

- (3) A forestry worker who keeps livestock on the land of the employer is entitled to keep that livestock for the period stipulated in the contract of employment or for one month from the date on which the contract of employment was terminated in terms of sub-clause (1).
- (4) (a) A forestry worker who has standing crops on the land of the employer is entitled to tend to those crops and harvest and remove them within a reasonable time after they become ready for harvesting, unless the employer pays the forestry worker an agreed amount for the crops.
- (b) Paragraph (a) applies in addition to a forestry worker who terminates the contract of employment in accordance with clause 29.
- (5) If a forestry worker elects to remain in accommodation in terms of sub-clause (2) after the employer has terminated the forestry worker's contract of employment in terms of sub-clause (1), the employer may deduct an amount calculated in accordance with clause 10(1)(a) from the amount that the employer is required to pay the forestry worker in terms of clause 30.

32. PAYMENTS ON TERMINATION

- (1) On termination of employment, an employer must pay a forestry worker all monies due to the forestry worker including –
- (a) any remuneration that has not been paid;
 - (b) any payment owing in respect of extended ordinary hours of work in terms of clause 13;
 - (c) any paid time-off that the forestry worker is entitled to in terms of clause 16 that the forestry worker has not taken;
 - (d) remuneration calculated in accordance with clause 24(9) for any period of annual leave due in terms of clause 24(1) that the forestry worker has not taken; and

- (e) if the forestry worker has been in employment longer than four months, in respect of the forestry worker's annual leave entitlement during an incomplete annual leave cycle as defined in section 24(1)–
 - (i) one day's remuneration in respect of every 17 days on which the forestry worker worked or was entitled to be paid; or
 - (ii) remuneration calculated on any basis that is at least as favourable to the forestry worker as that calculated in terms of subparagraph (i).

33. SEVERANCE PAY

- (1) For the purpose of this clause, "operational requirements" means requirements based on the economic, technological, structural or similar needs of an employer.
- (2) An employer must pay a forestry worker who is dismissed for reasons based on the employer's operational requirements, severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer.
- (3) A forestry worker who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer, is not entitled to severance pay in terms of sub-clause (2).
- (4) The payment of severance pay in compliance with this clause does not affect a forestry worker's right to any other amount payable according to law.
- (5) If there is a dispute only about the entitlement to severance pay in terms of this clause, the forestry worker may refer the dispute in writing to the CCMA.

34. CERTIFICATE OF SERVICE

- (1) On termination of employment, a forestry worker is entitled to a certificate of service stating –
- (a) the forestry worker's full name;
 - (b) the name and address of the employer;
 - (c) the date of commencement and date of termination of employment;
 - (d) the title of the job or brief description of the work for which the forestry worker was employed at the date of termination;
 - (e) any relevant training received by the forestry worker;
 - (f) the pay at date of termination; and
 - (g) if the forestry worker so requests, the reason for termination of employment.

35. KEEPING OF SECTORAL DETERMINATION

- (1) Every employer on whom this sectoral determination is binding must keep a copy of the sectoral determination or a guideline, available in the workplace in a place to which the forestry worker has access.

36. TEMPORARY EMPLOYMENT SERVICES

- (1) In this clause, "temporary employment service" means any person who, for reward, procures for or provides forestry workers to a client if that person remunerates the forestry workers.
- (2) For the purpose of this determination, a forestry worker whose services have been procured for, or provided to, a client by a temporary employment service is employed by that temporary employment service, and the temporary employment service is that person's employer.

- (3) The temporary employment service and the client are jointly and severally liable to comply with this determination in respect of its forestry workers.
- (4) If the temporary employment service is in default of its obligation to make any payment in terms of this determination to a forestry worker for a period of thirty days, the client concerned becomes liable to make payment.
- (5) A client that in terms of this clause makes any payment that is owing to a forestry worker is entitled to recover such amount from the employment service.

37. PRESUMPTION AS TO WHO IS A FORESTRY WORKER

- (1) A person who works for, or renders services to, any other person in forestry activities is presumed, until the contrary is proved, to be a forestry worker, regardless of the form of the contract if any one or more of the following factors is present:
 - (a) the manner in which the person works is subject to the control or direction of another person;
 - (b) the person's hours of work are subject to the control or direction of another person;
 - (c) the person forms part of the employer's organisation;
 - (d) the person has worked for that other person for an average of at least 40 hours per month over the last three months;
 - (e) the person is economically dependant on the other person for whom that person works or renders services;
 - (f) the person is provided with tools of trade or work equipment by the other person; or
 - (g) the person only works for or renders services to one person.

39. WHAT WORDS MEAN IN THIS DETERMINATION

(1) Any expression in this determination, which is defined in the Basic Conditions of Employment Act (the Act) and is not defined in this clause, has the same meaning as in the Act and-

“agreement” includes a collective agreement;

“Basic Conditions of Employment Act” means the Basic Conditions of Employment Act, 1997 (Act 75 of 1997)

“child” means a person who is under 15 years of age;

“contractor” means individuals and legal entities who render sivicultural, harvesting and transport services to the Forestry Industry for commercial gain and for whom these forestry contracting activities make up the majority of the time spent on all contracting or sub-contracting activities undertaken by these businesses.

“commercial timber growers” a farmer who cultivates a commercially viable amount of timber for profit.

“conservation forestry” refers to the maintenance and protection of natural (indigenous) forests and woodlands in South Africa on a sustainable level.

“day” means, for the purposes of measuring hours of work, a period of 24 hours, measured from the time when a forestry worker normally commences work;

“dispute” includes an alleged dispute;

‘emergent contractor’ refers to a previously disadvantage individual or company owned by a previously disadvantage person that has started to

operate as a contactor within the past five years, sometimes with the support of another sector organisation.

“**emergent timber growers**” refers to a previously disadvantaged person who has started growing timber within the past ten years, usually with the support of other sector organisations (e.g. corporate forestry companies). The scale of operation is generally less than 50 hectares.

“**employee**” has the corresponding meaning as “**forestry worker**”

“**farming activities**” includes but not limiting its meaning, primary and secondary agriculture, mixed farming, horticulture, aqua farming and farming of animal products or field crops.

“**forestry sector**” refers to forestry operations related to the planting, growing, tending and harvesting of trees. Forestry operations end at the gate to the plantation.

“**forestry worker**” means a worker who is employed mainly or wholly in connection with forestry activities, and includes a domestic worker employed in a home on a plantation and a security guard employed on a plantation or other premises where forestry operations are conducted, excluding a security guard, employed in the Private Security Industry Sector;

“**incapacity**” means inability to work owing to sickness or injury;

“**Minister**” means the Minister of Labour;

“**month**” means a calendar month;

“**monthly wage**” means an employee’s weekly wage multiplied by four and a third;

“**night work**” means work performed after 18:00 and before 06:00 the next day,

“ordinary hours of work” means the hours of work permitted in terms of clause 13

“overtime” means the time that the forestry worker works during a day or in a week in excess of ordinary hours of work;

“paid leave” means any annual leave, paid sick leave or family responsibility leave that a forestry worker is entitled to in terms of Part E of this determination;

“public holiday” means any day that is a public holiday in terms of the Public Holiday Act, 1994 (Act No. 36 of 1994);

“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 any other person, including the State;

“stand by” means when an employee is required to be at work during the night but sleeping and available for work between 20:00 and 04:00 the next day.

“wage” means the amount of money paid or payable to a forestry worker in respect of ordinary hours of work or, if they are shorter, the hours a forestry worker normally works in a day or week;

“week” in relation to a forestry worker, means the period of seven days within which the working week of that forestry worker falls;

“work place” means any place where a forestry worker works.

Sample of written particulars
Provided free of charge
by the Department of Labour

**WRITTEN PARTICULARS OF EMPLOYMENT
(FORESTRY WORKER)**

Given by:

(herein after referred to as "the employer")

Address of employer:
.....
.....

to

(herein after referred to as "the employee")

1. Commencement

Employment started/will start on and continue until terminated in terms of clauses 1 and 2 of the guidelines.

2. Place of work

3. Job description

Job Title Forestry Worker :
Tractor driver/truck driver/general worker etc.

Duties:

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

.....

4. Hours of work

4.1 Normal working hours will be hours per week, made up as follows:

Monday / Tuesday / Wednesday / Thursday / Friday: am to
 pm

Meal intervals will be from: to

Other breaks:.....

Saturdays: am to pm

Meal intervals will be from: to

Other breaks:

Sundays: am to pm

Meal intervals will be from: to

Other breaks:.....

4.2 Hours of work will be extended with by not more than five hours per week during and reduced by the same hours during

4.3 Overtime will only be worked as agreed from time to time and will be paid at the rate of one and a half times of the total wage as set out in clause 5.3 of the guidelines.

5. Wage

5.1 The employees wage shall be paid in cash on the last working day of every week/month and shall be: R.....

5.2 The employee shall be entitled to the following allowances/other cash payments/payment in kind:

5.2.2 Accommodation per week/month to the value of: R.....

5.2.3 Food per week/month to the value of: R.....

5.3 The following deductions are agreed upon: R.....

..... R.....

..... R.....

.....

5.4 The total value of the above remuneration shall be _____
(The total of clauses 5.1 to 5.3.) R.....
(Modify or delete clauses 5.2. to 5.3 as needed)

5.5 The employer shall review the employee’s salary/wage on or before 1 April of every year.

6. Termination of employment

Either party can terminate this agreement with one week’s notice during the first six months of employment and with four week’s notice there after. Notice must be given in writing except when it is given by an illiterate Forestry worker. In the case where the Forestry worker is illiterate notice must be explained orally by or on behalf of the employer.

On giving notice of termination of employment the employer is to provide the employee who resides in accommodation that belongs to the employer accommodation for a period of a month. A employer is also obliged to allow the Forestry worker who has standing crops on the land a reasonable time to harvest the crop or the employer may pay the worker an agreed amount for that crop.

7. Sunday work

Any work on Sundays will be by agreement between the parties and will be paid according to clause 7 of the guidelines.

8. Public Holidays

Any work on public holidays will be by agreement and will be paid according to clause 8 of the guidelines.

9. Annual Leave

The employee is entitled to three weeks paid leave after every 12 months of continuous service. Such leave is to be taken at times convenient to the employer and the employer may require the employee to take his/her leave at such times as coincide with that of the employer.

10. Sick leave

- 10.1 During every sick leave cycle of 36 months the employee will be entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.
- 10.2 During the first six months of employment the employee will be entitled to one day's paid sick leave for every 26 days worked.
- 10.3 The employee is to notify the employer as soon as possible in case of his/her absence from work through illness.
- 10.4 A medical certificate may be required if absent for more than 2 consecutive days or has been absent on more than two occasions during an eight-week period.

11. Maternity leave

(Tick the applicable clauses in the space provided).

- 11.1 The employee will be entitled to months maternity leave without pay; or
- 11.2 The employee will be entitled to months maternity leave on pay

12. Family responsibility leave

The employee will be entitled to three days family responsibility leave during each leave cycle if he or she works on at least four days a week.

13. Accommodation

(Tick the applicable boxes).

- 13.1 The employee will be provided with accommodation for as long as the employee is in the service of the employer, which shall form part of his/her remuneration package.
- 13.2 The accommodation may only be occupied by the worker and his/her immediate family, unless by prior arrangement with the employer.
- 13.3 Prior permission should be obtained for visitors who wish to stay the night. However where members of the employee's direct family are visiting, such permission will not be necessary.

14. Clothing *(Delete this clause if not applicable)*

..... sets of uniforms/protective clothing will be supplied to the employee free of charge by the employer and will remain the property of the employer.

..... sets of boots/gumboots will be supplied to the employee free of charge by the employer and will remain the property of the employer.

..... will be supplied to the employee free of charge by the employer and will remain the property of the employer.

15. Other conditions of employment or benefits

.....
.....
.....
.....

16. General

Any changes to the written particulars will only be valid if agreed to by both parties.

.....
EMPLOYER

Acknowledgement of receipt by employee:

.....

Date:

GUIDELINES

1. Notice period and termination of employment

In terms of the Sectoral Determination, any party to an employment contract must give written notice, except when an illiterate Forestry worker gives it, as follows:

- One week, if employed for six months or less
 - Four weeks if employed for more than six months.
-
- Notice must be explained orally by or on behalf of the employer to a Forestry worker if he/she is not able to understand it.

 - The employer is required to provide the Forestry worker who resides in accommodation that is situated on the premises of the employer or that is supplied by the employer, with accommodation for a period of one month, or if it is a longer period, until the contract of employment could lawfully have been terminated.

 - The Forestry worker is entitled to keep livestock on the premises for a period of one month or until the contract of employment could lawfully have been terminated.

 - The Forestry worker who has standing crops on the land is entitled to tend to those crops, harvest and remove them within a reasonable time after they become ready for harvesting unless the employer pays the Forestry worker an agreed amount for the crops.

 - All monies due to the Forestry worker for any wages, allowance or other payments that have not been paid, paid time-off not taken and pro-rata leave must be paid.

2. Procedure for termination of employment

Whilst the contract of employment makes provision for termination of employment, it must be understood that the services of an employee may not be terminated unless a valid and fair reason exists and fair procedure is followed. If an employee is dismissed without a valid reason or without a fair procedure, the employee may refer the matter to the CCMA for assistance.

Pro-rata leave and severance pay might be payable.

In the event of a Forestry worker being unable to return to work due to disability, the employer must investigate the nature of the disability and ascertain whether or not it is permanent or temporary. The employer must try to accommodate the employee as far as possible for example, amending or adapting their duties to suit the disability. However, in the event of it not being possible for the employer to adapt the Forestry worker's duties and/or to find alternatives, then such employer may terminate the services of the Forestry worker.

The Labour Relations Act, 66 of 1995 sets out the procedures to be followed at the termination of services in the Code of Good Practice, in Schedule 8.

3. Wage/Remuneration/Payment

There is a prescribed minimum wage. Additional payments (such as for overtime or work on Sundays or Public Holidays) are calculated from the total remuneration as indicated in clause 11 of the written particulars of employment. The total remuneration is the total of the money received by the employee and the payment in kind, which may not be more than 10% each of the wage for food and accommodation.

4. Transport allowances

Sectoral Determination 12: Forestry workers Sector, South Africa does not regulate this and is therefore open to negotiation between the parties.

5. Hours of work

5.1 Normal hours (excluding overtime)

A Forestry worker may not be made to:

- work more than 45 ordinary hours a week;
- work more than nine ordinary hours per day for a five day work week; and
- work more than eight ordinary hours a day for a six day work week.

5.2 Extension of ordinary hours of work

By written agreement, ordinary hours of work may be extended by not more than five hours per week for a period of not more than four months and be reduced by the same number of hours during a period of the same duration in the same twelve-month period.

The employer must pay the Forestry worker the wage he/she would have received for his/her normal hours worked.

Extended hours not reduced must be paid as overtime on termination.

5.3 Overtime

A Forestry worker may not work more than 15 hours overtime per week but may not work more than 12 hours on any day, including overtime.

Overtime must be paid at 1.5 times the employee's normal wage or an employee may agree to receive paid time off.

5.4 Daily and weekly rest periods

5.4.1 A daily rest period of 12 consecutive hours and a weekly rest period of 36 consecutive hours, which must include Sunday, unless otherwise agreed, must be allowed.

5.4.2 The daily rest period may by agreement be reduced to 10 hours for an employee who live on the premises whose meal interval lasts for at least three hours.

5.4.3 The weekly rest period may by agreement be extended to 60 consecutive hours every two weeks or be reduced to eight hours in any week if the rest period in the following week is extended equivalently.

5.5 Night work

5.5.1 Night work means work performed after 20:00 and before 04:00

5.5.1 Only worked if agreed to in writing and must be compensated by an allowance of at least 10% the ordinary daily wage and if transport is available.

6. Meal intervals

A Forestry worker is entitled to a one-hour break for a meal after not more than five hours work. Such interval may be reduced to 30 minutes, by agreement between the parties. When a second meal interval is required because of overtime worked, it may be reduced to not less than 15 minutes. If required or permitted to work during this period, remuneration must be paid.

7. Work on Sundays

Must be paid as follows:

Time worked on a Sunday	Payment
One hour or less	Double the wage for one hour
More than one hour but not more than two hours	Double the ordinary wage for time worked
More than two hours but not more than five hours	The ordinary daily wage.
More than five hours	The greater of double the wage payable in respect of time worked (excluding overtime) or double the ordinary daily wage.

A Forestry worker who does not reside on the plantation who works on a Sunday must be regarded as having worked at least two hours on that day.

8. Public Holidays

The days mentioned in the Public Holidays Act must be granted but the parties can agree to further public holidays. Work on a public holiday is entirely voluntary and a Forestry worker may not be forced to work on such public holiday.

The official public holidays are:

New Years Day	Youth Day
Human Rights Day	National Woman's Day
Good Friday	Heritage Day
Family Day	Day of Reconciliation
Freedom Day	Christmas Day
Workers Day	Day of Goodwill

Any other day declared an official public holiday from time to time must also be granted.

These days can be exchanged for any other day by agreement.

If the employee works on a public holiday he/she shall be paid double the normal day's wage.

9. Annual Leave

Annual leave may not be less than three weeks per year for full-time workers or by agreement, one day for every 17 days worked or one hour for every 17 hours worked.

The leave must be granted not later than six months after completion of the period of 12 consecutive months of employment. The leave may not be granted concurrent with any period of sick leave, nor with a period of notice of termination of the contract of employment.

10. Sick leave

During every sick leave cycle of 36 months an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.

During the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked.

The employer is not required to pay an employee if the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury.

11. Maternity leave

The employee is entitled to at least four consecutive months' maternity leave. The employer is not obliged to pay the Forestry worker for the period for which she is off work due to her pregnancy. However the parties may agree that the Forestry worker will receive part of or her entire salary/wage for the time that she is off due to pregnancy.

12. Family responsibility leave

Employees employed for longer than four months and for at least four days a week are entitled to take three days' paid family responsibility leave during each leave cycle when the employee's child is born, or when the employee's child is sick or in the event of the death of the employee's spouse or life partner or parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

13. Deductions from the remuneration

The Sectoral Determination prohibits an employer from deducting any monies from the Forestry worker's wages without his/her written permission.

A deduction of not more than 10% each of the wage may be deducted for food and accommodation provided on a consistent and regular basis and provided the house has a roof that is durable and waterproof, has a glass window that can be opened, electricity and water on tap is available inside the house and a flush toilet or pit latrine is available inside or in close proximity to the house.

14. Other issues

There are certain other issues which are not regulated by the Sectoral Determination such as probationary periods, right of entry to the employer's premises, afternoons off, weekends off and pension schemes, medical aid schemes, training/school fees,

funeral benefits and savings account. However the aforementioned may be negotiated between the parties and included in the contract of employment.

15. Prohibition of Employment

The Sectoral Determination prohibits employment of any person under the age of 15 and it is therefore important for an employer to verify the age of the Forestry worker by requesting a copy of the identity document or birth certificate.

16. Other conditions of employment

There is no provision, which prevents any other conditions of employment being included in a contract of employment but any provision, which sets conditions, which are less favourable than those set by the Determination, would be invalid.
