HAIRDRESSING,
COSMETOLOGY, BEAUTY AND SKINCARE INDUSTRY: EXTENSION TO
NON-PARTIES OF THE AGENCY SHOP COLLECTIVE AGREEMENT**

I, **MILDRED NELISIWE OLIPHANT**, Minister of Labour, hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the provisions of the collective agreement which appears in the Schedule hereto, which was concluded in the **National Bargaining Council for the Hairdressing, Cosmetology, Beauty and Skincare 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 the second Monday after the date of publication of the agreement until 31 December 2018.


.....**M N OLIPHANT, MP****MINISTER OF LABOUR**

DATE: 17/10/2017.....

UMTHETHO WOBUDLELWENO KWEZABASEBENZI KA-1995**NATIONAL BARGAINING COUNCIL FOR THE HAIRDRESSING,
COSMETOLOGY, BEAUTY AND SKINCARE INDUSTRY:****UKWELULELWA KWESIVUMELWANO SENTELA SABAQASHI
NABASEBENZI SELULELWA KULABO ABANGEYONA INGXYENYE
YESIVUMELWANO**

Mina, **MILDRED NELISIWE OLIPHANT**, uNgqongqoshe WezabaSebenzi, ngokwesigaba 32(2) soMthetho Wobudlelwano KwezabaSebenzi ka-1995, ngazisa ukuthi isiVumelwano sabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe lapha, esenziwa **National Bargaining Council for the Hairdressing, Cosmetology, Beauty and Skincare Industry**, futhi ngokwesigaba 31 soMthetho Wobudlelwano kwezabaSebenzi, ka 1995 esibopha labo abasenzayo, sizobopha bonke abanye abaqashi nabasebenzi kuleyomboni, siyokuqala ukusebenza kusukela ngomSombuluko wesibili emva kokushicilelwa kwalesiSivumelwano kuze kube ngomhlaka 31 kuZibandlela 2018.



.....
MN OLIPHANT, MP

UNGQONGQOSHE WEZABASEBENZI

DATE: ...17/10/2017.....

SCHEDULE

NATIONAL BARGAINING COUNCIL FOR THE HAIRDRESSING, COSMETOLOGY, BEAUTY AND SKINCARE INDUSTRY

AGENCY SHOP COLLECTIVE AGREEMENT

In accordance with the provisions of the Labour Relations Act, No. 66 of 1995, made and entered into by and between the

Employers' Organisation for Hairdressing, Cosmetology and Beauty

(hereinafter referred to as the "*Employers' Organisation*" on the one part)

and

UASA – The Union

(hereinafter referred to as the "*Trade Union*" on the other part)

being the Parties to the National Bargaining Council for the Hairdressing, Cosmetology, Beauty and Skincare Industry.

1 SCOPE OF APPLICATION

1.1 The terms of this Agreement shall be observed in the Hairdressing, Cosmetology, Beauty and Skincare Industry by all Employers who are members of the Employers' Organisation and by all Employees who are members of the Trade Union.

1.2 Notwithstanding the provisions of clause 1.1 of this Agreement, the terms of this Agreement shall:-

- 1.2.1 apply only to Employees for whom a Basic Salary or Wage or Commission are specified in the Main Collective Agreement and to the Employers of such Employees;
- 1.2.2 apply to Learners/Students only in so far as they are not inconsistent with the provisions of the Skills Development Act, 1998 or any contract entered into or any condition fixed there under;

2. PERIOD OF OPERATION

- 2.1 This Agreement shall come into operation on such date as may be determined by the Minister of Labour in terms of section 32 of the Act and shall remain in force for a period of 12 months.

3. DEFINITIONS

- 3.1 Any term or expression used in this Agreement which is defined in the Labour Relations Act, No. 66 of 1995, as amended, has the same meaning assigned to it in the Act. The masculine includes the feminine and *vice versa* and the singular includes the plural.
- 3.2 Save where expressed distinction is made between definitions contained in this Agreement, the following words shall have the under mentioned meaning assigned to them, being:
- 3.2.1 **"THE ACT"** means the Labour Relations Act, No. 66 of 1995 as amended;
- 3.2.2 **"AGENCY SHOP COLLECTIVE AGREEMENT"** means this Agency Shop Agreement as envisaged in section 25 of the Act;
- 3.2.3 **"COUNCIL"** means the National Bargaining Council for the Hairdressing, Cosmetology, Beauty and Skincare Industry registered in terms of section 29 of the Act;

- 3.2.4 **“EMPLOYEE”** means any person who is employed by or working for any Employer and who is receiving or is entitled to receive remuneration, and any other person who in any manner assists in the carrying on or conducting of the business of any Employer, and “employ” and “employment” have corresponding meanings;
- 3.2.5 **“EMPLOYER”** means any person who employs or provides work for any person and remunerates or expressly or tacitly undertakes to remunerate him, or who permits any person whosoever in any manner assist him carrying on or conducting his business and “employ” and “employment” have corresponding meanings;
- 3.2.6 **“ESTABLISHMENT”** means any place or premises from which hairdressing, cosmetology, beauty and/or skincare services are rendered but excluding canvas or sail gazebos or if such services are rendered in open space, unless chemicals are used in the execution of the hairdressing, cosmetology, beauty and/or skincare services rendered, in which event all such places or premises shall be considered to be an establishment;
- 3.2.7 **“MAIN COLLECTIVE AGREEMENT”** means the Collective Agreement entered into by and between the representative Employers’ organisation and the representative Trade Union as envisaged in section 31 of the Act;
- 3.2.8 **NON-PARTY**” means any Employer or Employee who is not a member of a registered Employers’ organisation or Trade union which is party to the Council;
- 3.2.9 **“PARTY”** means any registered Employers’ Organisation or Trade Union which is a party to the Council and **“PARTIES”** means the Employers’ Organisation and Trade Union jointly ;

3.2.10 “**REMUNERATION**” means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for the other.

4. **APPLICATION OF AGENCY SHOP COLLECTIVE AGREEMENT**

4.1 A separate Agency Shop Collective Agreement in terms of section 25 of the Act is hereby agreed to and the provisions of the Act shall apply to this Agency Shop Collective Agreement.

4.2 The object of the Agency Shop Collective Agreement is to ensure that all Employers and Employees, who received the benefit of collective bargaining contribute to the costs and expenses in respect thereof.

4.3 The Agency Shop Collective Agreement shall be subject to the respective Parties being representative as envisaged in section 25 of the Act in respect of Employers and Employees to which the Main Collective Agreement apply, as verified by the Department of Labour from time to time.

4.4 Accordingly, the application of this Agency Shop Collective Agreement shall apply to the Parties to the Collective Agreement for as long as such Parties remain representative.

5. **AGENCY SHOP LEVY**

5.1 **Employers**

5.1.1 Every Employer who does not belong to the Employers’ Organisation shall pay a monthly bargaining levy as set forth in **Annexure “AG1” and “AG2 to AG13”** hereto.

- 5.1.2 No Employer is compelled to become a member of the Employers' Organisation.
- 5.1.3 The monthly bargaining levy shall be paid on or before the seventh day of each and every succeeding month to the Council, on behalf of the Employers' Organisation.
- 5.1.4 The Council shall prepare an analysis of all amounts received from Employers by way of bargaining levies. The Council shall be entitled to deduct a collection fee from the bargaining levy so collected, expressed as a percentage of the total levies collected, which percentage will be calculated and agreed upon from time to time by the Parties to the Council.
- 5.1.5 The CEO shall cause to deposit all bargaining levies received into a separate account administered by the Employers' Organisation (*"the separate account"*).
- 5.1.6 The monies held in the separate account may not be:-
- 5.1.6.1 paid to a political party as an affiliation fee; or
- 5.1.6.2 contributed in cash or kind to a political party or a person standing for election to any political office.
- 5.1.7 The Employers' Organisation shall arrange for an annual audit of the separate account within 6 (six) months of its financial year by an auditor who shall:-
- 5.1.7.1 conduct the audit in accordance with general accepted auditing standards;
- 5.1.7.2 report in writing to the Employers' Organisation, and in this report express an opinion as to whether or not the Employers' Organisation

have complied with the provisions of its constitution relating to the financial matters and the provisions of clause 5.1.6.

- 5.1.8 The Employers' Organisation shall submit to the Council, within 30 (thirty) days of receipt of the auditor's report referred to in clause 5.1.7.2, a certified copy of that report.
- 5.1.9 Any person may inspect the auditor's report submitted to the Council, at the Council's office situated at 352 Ontdekkers Road, Florida, Johannesburg or such other address to which the Council may relocate from time to time.
- 5.1.10 The Council shall provide a certified copy of, or an extract from the auditor's report to any person requesting such certified copy or extract.
- 5.1.11 A conscientious objector may request the Council to pay the bargaining levy received into a fund administered by the Department of Labour.
- 5.1.12 Any dispute about the application or interpretation of the provisions of this clause 5.1 shall be resolved in terms of the provisions of the Council's Constitution.

5.2 **Employees**

- 5.2.1 Every Employer shall on a monthly basis, deduct from the Basic Salary or Wages, of its Employees an agency shop fee equivalent to the Trade Union membership fee, as determined from time to time by the Trade Union and shall pay such agency shop fee to the Council on behalf of the Trade Union, by no later than the seventh day of each and every month following on the month in which the deductions were made.
- 5.2.2 The Council shall prepare an analysis of all amounts received as agency shop fees. The Council shall be entitled to deduct a collection fee, expressed as a percentage of the total of the agency shop fees collected,

which percentage will be determined and agreed upon from time to time by the Parties to the Council.

- 5.2.3 Employees who are not members of the Trade Union are not compelled to become members of the Trade Union, save where the closed shop agreement as set forth in the Main Collective Agreement, applies.
- 5.2.4 The CEO of the Council shall cause to deposit all monies received as agency shop fees, into the Council's account and at the end of each month shall deposit all agency shop fees received in respect of non-members into a separate account administered by the Trade Union (*"the Union's separate account"*).
- 5.2.5 The monies held in the Union's separate account and may not be:-
- 5.2.5.1 paid to a political party as an affiliation fee; or
 - 5.2.5.2 contributing cash or kind to a political party or person standing for election to a political office; or
 - 5.2.5.3 used for any expenditure that does not advance or protect the socio-economic interest of Employees.
- 5.2.6 The Trade Union shall arrange for an annual audit of the Union's separate account within 6 (six) months of its financial year by an auditor who shall:-
- 5.2.6.1 conduct the audit in accordance with the general accepted auditing standards;
 - 5.2.6.2 report in writing to the Trade Union, and in this report express an opinion as to whether or not the Trade Union have complied with the provisions of its constitution relating to the financial matters and the provisions of clause 5.2.5.

- 5.2.7 The Trade Union shall submit to the Council, within 30 (thirty) days of receipt of the auditor's report referred to in clause 5.2.6 a certified copy of that report.
- 5.2.8 Any person may inspect the auditor's report submitted to the Council, at the Council's office situated at 352 Ontdekkers Road, Florida, Johannesburg or such other address to which the Council may relocate from time to time.
- 5.2.9 The Council shall provide a certified copy of, or an extract from the auditor's report to any person requesting such certified copy or extract.
- 5.2.10 A conscientious objector may request the Employer to pay the amount deducted from the Employee's Wages into a fund administered by the Department of Labour.
- 5.2.11 Any dispute about the application or interpretation of the provisions of this clause 5.2 shall be resolved in terms of the provisions of the Council's Constitution.

6. EXEMPTIONS

6.1 General exemption from any provisions of this Agency Shop Collective Agreement

- 6.1.1 An application for the exemption of the provisions contained in this Agency Shop Collective Agreement shall be heard by an Independent Exemption Committee (*"the Exemption Committee"*) consisting of 2 (two) Commissioners accredited in accordance with the provisions of section 128 of the Act.
- 6.1.2 An application for exemption shall be in writing and made to the CEO of the Council in the form as set forth in **Annexure "AG14"** hereto.
- 6.1.3 All applications for exemption shall be supported by such supporting

documentation as may be indicated or required by the Exemption Committee, from time to time, in order to properly assess the application for exemption.

6.1.4 The Exemptions Committee shall decide on an application for exemption within 30 (thirty) days of receipt of such application by the CEO of the Council.

6.1.5 The person or entity moving for the application for exemption ("*the Applicant*") may request the Exemption Committee that the application for exemption be amplified by means of oral argument on the date upon which the Exemption Committee considers the application, failing which the Exemption Committee will consider the application for exemption on the basis of the written application and supporting documents, submitted.

6.1.6 All applications shall comply with the following, being:-

6.1.6.1 it shall be fully motivated;

6.1.6.2 be accompanied by the required supporting documentation;

6.1.6.3 applications that adversely affect any rights and obligations of Employees, will not be considered unless the Employees or their representatives have been properly consulted and their views fully recorded in the application;

6.1.6.4 a presentation reflecting the objectives and strategies to be adopted by the Applicant during the exemption period, to rectify the non-compliance with this Agreement and indicating a time frame for such objectives and strategies to be achieved;

6.1.6.5 the time period for which exemption is required.

6.1.7 In considering an application for exemption, the Exemption Committee shall, amongst others, consider, but shall not be limited to, the following criteria:-

- 6.1.7.1 the Applicant's past record of compliance with the provisions of this Agreement and previous exemption granted;
- 6.1.7.2 any special circumstances that may exist;
- 6.1.7.3 any precedent that might be set as a result of the granting of the exemption;
- 6.1.7.4 the interest of the sector with specific reference to:-
 - 6.1.7.4.1 unfair competition;
 - 6.1.7.4.2 collective bargaining;
 - 6.1.7.4.3 the dilution of the scope and jurisdiction of the Council.
- 6.1.7.5 the interest of Employees with specific reference to:-
 - 6.1.7.5.1 exploitation;
 - 6.1.7.5.2 job preservation.
- 6.1.7.6 the interest of the Applicant with specific regard to:-
 - 6.1.7.6.1 financial stability;
 - 6.1.7.6.2 operational requirements.

6.2 Appeals

- 6.2.1 In accordance with the provisions of the Act, the Council hereby establishes an independent body, to be known as the Exemptions Appeal Body to consider appeals against a refusal of a non-party's application for exemption from the provisions of this Agency Shop Collective Agreement and the withdrawal of such exemption by the Council.

- 6.2.2 An Applicant may lodge an appeal with the Council against the Exemption Committee's refusal for an application for exemption from the provisions of this Agency Shop Collective Agreement or the withdrawal of such an exemption by the Council.
- 6.2.3 The Exemption Appeal Body shall hear, decide and inform the applicant and the Council as soon as possible and not later than 30 days after the appeal has been lodged against the decision of the exemptions body.
- 6.2.4 Any appeal shall be in writing and shall contain the following:-
- 6.2.1.1 grounds of appeal;
 - 6.2.1.2 all supporting documentation which will be used in support of the appeal;
 - 6.2.1.3 any other relevant information or documentation that may assist the Exemption Appeal Board to arrive at a conclusion.
- 6.2.5 Any appeal may be amplified by oral argument.
- 6.2.6 The criteria for the consideration of an appeal will be the criteria as set forth in clause 6.1.7 above.
- 6.2.7 The Exemption Appeal Body's finding on appeal shall be in writing and shall be made available to the Applicant.
- 6.2.8 The Exemption Appeal Body shall consist of 2 (two) Commissioners accredited in accordance with the provisions of section 128 of the Act, from the panel approved by the Council from time to time.

6.3 The granting of exemption or withdrawal thereof

- 6.3.1 When exemption is granted by the Exemption Committee or, on appeal by the Exemption Appeal Board, such exemption shall expressly specify:-

- 6.3.1.1 any conditions subject to which the exemption is granted;
 - 6.3.1.2 the period during which the exemption is to operate;
 - 6.3.1.3 the circumstances, if any, in which the exemption may be withdrawn.
- 6.3.2 The CEO shall furnish the Applicant, should exemption be granted in favour of such Applicant, with a letter of exemption recording the:-
- 6.3.2.1 full name of the person/s in whose favour exemption is granted;
 - 6.3.2.2 provisions of this Agreement from which exemption are granted;
 - 6.3.2.3 conditions subject to which exemption is granted;
 - 6.3.2.4 period during which exemption is to operate;
 - 6.3.2.5 circumstances in which it may be withdrawn, if any.
- 6.3.3 Should circumstances dictate and permit, the Council may withdraw the exemption granted, the CEO of the Council shall notify the Applicant thereof, by furnishing it with at least 7 (seven) days' notice.
- 6.3.4 The Applicant may appeal the resolution by the Council to withdraw the exemption granted in accordance with the provisions of clause 6.2 above.

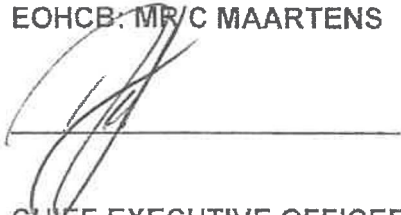
SIGNED AT PRETORIA ON THIS THE ..1st..DAY OF*July*.....2017



UASA – THE UNION:
MR N VAN ROOYEN



EOHCB: MR/C MAARTENS



CHIEF EXECUTIVE OFFICER
BARGAINING COUNCIL:
MR S DELPORT