

Gazette No: 20587

**GOVERNMENT NOTICES
DEPARTMENT OF LABOUR**

No. R. 1295

5 November 1999

**BASIC CONDITIONS OF EMPLOYMENT ACT, 1997
MINISTERIAL DETERMINATION: SMALL BUSINESS**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 50 of the Basic Conditions of Employment Act, 1997, make a Ministerial Determination establishing condition of employment for employers and employees in Small Businesses, South Africa, in the Schedule hereto and determine the second Monday after the date of publication of this notice as the date from which the provisions of the said Ministerial Determination shall become binding.

M. M. S. MDLADLANA
Minister of Labour

SCHEDULE

MINISTERIAL DETERMINATION No. 1: SMALL BUSINESS SECTOR

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1. APPLICATION

- 1.1 This determination applies to employers who conduct businesses employing less than ten employees.
- 1.2 To the extent provided for in this determination, this determination varies the application of the Basic Conditions of Employment Act, No. 75 of 1997, to such employers and their employees.
- 1.3 This determination must be read in conjunction with the Basic Conditions of Employment Act.
- 1.4 Unless otherwise indicated, any word used in this determination has the same meaning as in the Basic Conditions of Employment Act, No. 75 of 1997.
- 1.5 A bargaining council agreement or sectoral determination takes precedence over this determination, unless the agreement or determination provides otherwise.
- 1.6 This determination does not apply to-

- (a) the employment of domestic workers;
- (b) the public service;
- (c) any employer who conducts more than one business;
- (d) any business formed by the division or dissolution of an existing business.

2. OVERTIME

- 2.1 Despite section 10 (1) (b) (ii), an employer may not require or permit an employee to work more than fifteen hours overtime a week.
- 2.2 Despite section 10 (2), an employer must pay an employee
 - (a) at least one and one third times the employee's wage for the first ten hours of overtime worked in any week;
 - (b) at least one and one half times the employee's wage for any overtime in excess of ten hours worked in a week.

3. AVERAGING OF HOURS

- 3.1 Despite sections 9 (1) and (2) and 10 (1) (b) of the Basic Conditions of Employment Act, No. 75 of 1997, and clause 2 of this determination, the ordinary hours of work and overtime of an employee may be averaged over a period of up to four months in terms of a written agreement concluded by an employer and employee.
- 3.2 An employer may not require or permit an employee who is bound by an agreement in terms of sub-clause 1 to work more than-
 - (a) an average of forty-five ordinary hours of work in a week over the agreed period;
 - (b) an average of ten hours overtime in a week over the agreed period.
- 3.3 An agreement in terms of sub-clause 1 lapses after twelve (12) months.

4. FAMILY RESPONSIBILITY LEAVE

- 4.1 An employer and an employee may conclude a written agreement in terms of which an employer may reduce an employee's entitlement to annual leave in terms of section 20 of the Basic Conditions of Employment Act, No. 75 of 1997, by the number of days of family responsibility leave on full remuneration granted to the employee at the employee's request in terms of section 27 of the Basic Conditions of Employment Act, No. 75 of 1997.