ETHICAL TRADING HANDBOOK
ETIESE HANDELSKWESSIES HANDBOEK

Supporting ethical awareness and continuous improvement of labour conditions on fruit farms and in packhouses.

FRUIT South Africa

Ter steun van etiese bewustheid en die voortdurende verbetering van arbeidstoestande op vrugteplase en in pakhuis.
ETHICAL TRADING HANDBOOK

Supporting ethical awareness and continuous improvement of labour conditions on fruit farms and in packhouses

FRUIT South Africa

FIRST EDITION 2011
FOREWORD

Fruit South Africa (FSA) is committed to the economic transformation and continuous improvement of labour conditions on farms and packhouses in the fruit industry. Representing Hortgro, the Citrus Growers’ Association, South African Table Grape Industry, South African Subtropical Growers’ Association, and the Fresh Produce Exporters’ Forum, FSA represents approximately 5000 growers and 80 exporters in the fresh fruit industry.

The FSA Ethical programme is a proactive response by the industry to ensure the existence of sound ethical labour practices on South African fruit farms and in packhouses. Driven by the principle of ‘continuous improvement’, there is a strong emphasis on programmes and interventions to raise awareness and build capacity.

Why have we published this Handbook? Our purpose is firstly to raise awareness amongst growers and exporters of ethical Code requirements, and secondly, to help them understand and apply the law so that they can meet the necessary legal and ethical requirements. The fundamental principles for creating fair labour conditions on farms are contained in our labour laws and the Ethical Code principles merely reinforce these.

The Handbook, in both English and Afrikaans, gives an overview of ethical trade and introduces each of the Code principles. Each chapter provides a reference to the relevant South African law, guidelines to the application of the law and best practice, as well as a self-assessment checklist for each Code principle. As an additional resource, it includes information on the Skills Development Act and Broad Based Black Economic Empowerment (BBBEE) and how projects linked to an ethical programme can support a BBBEE scorecard. An index at the end of the book is a useful cross-reference to allow access to specific information. The FSA ethical trade website (www.FruitSA-ethical.org.za) contains the Handbook in both languages, has electronic links to South African law, and has all relevant documents that can be downloaded. These are highlighted in the text.

While we will aim to keep the website version of the Handbook updated on a regular basis, we would advise you to get legal opinion before taking major policy decisions.

FSA would like to thank all the people and organisations that have contributed in any way to the production of this Handbook. We would particularly like to thank retailers, Tesco, M&S, The co-operative Food, Waitrose, Sainsbury’s and IPL for their generous contributions. We believe this joint support embraces the principle that all stakeholders working in this industry are striving towards the same ethical goals. Finally, we extend our gratitude to those of you who are making a difference out there with your projects and initiatives.

Derek Donkin  FSA Chairman  •  South African Subtropical Growers’ Association
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NOTE: The website www.FruitSA-ethical.org.za contains links to South African laws (for example, Section 3, Labour Relations Act) and documents (for example, Contract of Employment) that can be downloaded. These are highlighted in the text with the symbol •.
Ethical trade means different things to different people. Some people refer to ‘ethical trade’ as a broad term for all types of business practices that promote more socially and/or environmentally responsible trade. Others use the term in a much narrower sense, referring specifically to the social and labour practices in a business’s supply chain.

For purposes of this Handbook the focus will be on social and labour ethical practices.

Ethical trade provides an assurance to consumers that the working conditions of all the members of a supply chain comply with acceptable international standards. Suppliers show their commitment to ethical trade through adopting a code of labour practice that measures their compliance with minimum labour standards. Such codes address issues like wages, hours of work, health and safety and the right to join trade unions.

It is important to understand that the ethical Code of practice is not a new set of laws invented by the international community. The Code that the fruit industry uses as the basis of its ethical programme is based on international conventions and South African labour laws which are based on these conventions. If you comply with South African laws you will be complying with international ethical Code requirements.
WHY DO WE NEED AN ETHICAL TRADE PROGRAMME?

Consumers are increasingly becoming more conscious about the impact their purchasing is having on “people and planet” and want to be assured they are not indirectly promoting poor labour practices. Ethical Trade programmes allow buyers to get a better sense of how the supply chain is adopting “acceptable” practice. While the reality to date may be that buyers and consumers have been driving the Ethical Trade process, making it a commercial decision for growers or packhouse owners to participate in an Ethical Trade programme, this is a limited view of the value of an Ethical Trade programme. Other reasons for participation include the fact that it is a realistic way of assessing and managing the risk of the business, it provides a mirror of social practices in the workplace, it defines areas where problems may exist and how these can be fixed before they impact negatively on the business, and finally, it is a realistic measure of whether workplace laws are being complied with. Good ethical practices and the programmes that are used to measure and drive these, create businesses that are socially and economically sustainable in the long term.

In response to pressures raised over issues such as the use of child labour in businesses, various international multi-stakeholder initiatives were formed, such as the Ethical Trade Initiative (ETI) (UK) and the Business Social Compliance Initiative (BSCI) (Europe) which established Codes based on International Labour Organisation (ILO) Conventions. These could be used to measure (and ensure) that their suppliers’ employment practices were in line with international requirements. The South African fruit industry is proactively driving an ethical trade programme that aims to be robust, credible, internationally recognised, aligned to global best practice and development-led rather than audit-led. The overarching aim is continuous improvement.

WHAT ARE THE DIFFERENT ETHICAL INITIATIVES AND CODES?

1. **ETI Base Code** Compiled by the Ethical Trade Initiative (see www.ethicaltrade.org) and followed most widely by UK-based retailers.

2. **BSCI Code** Compiled by Business Social Compliance Initiative (see www.bsci-eu.org) and followed most widely by mainland Europe-based retailers.

3. **WIETA Code** Compiled by the Agricultural Ethical Trade Initiative (trading as Wine Industry Ethical Trade Association - WIETA) and based on the ETI Base Code but adapted for a South African context (see www.wieta.org.za).
4. **Fair Working Conditions** Compiled by OLIVE with its own Code based on ILO conventions and audit methodology (see www.fairworkingconditions.org).

5. **SA 8000** The only accredited social accountability certification standard in the world. Based on international conventions. BSCI Code is based on the SA8000 standard.

6. **Global Social Compliance Programme (GSCP)** Duplication and multiple ethical audits have been recognized as a serious problem by a large number of international and local retailers, including Tesco, Walmart, Migros, Carrefour, COOP (Swiss), Marks and Spencer and Pick n Pay. In response to this, the GSCP was formed with the aim of developing a clear and consistent message on best practice for suppliers globally; to reduce duplication of audits by allowing stakeholders to trust each other’s audit reports; and to support continuous improvement of conditions in the workplace. In support of these aims, the GSCP has created a set of Reference Tools based on best practice in social compliance, including a Reference Code, audit methodology and auditing competency. In simple terms, best practices from existing Codes (for example, ETI, BSCI and SA8000) have been collated into a single Reference Code, with the same applying to audit methodology and auditor recognition. These Reference Tools can be adopted by initiatives (such as the Fruit SA ethical programme) ‘as is’ with the value to the industry being the likely buy-in of major retailers who are members of GSCP. At the Fruit South Africa ethical trade workshop in December 2010, stakeholders supported the use of the GSCP Reference Tools for the industry’s ethical programme, and this recommendation has been endorsed by the FSA leadership and membership. The industry is currently developing an ethical trade programme based on the GSCP Reference Tools.

**WHAT IS THE SOUTH AFRICAN FRUIT INDUSTRY’S ETHICAL TRADE PROGRAMME?**

Fruit South Africa (FSA) is driving an ethical trade programme that is South African-based, aligned with international standards, and aimed at transformation and continuous improvement on its farms and packhouses. FSA represents the growers’ associations of Hortgro, Citrus Growers’ Association (CGA), South African Sub-Tropical Growers’ Association, South African Table Grape Industry (SATI) and the Fresh Produce Exporters’ Forum (FPEF). Together these industries support 5 000 growers and 400 000 employees with FPEF having a membership of approximately 80 exporters.

While an important component of the fruit industry’s ethical programme is the audit which can provide assurance to its customers of ethical and legal compliance, the main focus is on remediation, development and supporting suppliers with compliance requirements.
The FSA ethical programme aims to: ensure that the industry drives its own ethical trade portfolio in a professional manner; improve labour conditions on farms; help manage commercial risks allied to ethical trade matters; give retailers and other stakeholders confidence in the South African supply base; and reduce the number and cost of audits for growers.

The six key areas of the ethical programme include:

1. **Auditing** – Audits are an important checkpoint for the industry and other stakeholders but they are not the focus of the programme; outcomes of audits should be used to inform training and development needs;

2. **Convergence** with retailer ethical trade programmes - Getting buy-in from retailers (both local and international) to avoid duplication and focus on achievement of the same goals;

3. **Data-capturing** – Developing a South African based data-capturing system that will allow the industry to capture audit results and provide statistics and trends;

4. **Communication and engagement** around the FSA ethical programme with all stakeholders;

5. **Awareness-raising**, training and capacity-building programmes based on the results of audits and other general needs;

6. **Encouraging ethical practices** along the supply chain.

The industry’s Ethical Programme is based on these goals and key areas of focus. FSA, in collaboration with other stakeholders, is driving a number of projects and activities as part of its drive for continuous improvement.

These include:

• Growers’ Ethical Trade Handbook and awareness-raising sessions to help people to use it;

• Tesco Training Fund which provides a training subsidy to suppliers to Tesco;

• Grievance mechanism and toolkit to improve channels of communication in the workplace between management and employees;

• Labour Broker Training and Support;

• Small-scale commercial farmers - Supporting in the implementation of Ethical Code requirements;

• Top of the Class - Your role in the Value Chain (includes a module on Understanding Ethical Trade);

• Leadership and Mentorship Development Programme to identify and promote leadership potential in the workplace.
THE FSA ETHICAL PROGRAMME FRAMEWORK

COMMUNICATION AND ENGAGEMENT

Working with grower members and other stakeholders to drive common goals and continuous improvement:

- Businesses appoint ethical ‘Champion’ to act as link on ethical matters
- Ethical Steering Group to play an oversight role
- Liaising with retailers, importers, NGOS, unions to drive convergence and ethical practices along the supply chain

MONITORING

- STEP 1 Awareness
- STEP 2 Training
- STEP 3 SAQ
- STEP 4 Audit

DATA-SYSTEM

Captures data and provides statistics and trends to the industry

CONTINUOUS IMPROVEMENT

- Training and development programmes based on audit findings and needs
- Monitoring and demonstration of continuous improvement
WHAT IS THE ETHICAL AUDITING PROCESS?

Queries are often raised about the ethical audit and whether this can overlap with other audits, such as food safety audits. The ethical auditing process uses a different format and methodology to the technical food safety audits which measure compliance with identified control points. An ethical audit is not a ‘tick box’ or ‘pass/fail’ exercise; the aim is to measure current performance and identify areas where improvements could or should be made. This process results in what is known as a “Corrective Action Plan” that identifies the issues and what can be done to improve. Ethical audits take longer to perform because they involve interviews with employees and can only be performed by auditors who have received appropriate training. As the ethical audit is more time-consuming and costly than other audits, it takes place less frequently than food safety audits. The recommendation from the FSA December 2010 workshop was for audits to take place every 5 years. FSA will finalise this once consultations have taken place with retailers and growers around the country. FSA is also working at ensuring that results of ethical audits are mutually exchangeable amongst all retailers in order to avoid duplication.

The ethical audit process consists of 3 phases:

1. **Pre-Audit Administration**
2. **Site Assessment**
3. **Post-Audit Administration**

**PRE-AUDIT ADMINISTRATION**

The auditor collects information about the site and uses this to create a site profile. This tells the auditing body about the characteristics of the site and will be used to plan the audit process.

**SITE ASSESSMENT**

An audit team (or single auditor depending upon the size and type of site in question) visits the site to do the assessment.

The audit process uses a method called “triangulation of evidence” to measure and report on its findings. This method means the auditor supports one
type of evidence with another. For example, if the auditor wants to check on compliance regarding deductions from wages, he will use verbal evidence collected during employee and management interviews, and documentary and visual evidence (such as written pay slips) to prove compliance.

When the site assessment is finished, the audit body gives the site management a report with the details of the findings made throughout the audit process. The purpose of this feedback session is to agree on actions that could and should be taken to allow for improvement. These actions will then be monitored and are part of the ‘continuous improvement’ element of the ethical trade programme.

POST-AUDIT ADMINISTRATION
Using the evidence collected during the site assessment, the auditing body will draw up a complete report giving details of all areas of compliance and any non-compliances noted during the audit.

If the audit is conducted using the SMETA methodology, then the audit report will most likely be uploaded onto the SEDEX database for buyers and other stakeholders in the supply chain to view the report and monitor progress. In addition to the report being uploaded, the site is responsible for uploading onto SEDEX any evidence from corrective actions that were agreed to on the day of the audit. This allows customers to track and monitor the continuous improvement of the site.

WHAT VALUE DOES ETHICAL TRADE ADD TO YOUR BUSINESS?

An ethical trade programme based on continuous improvement in the workplace will add value to your business objectives in the following ways:
- Improve efficiency in the supply chain;
- Motivate and create a more efficient workforce;
- Protect the reputation of suppliers and retailers;
- Protect and increase sales;
- Improve supply chain sustainability;
- Increase productivity.
A management system is a set of policies and procedures that are implemented to help an organization conduct business in an orderly and consistent manner. A good management system also creates confidence and provides assurance to customers that an organization operates in a planned, consistent and controlled manner.

More and more, with increased globalization, suppliers are being asked to demonstrate that they have a competent and robust management system in place in order to provide the necessary assurances that they are a credible and “safe” trading partner. A management system is therefore an essential component of any business that aims to trade internationally.

Implementing an effective ethical trade management system can help you to:

- Manage your social risks
- Reduce costs
- Protect your brand and reputation
- Promote innovation
- Improve staff commitment and morale
- Operate with responsibility and accountability which can lead to a better reputation, greater consumer and investor confidence, and improved product quality.

- Improve operations
- Increase customer satisfaction
- Achieve continual improvement
- Remove barriers to trade
- Build more reliable business partnerships
WHAT MUST I DO?

**Step 1: Define and document Policies and Procedures**

The first step is to define and document the policies and procedures that you need to implement to ensure that the working conditions in your workplace comply with the ethical Code and the law. As a guide, when developing your policies and procedures, you need to consider the principles in the ethical Code and commit to these in an Ethical Policy.

An Ethical Policy should clearly include the following commitments:
- to conform to all requirements of the ethical Code;
- to comply with national laws and other requirements;
- to have all documents necessary for an ethical audit available and filed in a systematic way;
- to review the policy regularly in order to continually improve, taking into account changes in the law and any other company requirements;
- to see that the policy is effectively documented, implemented, maintained, communicated, and made accessible in a comprehensible form to all personnel, including directors, executives, management, supervisors, and staff, whether directly employed by, contracted with, or representing the company;
- to make the policy publicly available in an effective form and manner to anyone who asks for this;
- to meet on a regular basis (perhaps twice a year) with employee representatives to discuss Code implementation and concerns around this.

*Chapters 3 – 11 of this Handbook explain what policies and procedures you must have in place for each of the Code principles.*

**Step 2: Implement Policies and Procedures**

Once you have developed a set of policies and procedures as set out above, there MUST be commitment from senior management to implement and manage these policies. The company policies and procedures could be signed by the CEO or owner or someone appointed to represent the company. It is important to ensure that the content and intention of the policies are endorsed by a member of senior management, in other words, someone who is able to make sure they are properly implemented. The industry supports businesses appointing an ethical champion to drive and monitor these policies and to be the link with the fruit industry’s national ethical programme.
Step 3: Communicate Policies and Procedures

When the policies and procedures have been authorized by the senior management, they should be communicated to all stakeholders, these include:

1. THE WORKFORCE – Permanent & seasonal
2. MANAGEMENT – Supervisors and middle/operational managers
3. TRADE UNIONS or employee representative committees
4. CUSTOMERS – Current and future

If required by law policies should be displayed in a public place on the company’s premises where everyone can read them and preferably in languages that are spoken in the workplace.

Step 4: Keep Policies and Procedures Up to Date

Adapt your company policies and procedures to comply with the law. For example, the way you currently operate with regard to pay slips might show that deductions for loans exceed the legal maximum or the employee has not given permission to authorize the deduction; you will therefore need to change your procedures and reflect this on the payslip.

Making these changes to the way you work is all part of the implementation process and will take time so set reasonable targets that you can achieve.

Step 5: Manage the Process

Once you have completed the first four steps, you are on your way to achieving legal compliance and therefore compliance with the principles of ethical trade. Understand that this is a journey and not something that can be completed in a short space of time. The principles of ethical trade are about continuous or ongoing improvement. Your goal should be progress so it is essential that you include this in your management planning.
The development and implementation of a good management system should be seen as a good beginning - it does not provide the solution but rather points you in the right direction!

These are some guidelines for operating a successful management system:

1. **REGULARLY REVIEW YOUR MANAGEMENT SYSTEMS.** Perform regular self-assessments to see whether you are achieving what you set out to achieve.

2. **ASK FOR HELP.** Contact experts in the areas that you are struggling with and share ideas. There are many solutions to a single problem.

3. **CONSULT YOUR EMPLOYEES.** Employees are an incredibly informative resource and, as all these interventions are designed to improve working conditions for them, they are probably in the best position to advise you.

4. **DOCUMENT EVERYTHING.** If planning is the foundation to a successful management system then good record-keeping is the corner-stone.

5. **INVEST IN TRAINING AND SKILLS DEVELOPMENT** of your employees, including your middle managers, supervisors and team leaders. Usually there are more of them than there are of you and so they are more able to manage your systems.

6. **STAY UP-DATED.** Laws change and so it is important that you as a business owner or manager keep up to date with these changes. Remember: ignorance is no excuse!

*The fruit industry ethical trade portfolio offers ongoing support. Please contact your growers’ association or the ethical portfolio co-ordinator, Colleen Chennells at chennell@iafrica.com or on 0823763453 if you need help.*
Although slavery and hard labour for prisoners was made illegal years ago, there are still many forms of “forced” or “bonded” labour that exist.

Forced labour is when someone is forced to work against their will because if they refuse to work they will suffer some kind of penalty.

Bonded labour is also called debt bondage. This refers to a situation where a person has to work for someone in order to repay a loan. For example, a person borrows R10 000 from an employer and he is told he must work to pay off the loan.

Local laws and international conventions clearly address these issues but there are many practices that need to be carefully checked to ensure that all employees are not forced to work against their will.
WHAT DOES THE CODE SAY?

1. All work must be conducted on a voluntary basis, and not under threat of any penalty or sanctions.
2. The use of forced or compulsory labour in all its forms is prohibited.
3. Suppliers shall not require employees to make deposits/financial guarantees and shall not retain identity documents (such as passports, identity cards, etc).
4. Bonded labour is prohibited. Suppliers shall not use any form of bonded labour nor permit or encourage employees to incur debt through recruitment fees, fines, or other means.
5. Indentured labour is prohibited. Suppliers shall respect the right of employees to terminate their employment after reasonable notice. Suppliers shall respect the right of employees to leave the workplace after their shift.

WHAT DOES SOUTH AFRICAN LAW SAY?

BILL OF RIGHTS, CHAPTER 2(13) No one may be subjected to slavery, servitude or forced labour.

CORRECTIONAL SERVICES ACT, 1998, ACT 111, CHAPTER 4(40) Prisoners are not allowed to work as a form of punishment or disciplinary measure.

SECTORAL DETERMINATION 13 (SD13) : PART F(25)4-5-6 No person may be forced to work unless they do so voluntarily. Various other provisions under the BCEA and SD 13 apply and are included in the section on Guidelines to the Law and Best Practice.

BCEA, CHAPTER 5(39) AND ESTA Employers must comply with the provisions of the Extension of Security of Tenure Act (ESTA) in respect of those employees living on their land. In particular, employers must respect the occupational rights of farm dwellers, and comply with the provisions of the legislation where these regulate the eviction of people living on the farm.
GUIDELINES TO THE LAW AND BEST PRACTICE

The following Guidelines describe various issues that fall within the scope of this Code principle and what the law requires you to do or not do. Under each issue there is also a guide to Best Practice which gives advice on how to improve conditions on your farm beyond the law.

**PRISON LABOUR**

What does the Law say? No prison labour is allowed.

**FORCED, BONDED OR INVOLUNTARY LABOUR**

What does the Law say? You must allow employees to enter into employment contracts of their own free will. Contracts of Employment are dealt with in more detail in Chapter 8.

Policies and contracts are explained in a language that is understood by employees.

Employees can only be expected to do work that they have been contracted to do and that they are qualified and able to do.

Employees have the right to leave the workplace after completing the standard workday and they have the right to freedom of movement. *BCEA: Chapter 2(9), (15)*

What is Recommended? While a staff policy is not a legal requirement it is recommended that you have one in place and that it includes a clause that states employment is freely chosen and forced or bonded labour is not allowed.

You cannot benefit in any way from an arrangement with an employee where she agrees not to exercise her rights in terms of labour law, for example, if an employee agrees not to belong to a Union in exchange for getting the job.

If you use a labour broker or contractor you should check their systems and ask for internal audit results (on a
regular basis) to ensure that they comply with all legal requirements relating to conditions of employment, and the right of employees to join and leave the employment.

Your Comments

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**What is Recommended?**

If it is not possible to immediately return an ID make sure that the owner is aware of (a) why they cannot get their document back, and (b) when they can expect it back.

Before you make a copy, check the document to see that it is legitimate and not a fraud. There is a large amount of ID fraud in the agriculture sector, especially where people need an ID before they can be employed.

Make sure therefore that you check to make sure that the person is who the ID says it is.

Make a copy and put the copy on the first page of the employee’s staff file.

**Your Comments**

________________________________________________________________________

________________________________________________________________________

**DEPOSITS**

**What does the Law say?**

Employees should not have to pay any deposits when they start work.

If a deposit is taken (for a legal reason) it must be returned when the employee leaves the employment.

**What is Recommended?**

Deposits create a bond between the employer and the employee. This goes against the principles of ethical trade as well as South African law. Make sure, therefore, that you do not charge deposits for anything, including working equipment, for example, pruning shears.

**Your Comments**

________________________________________________________________________

________________________________________________________________________
LOANS

What does the Law say?
You cannot make a loan to an employee if this will in any way prevent the employee from leaving the job as this creates a system of bonded labour.

Loans must be agreed to in writing. The agreement must include the terms of the repayment including: how much has been loaned, interest rate, monthly repayments and how many payments must be made.

The maximum deduction allowed for loans is 10% of the wage earned for that period. So, if an employee earns R1500 per month and your maximum period for repayment is 6 months then the formula would be:
10% of R1500 x 6 months = R900. In this case you would only be allowed to loan the employee R900 to be repaid in equal portions over 6 months.

What is Recommended?
No loans should be made as a general rule but you can make an exception in special cases where employees are experiencing hardship.

The policy on loans must be applied consistently and there must be no favouritism, in other words, more favourable terms for some people.

Develop a loans policy that clearly establishes the company’s approach to lending money. Often a person is unable to repay an initial loan and must take another, and another and another to keep re-paying loans, and this can become a form of debt bondage. While employers might be providing loans for entirely the right reasons, it is often the start of a process which ends in employees not being able to pay their way out of debt.

When developing a loans policy, consider:
a) What you are willing to lend money for, for example, school uniforms or unforeseen circumstances like burials.
b) The amount you are prepared to lend. When calculating this, consider how much the employee is earning and the formula for repayment.
c) Terms of the repayment. Are you prepared to extend flexible terms?
What if the employee requests that you deduct more than 10% off her wages? This is not allowed by law so the 10% principle should be strictly applied. (However cash payments are not considered as deductions).

These are all factors to consider when determining the company loan policy. Remember that some people, especially those that have received little formal education, are a lot more vulnerable to falling into a debt trap, so you should consider this when determining whether to give a loan or not.

Your Comments

OVERTIME

What does the Law say?  You cannot force anyone to work overtime unless you have an agreement with them in terms of their contract.

What is Recommended?  There should be a clause in the contract that indicates the need for overtime as a part of the job. Due to the seasonal nature of agriculture, it is not unreasonable to expect an employee to work overtime but within the limits defined by law. This person needs to know that this is a condition of employment before they enter into the employment relationship. It is therefore recommended that you put a clause in the contract which states this need and makes it clear that any employee that accepts the terms and conditions of work at that particular work place will be expected to work overtime from time to time as required by management.

Where overtime is required, give as much notice as possible to the employees – place a notice on the notice board or have the supervisors inform the employees at least 48 hours before the overtime is required. This enables parents to make arrangements for children and other responsibilities.

Your Comments
TERMINATION OF SERVICE

What does the Law say?

Employees are free to leave their employment within the terms of their contract. Minimum notice is as follows:
- one week, if the employee has been employed for six months or less;
- two weeks, if the employee has been employed for more than six months but not more than one year;
- four weeks, if the employee has been employed for more than a year.

*BCEA, Chapter 5(27), (38), (40)*

Your Contract of Employment should include notice and termination of service.

Employees may terminate their services by giving due notice and may not be prevented in any way from exercising this right. *SD 13: Section 26(1)*

On termination of employment, an employer must pay an employee all monies due to the employee including:
- any wages that have not been paid;
- any payment owing in respect of extended ordinary hours of work;
- any paid time off that the employee is entitled to that the farm employee has not taken; and
- outstanding leave pay.

**Certificate of service** You must supply a certificate of service if the employee asks for this when leaving the job. An example of a *Certificate of Service* is available on the website.

*SD 13: Part G (31) BCEA: Chapter 5 (42)*

What is Recommended?

Serving notice is something that is greatly neglected in the farming sector and it is not uncommon for employees to disappear without even claiming their pay. Management of this issue is therefore particularly difficult and so it is recommended that you draw specific attention to this aspect of the employment relationship during the induction training.
Make sure that termination of employment is clearly spelled out in the contract and consider what costs are involved should an employee fail to give notice. While you may not deduct from the employee’s wages as a result of their failure to serve notice (this is seen as a form of fine) you can claim expenses that your business has incurred as a result of the failure, for example, if you were to recruit another employee through a broker or at a fee that is levied, you would be able to claim this fee. It is important that employees know this.

On termination of employment, put the final payment package in writing; have it signed by the employee and kept on record. If the employee refuses to sign such an agreement, ask a witness, for example, a shop steward or employee representative, to counter-sign.

A certificate of service is a good way to demonstrate that an employee has left your service and there are no further obligations either way. These records are also useful if queries ever arise later on as to the reason for termination of employment.

**Your Comments**

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**HUSBANDS, WIVES, PARTNERS, PARENTS AND CHILDREN LIVING WITH EMPLOYEES ON THE FARM**

**What does the Law say?**

Spouses, partners, parents or children of employees living on the farm cannot be told to work in return for the right to live on the farm.

Spouses, partners and young employees, should have their own separate contracts of employment if they work on the farm.

**What is Recommended?**

Family members living on the farm cannot be forced to work there. They are free to work wherever they choose.
even if they are living on the premises. Make sure therefore, that you have a housing agreement setting out the terms under which the accommodation is provided and include in this document a list of people that are authorised to stay in the house. An example of a Housing Agreement is available on the website.

Your Comments

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HOUSING

What does the Law say? The occupational rights of employees staying on the farm must be respected. If an employee has been dismissed, you must give one month's notice to vacate the premises. All aspects of the law, including ESTA must be complied with. BCEA: Chapter 5(39)

What is Recommended? Make sure that the terms of occupation are clearly set out in the housing agreement. This does not provide an automatic right to evict a person upon termination of employment, however it provides a base from which a legal eviction can be sought.

Your Comments

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FAMILY LIFE

What does the Law say? Employees’ right to a private family life should be respected.
WITHHOLDING WAGES OR BENEFITS

What does the Law say? You cannot keep any part of an employee’s salary, benefits, property or documents in order to force the employee to carry on working for you.

What is Recommended? Be careful of “savings” policies. Unless these are carefully managed, they can appear to be a form of bond, especially where the employee can only get his or her own savings back at the end of the contract or season. Savings are only fine if there are records to show that the employee requested the savings and that they have signed a letter authorizing the employer to make the agreed deduction.

Develop a savings policy which clearly sets out the procedure to be followed by employees that volunteer to participate in the savings scheme. Give the employees a statement indicating how much they have saved/withdrawn during that particular pay period as well as the balance (if any) remaining.

Your Comments

DEBT BONDAGE

What does the Law say? Employees must agree in writing to any deduction unless the deduction is required in terms of the law, collective agreement, court order or arbitration award. See ‘Loans’ page 17.

What is Recommended? If a person is unable to repay an initial loan and must keep taking out loans to repay the loans, this is debt bondage. So, while employers might be providing loans for entirely the right reasons, it is often the start of a process which ends in employees not being able to pay their way out of debt.
HUMAN TRAFFICKING

What does the Law say? Neither the farm or packhouse nor the organisation supplying labour to the company should be involved with or support trafficking in human beings for purposes of forced labour.

What is Recommended? If you use a labour broker ensure that they are not involved in any form of human trafficking. You can check this by asking for them to be regularly audited.

Human trafficking sounds like a far-fetched concept and something that happens in other parts of the world. The reality is, it takes many forms and can be found right here in South Africa. Migrant or foreign employees are particularly vulnerable because their legal status is not established and so they are easily influenced. The practice of fetching labour from distant places to come and work on the farm during harvesting is an activity that you need to monitor carefully.

Ensure that employees that are not from the immediate area and have been transported to the place of work – either by the employer or by a third party like a labour broker – have been informed about the terms of their employment before they start the journey.

Your Comments

THE FOLLOWING ACTS (OR SUMMARIES) MUST BE DISPLAYED IN THE WORKPLACE

What does the Law say? BCEA – Basic Conditions of Employment Act
OHSA – Occupational Health and Safety Act of 1993
EEA – Employment Equity Act of 1998

BCEA – Basic Conditions of Employment Act
OHSA – Occupational Health and Safety Act of 1993
EEA – Employment Equity Act of 1998
**What is Recommended?**

Part of the implementation of the company policies and procedures aimed at managing working conditions is the commitment to inform employees and operate transparently. Displaying national legislation in the workplace is directly related to this point and provides employees not only with a reference to find out more about their rights under law, but also demonstrates to employees the employers’ commitment to operating in line with the law.

**Your Comments**

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**THE FOLLOWING GOVERNMENT GAZETTES SHOULD BE AVAILABLE AT THE WORKPLACE**

**What does the Law say?**

- **BCEA – Basic Conditions of Employment Act**
- **Sectoral Determination 13 for Farm Employees**
- **LRA: Labour Relations Act**
- **ESTA: Extension of Security Tenure Act, 1997**
- **OHSA: Occupational Health and Safety Act of 1993**
- **EE: Employment Equity Act**
- **SDA: Skills Development Act**

**Your Comments**

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WHAT MUST I DO?

The following is a Checklist for you to complete as a guideline to compliance.

1. **Staff policy on bonded or forced labour**
   - You have a staff policy in place that states no bonded or forced labour is allowed.
   - The policy states that employees must enter voluntarily into the contract and can terminate a contract of employment.

2. **Right to terminate employment contract**
   - There is a process in place for employees to give notice if they wish to leave their employment.
   - Employees can voluntarily end their employment.
   - Employees are not fined if they leave the job.
   - Employees receive their final salary payment when they leave the job.
   - Job descriptions do not mention limits on employees’ movements.
   - All employees have a contract of employment which explains their rights and responsibilities, as well as notice periods and grievance procedures.
   - The contract of employment has been explained to employees in a language they can understand.
   - Loans or other financial agreements between the employee and the employer are not included in the contract of employment.

3. **Identity documents, and other original documents**
   - You only keep copies of ID’s or other original documents like driver’s licence, training certificates, etc.
   - You return all original documents to employees, within a reasonable time, once it has been copied.

4. **You may only make deductions or take deposits that are legal**
   - If you have made any deductions (including repayment of loans) from employee’s salaries:
     - The deductions are legal (UIF, PAYE).
     - Employees have signed a document setting out the amount of the deduction and given their consent.
     - Employees have a copy of this document.
     - Deductions are not more than the law allows.
     - There are no deductions for disciplinary reasons.
     - There are no deductions for essential items like protective equipment.
   - If you have taken a deposit:
The deposit is legal.
Employees have signed a document setting out the amount of the deposit and the terms of its repayment.
Employees have a copy of this document.
Deposits are reasonable and within the limits set by the law.

5. Loans
If you make a loan, the size and terms of repayment are within the limits set by the law.
You have a signed agreement with any employees who you have made a loan to.

6. Communicating the law to your managers and supervisors
Your managers and supervisors understand the law and requirements regarding deductions, deposits, loans, and keeping ID’s.
Managers and supervisors do not allow or encourage employees to have big debts through loans or other means.

7. Employees have reasonable freedom to move around the workplace

Checklist of requirements:
Fire exits, all doors and windows are unlocked during working hours.
Employees can leave the workplace freely during breaks and rest-time.
Employees can leave or move freely around the workplace.
Security guards are not allowed to limit the movement of employees or their right to leave the workplace at the end of the shift.
Security guards are not threatening to employees.
Dormitories are secure, but employees can leave them when they wish.
Dormitories (if provided) have individual secured lockers to store documents and other personal possessions.
Any restrictions on movement (for example, curfews) are reasonable.
There are no security procedures that unreasonably limit the free movement of employees.

8. Housing contracts and/ rental agreements
You have a housing contract or rental agreement with the head of each household.
The occupants of each house are listed.
The list of housing occupants is regularly updated.
The housing contract is in a language that the occupants understand.
The housing contract is explained to occupants in a language they understand.
Occupants receive a copy of the housing contract if requested.
9. **Foreign nationals**
   - You only employ foreign nationals if they have the correct legal documentation.
   - You only keep copies of the documents of the foreign nationals.
   - Foreign nationals are given the same rights as all employees.

10. **Summaries of laws displayed in the workplace**
    *You display the following laws in the workplace:*
    - Basic Conditions of Employment Act
    - Occupational Health and Safety Act
    - Employment Equity Act

11. **Laws are available in the office at the workplace**
    *You keep copies of the following laws at the workplace:*
    - BCEA
    - Sectoral Determination 13 for Farm Workers
    - Labour Relations Act
    - Extension of Security of Tenure Act (ESTA)
    - Occupational Health and Safety Act
    - Employment Equity Act
    - Skills Development Act

12. **Certificates of service**
    - Certificates of service are provided if an employee requests this when the job is terminated.
Of all labour rights, one issue that is certainly the most controversial and sensitive is that of child labour and young employees. Consumers do not want to think that the food or household goods that they buy might be the products of child labour.

Although labour rights vary by country almost everyone agrees that child labour cannot be condoned, but the issue can be more complicated.

According to UNICEF, an estimated 246 million children are working, and nearly three quarters of those children are working in hazardous places like mines, or working with dangerous tools like machinery and pesticides. This is unacceptable, but what about very poor families or parents who find it difficult to make ends meet without their children’s income? These situations can create a conflict of interest for the employer and the employee. The ethical code encourages employers to find sensitive ways to resolve cases like this.

South African legislation is clear on the principle of employment of children and young employees, offering guidelines for the employment of people between the ages of 15 and 17 years if this is a necessity. At an international level the issue is regarded as so important that it is “at the core of the ILO’s values.”
WHAT DOES THE CODE SAY?

1. Suppliers shall comply with: i) the national minimum age for employment; ii) or the age of completion of compulsory education; iii) or any otherwise specified exceptions; and shall not employ any person under the age of 15.

2. Suppliers shall not recruit child labour nor exploit children in any way. If children are found to be working directly or indirectly for the supplier, the latter shall seek a sensitive and satisfactory solution that puts the best interests of the child first.

3. Suppliers shall not employ young employees under 18 years of age at night, or in conditions which compromise their health, their safety or their moral integrity, and/or which harm their physical, mental, spiritual, moral or social development.

WHAT DOES SOUTH AFRICAN LAW SAY?

SECTORAL DETERMINATION 13: PART F(25)1-2  You may not employ a child who is under 15 years of age.

THE CHILD CARE ACT (1983)  In terms of this Act, the Prevention of Ill-Treatment and Prohibition of Employment of Certain Children specifically says that you cannot employ or provide work to any child under the age of 15 years.

CONSTITUTION, 1996 (NO. 108 OF 1996)  The Constitution provides that children under 18 have a right to be protected from work that is exploitative, hazardous or otherwise inappropriate for their age, detrimental to their schooling, or detrimental to their social, physical, mental, spiritual or moral development.

BASIC CONDITIONS OF EMPLOYMENT ACT, 1997  The Act provides several guidelines regarding the prohibition of employment and conditions of employment, with regard to children; these are included in the section below on Guidelines to the Law and Best Practice.

SOUTH AFRICAN SCHOOLS ACT, 1996 (ACT NO. 84 OF 1996)  The South African Schools Act requires every parent to ensure that the children in their care attend school up to the age of 15 or to Grade 9 (whichever comes first).
GUIDELINES TO THE LAW AND BEST PRACTICE

The following Guidelines describe various issues that fall within the scope of this Code principle and what the law requires you to do or not do. Under each issue there is also a guide to Best Practice which gives advice on how to improve conditions on your farm beyond the law.

MINIMUM WORKING AGE

What does the Law say?

The BCEA says you cannot employ a child:
- who is under the age of 15 years; or
- who is under the minimum school leaving age in terms of any law, if this is 15 or older;
- to do work that is inappropriate for a person of that age; and
- to do work that places at risk the child’s well-being, education, physical or mental health, or spiritual, moral or social development.

The Sectoral Determination 13 refers to employment of children between 15 and 17 years, where they may not:
- work after 6:00 p.m and before 6:00 a.m.;
- work more than 35 hours per week;
- work with any chemicals.

You have to keep a record of all children (between 15 and 17 years) being employed, including their name, birth date, address and the work they are doing.

Check the ages of all employees. Keep copies of ID’s on record and don’t employ anyone without an ID or clear evidence of their age.

Evidence of age If there is a lack of evidence of the age of an employee, it is up to you to prove that it was reasonable to believe after investigation, that the employee was not below the permitted age.

If you find anyone below the minimum working age working on your site, take immediate steps to terminate their employment and pay out whatever money is payable. The Code encourages a sensitive remedial approach to
dealing with children who are working because it is likely that their families depend on this to make ends meet. 
See under ‘What is Recommended?’ below.

What is Recommended?

It is highly recommended that you only employ people who are 18 years and older.

Help employees and their children where necessary to apply for ID’s so that you can be assured that you are not employing someone outside the law. For example, arrange with the Department of Home Affairs to come to your site to do bulk applications if there are enough people who need this.

If a young person (between the age of 15 and 17 years) is employed, make sure their parents know what the potential risks are.

Remedial help for children who are working to supplement family income
Sometimes children work because the family depends on the income for survival. By terminating the child’s employment, you stop this support. To remove a child from work in this situation creates two potential problems:
1) the family’s income is reduced, and
2) it is unlikely that terminating the child’s employment is going to stop him from finding other work.

However the law requires that no person under the age of 15 years should be employed.
The Code supports dealing with cases such as these in a sensitive and constructive manner.
Options for managing such cases include:
• Try and find someone (over the legal age limit) from the child’s family to replace the child so that the family does not lose the income;
• Discuss the problem with the child’s parents or guardian, explaining the legal requirements and the need for the child to attend school;
• If you think the child’s welfare is threatened, call a social welfare worker;
• If possible create other activities for children, for example, sports events, drama classes, visits to local libraries to encourage reading, etc, that are not costly but can often be supported by local NGOs.
Labour brokers: Check that the labour broker you are using to supply labour has copies of ID’s of their workforce to ensure you are not using any child labour on your site or that young employees are not being used to perform work that is against the law.

Your Comments

NEW RECRUITMENT OF CHILD LABOUR

What does the Law say? You cannot recruit child labour.

What is Recommended? Include this requirement in your agreement with your labour broker.

HOURS OF WORK

What does the Law say? No person between 15 and 17 years is allowed to work:
• more than 35 hours per week, or
• more than 7 hours per day
• before 6 a.m. or after 6 p.m., and
• no overtime is allowed.

Keep a separate record of young employees and their working hours.

What is Recommended? Make sure that if you employ young people, you have a separate contract for them which clearly indicates these terms and conditions.

Remember: Get a parent or legal guardian to endorse the contract on the young person’s behalf.
SCHOOL REQUIREMENTS

What does the Law say?  Parents have to ensure that the children in their care attend school up to the age of 15 or to Grade 9 (whichever comes first).

If a young person wants to work during the school term this must not interfere with their school-going activities.

What is Recommended?  Encourage parents to keep their children in school at least to school leaving age of 15 years (as required by law).

Encourage children to stay in school.

It is strongly recommended that you do not employ young people between 15 and 17 years as a rule. If a young person of this age wants to work, encourage them to go to school and to work in the holidays to earn extra money.

Provide transport if possible for children to get to school.

Provide after-school care if possible for children to study in the afternoons.

CHILDREN WORKING IN SCHOOL HOLIDAYS

What does the Law say?  The same laws that apply to all working young people apply to those wanting to find casual work in the holidays.

What is Recommended?  If you do provide small jobs to school children (over the age of 15 years) during the holiday periods it is good practice to notify your local Department of Labour office. Ask them to send an inspector around to assess the working conditions of the young employees.

PAY RATES

What does the Law say?  Young employees must be paid at least the minimum wage.
TYPE OF WORK – PROHIBITION OF HAZARDOUS WORK

What does the Law say?  
The new Regulations of the Occupational Health and Safety Act (OHSA) give guidelines on employment of young people. Young people between 15 and 17 years are not allowed to work with chemicals, pesticides, machines or in excessive heat or cold conditions, or to do dangerous (hazardous) work. They are not allowed to work at night. Young people can only be employed to do light duties.

The Regulations state that there must be a risk assessment of the workplace where the hazards are determined in order to protect young employees from health and safety risks. They also describe workplace conditions such as:
- respiratory hazards;
- working in elevated positions;
- working in cold and/or hot environments;
- working in noisy areas;
- use of power tools and cutting or grinding equipment.

There is little difference between the requirements for adults and young employees. These include the need for:
- adults and children to be given adequate training and protective clothing;
- adequate supervision;
- regular breaks.

What is Recommended?  
It is highly recommended to isolate young employees and provide them with work that can be done in one place. There are many hazards on a farm – just getting from one place to another can be dangerous – so have the young employees together in an area where they are easy to supervise.

If this is not possible or practical then assign a supervisor or manager specifically to this "team" and make sure that that person is aware of the work that can and can’t be done by young employees.
Be sure to include young employees in the induction training that you give to other employees so that they are aware of the risks present in the work area; that they know what to do in the event of an accident or emergency and that they know who to go to if they get injured.

Include the requirements of the Regulations in your Health and Safety Risk Assessment.

WHAT MUST I DO?

The following is a Checklist for you to complete as a guideline to compliance.

1. **Staff policy on child labour**
   - You have a staff policy in place that that covers child labour and young employees and the specific requirements of the *Basic Conditions of Employment Act* and the *Sectoral Determination 13* for farm employees.
   - All employees know what this policy states.
   - You have a robust system for checking and verifying the ages of employees.
   - You keep records of training and apprenticeship schemes where applicable.
   - You keep a list of young employees, their job roles in the workplace, the hours that they work and their remuneration.

2. **Employee records**
   - You keep a personal up-to-date record for each employee.
   - Each record contains the employee’s name, age, date of birth and job role.
   - The records specify the date of birth of each employee (using the following documents as evidence):
     - Identity documents with photo or birth certificate.
     - Medical examination prior to employment.
     - Other documents such as affidavits.
     - School leaving certificate.
   - The documents are all valid and genuine.
   - You can verify the fitness of young employees through regular (at least once per year) medical check-ups by a qualified physician.
   - No employee is under the age of 15 years
   - Young employees (between the ages of 15 of 17 years) have the consent of their parents or guardian, where possible, to be working.
Contracts of employment and job descriptions for young employees state the limitations on the nature of work allowed. Young employees working as part of a training course have information about the course on their records.

3. **Hazardous, night or overtime work, holidays**
   - You do not employ children (under the age of 15 years) in the workplace.
   - You do not employ young employees (between the ages of 15 and 17 years) in hazardous, night or overtime work or work that could interfere with their education.
   - There is a minimum of 12 hours night rest between shifts for young employees.
   - Young employees’ holidays are at least 3 weeks per year.
   - You inform the parents or guardians of the young employees of the hazards and risks linked to their children being employed in the workplace.

4. **Attending school**
   - Young employees are able to attend school.
   - Where possible, you provide safe transport for children to go to school and encourage parents to send their children to school for as long as possible.
   - Where possible, you provide after-school care facilities to support school learners in the afternoons.

5. **Risk assessment**
   - You have an up to date risk assessment that covers young employees and the potential areas of risk in the workplace.

6. **Vocational training schemes**
   - You have a policy regarding the use of vocational training schemes.
   - You have an agreement (if appropriate) with the school regarding any employees who are engaged on a vocational training programme.

7. **Remediation of child labour**
   - You have a policy and procedure in place to remedy any child labour found in the workplace.

8. **Labour brokers and contractors**
   - You have a list of labour brokers and/or contractors used by the site.
   - You have a written contract with the broker or contractor which includes commitments to prevent and prohibit the use of child labour.
   - You are able to review the practices of brokers or contractors to ensure that they are complying with child labour requirements for example, through checking audit outcomes done on the broker or contractor.
COMMON QUESTIONS AND ANSWERS

1. **How should I respond if employees want to bring their children to work during school holidays?**

   The law doesn’t expressly say anything about bringing children to work. However, you have a general duty towards your employees and other people in the workplace to provide a reasonably safe working environment.

   Therefore, if the children in the workplace cause an accident and you didn’t take reasonable steps to prevent this, you might be held responsible and legally liable. If the children suffer harm as a result of negligence by one of your employees you could also be held liable. It is far better to provide care facilities for employees’ children where the parents know they will be safe.

2. **Can I employ a child below the age of 15 during the child’s school holidays?**

   No, you cannot employ any child below the age of 15 years even if it is just regarded as a holiday job.

3. **Can children come and help their parents at work?**

   In the past it was a fairly common practice for a parent to bring his or her child to work, for example, to help with picking fruit, so that the child could help the parent to earn more piece work. The parent was held to be responsible for the child, and the child was not regarded as an individual employee.

   This practice is however against the law because it is the employer who gives the child permission to work (and is therefore ‘employing’ the child without a written contract) and the child is not even paid. In addition to being against the law, the employer also runs a big risk, for example, with work-related injuries and acting against health and safety laws. Children should not even be allowed in the workplace to play.

4. **How do I know if a child is old enough to work?**

   You should not employ any person without seeing their ID and making sure they are legally allowed to work.
The principle of freedom of association and the right to collective bargaining aims to protect the right of employees and employers, to join and act together to defend not only their economic interest, but also civil rights and freedoms such as the right to life, security, integrity, and personal and collective freedom.

The United Nations Global Compact (UNGC) says: “Freedom of Association implies a respect for the right of all employers and all employees to freely and voluntarily establish and join groups for the promotion and defence of their occupational interests.” Employees can exercise this right without interference or influence of employers or the state.

Collective bargaining is the result of freedom of association and is also an essential part of freedom of association. Collective bargaining is the process through which the employer and employees come together collectively to discuss the employment relationship, in particular, the terms and conditions of work. Collective bargaining can involve organizations other than the employer and the employees concerned, for example, trade unions who can undertake this process on behalf of their members. Equally, in many instances, employers’ organizations are appointed to represent the employer at a bargaining council.
WHAT DOES THE CODE SAY?

1. Employees have the right to join or form trade unions of their own choosing and to bargain collectively, without prior authorisation from suppliers’ management. Suppliers shall not interfere with, obstruct, or prevent such legitimate activities.

2. Where the right to freedom of association and collective bargaining is restricted or prohibited under law, suppliers shall not hinder alternative forms of independent and free employees’ representation and negotiation, in accordance with international labour standards.

3. Suppliers shall not discriminate against or otherwise penalise employee representatives or trade union members because of their membership in or affiliation with a trade union, or their legitimate trade union activity, in accordance with international labour standards.

4. Suppliers shall give employee representatives access to the workplace in order to carry out their representative functions, in accordance with international labour standards.

WHAT DOES SOUTH AFRICAN LAW SAY?

THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA ACT 200 OF 1993

The Constitution entrenches the right to freedom of association, the right to fair labour practices, collective bargaining as well as the right to strike.

LABOUR RELATIONS ACT (LRA)

LRA Chapter 2(4)

Freedom of Association
• Every employee has the right to participate in forming, and joining a trade Union and to participate in its lawful activities.

LRA Chapter 3 Part B(23)

Collective Bargaining
• Every employee has the right to fair labour practices, to organize and bargain collectively and to strike for the purpose of collective bargaining.
GUIDELINES TO THE LAW AND BEST PRACTICE

The following Guidelines describe various issues that fall within the scope of this Code principle and what the law requires you to do or not do. Under each issue there is also a guide to Best Practice which gives advice on how to improve conditions on your farm beyond the law.

**EMPLOYEES HAVE THE RIGHT TO JOIN AND FORM TRADE UNIONS**

**What does the Law say?**

You may not prevent unions from having reasonable access to the workplace for purposes of recruiting new members or to have access to their members.

Employees have the right to join a trade union or association of their choice and to participate in its lawful activities.

You cannot discriminate against employees based on their union membership, including recruitment, promotion, transfers and training.

Employers cannot take action that would prevent employees from becoming union members or making use of their union’s services.

**What is Recommended?**

Inform employees of this right as part of the induction process.

Include this right in the standard employment contract.

**Your Comments**

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**COLLECTIVE BARGAINING**

**What does the Law say?**

Employees have the right to bargain collectively.

**What is Recommended?**

Collective bargaining agreements must be updated and revised regularly by all parties.
Wage increases and benefits of employment must be negotiated through a fair process in which employees get a genuine opportunity to represent their interests. This should be done through either a representative union or a democratically elected body, such as an employee’s committee if there is no union.

Your Comments

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DISCRIMINATION

What does the Law say? You cannot discriminate against any employee because of his or her trade union membership.

What is Recommended? You should adopt an open attitude towards the activities of trade unions and their activities. What does this mean? In practice, it means not interfering with properly elected officials and allowing them to conduct their duties freely. It means engaging with them, using structures that have been agreed to, to discuss issues around working conditions and not avoiding meetings or being evasive. An important aspect of this particular requirement is also how your company policy is worded with regard to this principle. For example, it is much more helpful to have an “open door” approach rather than to follow bureaucratic procedures.

Employers and all managers should know the Labour Relations Act and how to apply it.

Your Comments

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ACTIVITIES OF UNIONS AND OFFICE BEARERS

What does the Law say? Any office-bearer or official of a representative trade union is allowed to enter the employer’s premises with prior notice
and approval in order to recruit new members or communicate with members and to hold meetings outside of working hours. The place and time must be arranged with management in advance.

They are also allowed to conduct their affairs without any interference.

Employee representatives should be freely elected without the interference of employers or other groups.

**What is Recommended?**

Employee representatives should be given time off to carry out their representative functions in the workplace.

Your agreement with the Union (if applicable), sets out all arrangements regarding access to members, meetings and facilities provided.

Provide support to employee representatives (unionised or not) through offering relevant training, time off and sharing of relevant information.

Union officials should be given permission, within reason (time and place to be arranged with management and not be disruptive to business operations), to have access to the employment premises and facilities.

**Your Comments**

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**BUILDING COMMUNICATION CHANNELS BETWEEN MANAGEMENT AND EMPLOYEES**

**What is Recommended?**

Be open to Unions on your worksite and allow representatives to have free access to employees on site.

Encourage an environment where employees feel they can freely communicate with management on workplace issues.

If there is no Union on site and/or employees do not want to join a Union, support an initiative to form an employee’s committee which is representative of employees.
Develop a dispute resolution mechanism that will allow employees to raise workplace issues with management. The industry Grievance Mechanism Toolkit is available on the website and can be used to support this process.

Provide training in managing conflict and how to deal with disputes in the workplace. Information on this is also in the Grievance Mechanism Toolkit.

In the induction process, tell employees they have the right to join a union. If there is no union and there is another form of employee representation (for example, an employees’ committee), explain who the employee representatives are.

During induction, explain where employees can go to if they have a problem and how the problem will be dealt with.

Make sure employees understand the process and structures for reporting issues and any notices describing these procedures should be in all languages used in the workplace.

Your Comments

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RECOGNISING TRADE UNIONS

What does the Law say?

The LRA deals with the criteria for recognising a trade union. It makes provision for ‘Organisational Rights’ for a trade union under certain circumstances. Where a registered trade union is seen to be ‘sufficiently representative’ (30% representation of the workforce), that trade union becomes entitled to Stop Order facilities, and the right to hold meetings, and to have conditional access to the site.

Where the representation of the union, as determined by signed stop order forms, exceeds 50% of the workforce, that union becomes entitled to the election of shop stewards or employee representatives, time off for training of shop stewards, and for the engagement in union activities, and the disclosure of information to enable the shop
stewards to adequately carry out their duties as employee representatives.

What is Recommended? While the LRA prescribes no duty to bargain with a non-representative trade union, best practice does support engagement with a union with less than 50% representation.

You must enter into a recognition agreement with a registered and majority representative trade union (50% +1) which creates certain rights, duties and obligations between the parties. A typical recognition agreement will include clauses dealing with: 1) The recognition of the right of that trade union to negotiate and represent the interests of its members; 2) Details regarding the nomination, election of trade union representatives, (shop stewards), and their rights to represent members in workplace grievance processes, disciplinary processes, or incapacity processes; 3) Details regarding the meetings between shop stewards and management; 4) Details regarding the annual negotiation on changes to terms and conditions of employment (wage adjustments, working hours, shift work); 5) Details regarding the handling of grievances and disputes arising in the workplace; 6) Details regarding right of access of the trade union and the right to hold meetings with their members in their own time; and 7) Extra time for officials.

Your Comments

ACTIVITIES OF UNIONS AND REPRESENTATIVES

What does the Law say? Union representatives should be freely elected without the interference of the employer or other groups. Union members should be allowed reasonable time off for union activities.

Union officials or employee representatives are allowed reasonable paid time off to conduct union activities – this includes training.
All employees are allowed to make use of union services without suffering any negative consequences from the employer.

**What is Recommended?**

Provide union representatives with private facilities to hold their meetings and other union activities.

**Your Comments**

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**FAIR NEGOTIATIONS**

Even if there is no trade union representing the majority of the workforce, you must ensure that a process of fair negotiations takes place to determine wage increases and terms and conditions of employment. A fair process means employees have a genuine opportunity to represent their interests at the negotiation table.

As a guide, use the following principles to manage the process:

1. Conduct constructive negotiations, and make a genuine effort to reach an agreement. Employees will quickly determine whether there is a genuine intention behind the negotiation process. If it is not genuine, employees will feel disillusioned and this could break the negotiation process down.

2. Avoid unjustified delays. Delaying the implementation of agreements reached can create distrust and frustration amongst employees and they are more likely to give up the process of negotiation if they do not see results or if deadlines are missed.

3. Respect any agreements reached and apply these in good faith. This is the pillar upon which the process of negotiation rests. If agreements are broken, people lose faith in the process and this can be very difficult to restore.

4. Allow sufficient time for both parties to discuss and settle disputes. Don’t rush the process. A sustainable resolution is one which has been carefully considered, discussed and calculated by both parties.
THE RIGHT TO STRIKE

What does the Law say? Employees have a right to strike if they follow the procedures in the LRA. These state that:
- the employer must be given notice of the intention to strike, and;
- a secret ballot must be held with union members to vote on the strike.

You cannot take illegal action against employees who have gone on a legal strike, for example, victimisation or disciplinary action.

You do not need to pay employees who have gone on a legal strike.

What is Recommended? When you receive notice of the intention to strike, use this as an opportunity to discuss the issue with the union to try and find a solution (rather than having a strike).

Your Comments

MEMBERSHIP FEES - PAYMENT TO UNIONS

What does the Law say? Where payments are made to unions through the payroll, these deductions can only be done with the employee’s written permission.

What is Recommended? Remember, any deduction that is non-statutory can only be made with the express permission of the employee concerned. Be sure, therefore, to get written permission from the union members to allow the deduction of the membership fee from the wage.

Your Comments
WHAT MUST I DO?

The following is a Checklist for you to complete as a guideline to compliance.

1. Right of employees to join a union or association of their choice
   - Employees have a right to join a trade union or form their own employee representative body in the workplace.
   - Employees have been informed of the union or alternative forms of employees’ representation in the workplace.
   - You encourage an alternative form of worker representation (e.g. informal employee groups, employee committees, etc) if unions are not active at the site.
   - You do not discriminate against trade union members or worker representatives.
   - The contract of employment includes a clause on the right of the employee to join a union or association.
   - Employees have been able to elect their representatives freely (without influence from management).

2. Deducting union membership fees
   - All deductions for union membership fees are legal.
   - Employees who are members of a union have signed a document stating the amount of the deduction and giving their consent.
   - Employees have a copy of this document.
   - Payslips record the deductions.
   - Deductions are paid to the union.

3. Unions are active at the employment site.
   - Evidence to prove this includes:
     - Notices about joining unions.
     - Meeting reports between management and the union.
     - Election reports.
     - List of union representatives (shop stewards) and their functions.
     - History of any strikes in the workplace.
     - Collective bargaining agreements that are fair and reasonable.

4. Evidence of other forms of employee representation if there is no union represented on the site.
   - There are other alternative forms of employee representation, for example, employees’ groups or committees.
   - There are minutes of meetings, reports, and/or public notices to the employees.
   - The group or committee is representative of the workforce, independent of management, and able to represent the views of employees effectively.
   - The group or committee is not used to prevent employees from joining a union.
5. **Union and/or employee association activities**

- Union members can conduct their activities without unreasonable restrictions and/or interference by management.
- Employee representatives can have reasonable time off to engage in union or employee committee activities and are paid for this.
- Facilities are provided for employees’ representatives to carry out their functions.
- Notices of union or employee representative bodies can be posted on notice boards on the premises.
- There is a procedure in place (for example, a grievance procedure) for employee representatives to use if they believe they have been unfairly discriminated against as a result of their union activities.
- Employee representatives are able to contact all of the employees that are working on the site.
- Employee representatives are provided with training on how to negotiate effectively with management and resolve disputes.
- Employees are able to communicate grievances to management, including through proper communication systems for resolving disputes.
- Employee representatives are able to negotiate and collectively bargain with management.

6. **Management knowledge of policies and procedures**

- Managers know the law of freedom of association and collective bargaining.
- Managers are trained in dispute resolution.
- There are policies and procedures in place for the recognition of trade unions or an alternative employee representative body.
- Records are kept of any contact or dealings with any unions and the status of these dealings.
- Independent third parties (such as the CCMA) are used to mediate any disputes over unfair treatment.
- There is no restriction on the establishment and growth of free, independent and representative employees’ organisations.
- Policies and procedures regarding employee representation are communicated to all employees (for example, a written policy, employee handbook, etc).
- There is a list of union or employee representatives and their functions available in a public place.
- There are election reports.
- There are meeting reports/minutes.
COMMON QUESTIONS AND ANSWERS

1. Can I refuse access to union officials on my property?
No, not if the correct notice was given (in terms of the Recognition Agreement) and the time and place will not disrupt the business. However normal meetings should be held outside of working hours.

2. Do employees who are office bearers of unions qualify for extra leave?
Yes, although the amount of leave is not specified, leave over and above the agreed normal leave days (minimum 15), should be given to employee representatives.

3. Can I be represented by a labour consultant at the CCMA?
Yes, but only if you are a member of a registered employers’ organisation and by an official of that organisation.

4. What is a workplace forum?
A Workplace Forum is not a legal body and does not negotiate employment conditions such as wages. It can only be established if a registered union applies to the CCMA and if an employer employs more than 100 employees. CCMA Info Sheet: Workplace Forums

5. What information am I required to give to a union (which is recognised in the workplace) if they request this?
You must supply any information that will allow the Union to effectively engage in consultations or collective bargaining. However certain information, such as personal or confidential information is excluded from this requirement. Labour Relations Act, Chapter 5 ((89)(1)(2a, b, c, d))

Labour Relations Act, Chapter 3(16)
South Africa’s history has created deep patterns of inequality. One of the ways in which the government has tried to address the high levels of inequality in the South African labour market, is by passing various laws such as the Employment Equity Act (EEA) of 1998, which promote equity in the workplace by prohibiting unfair discrimination and requiring employers to put affirmative action measures in place. The aim of these measures is to have equal representation of designated groups (black people, women and disabled people) in all categories and levels of work in the workplace. There are various opportunities for promoting equality in the workplace including recruitment and hiring, pay, access to training and access to promotion.

This principle also deals with the need for employers to take all the necessary precautions to ensure that employees are not treated in a harsh or inhumane way in the workplace. Harsh or inhumane treatment includes physical or mental abuse or discipline, intimidation, sexual harassment, sexual abuse, corporal punishment, or verbal abuse of employees. It also includes any threat of such treatment.

In terms of the law employers are required to have disciplinary and grievance rules and procedures in place to deal with issues of non-compliance.
WHAT DOES THE CODE SAY?

1. Suppliers shall respect equal opportunities in terms of recruitment, compensation, access to training, promotion, termination or retirement.

2. Suppliers shall not engage in, support or tolerate discrimination in employment including recruitment, hiring, training, working conditions, job assignments, pay, benefits, promotions, discipline, termination or retirement on the basis of gender, age, religion, marital status, race, caste, social background, diseases, disability, pregnancy, ethnic and national origin, nationality, membership in employee organisations including unions, political affiliation, sexual orientation, or any other personal characteristics.

3. Suppliers shall treat all employees with respect and dignity.

4. Suppliers shall base all terms and conditions of employment on an individual’s ability to do the job, not on the basis of personal characteristics or belief.

5. Suppliers shall not engage in or tolerate bullying, harassment or abuse of any kind.

6. Suppliers shall establish written disciplinary procedures and shall explain them in clear and understandable terms to their employees. All disciplinary actions shall be recorded.

WHAT DOES SOUTH AFRICAN LAW SAY?

A. Discrimination

SA CONSTITUTION Everyone is equal before the law and has the right to equal protection and benefit of the law.

Equality includes the full and equal enjoyment of all rights and freedoms.
To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken, according to our Constitution.

THE EMPLOYMENT EQUITY ACT (EEA) The EEA aims to create an environment of equality and non-discrimination in the workplace.
It gives grounds for non-discrimination in the workplace including, race, gender, sex, pregnancy, birth, marital status, ethnic origin, social origin, colour, family responsibility, sexual orientation, age, disability, religion, HIV status, conscience, belief, culture, language, political opinion.

A case can be referred to the Labour Court if an employee believes that an employer is discriminating against him or her on any of the above grounds in order to:
- demote or not promote the employee;
- block the employee from having access to training and development;
- make an unfair distribution of employee benefits to the employee.

The EEA also sets out regulations on affirmative action in the workplace to create equal opportunities for all employees and for people applying for jobs. An employer, who employs over 50 people or has a turnover of over R2 million (Agriculture), must take steps to include and advance previously disadvantaged people in their workforce. So, when a company makes new appointments or promotes staff, it must give ‘preferential treatment’ to properly qualified people who are from one of these previously disadvantaged groups. In other words, formal qualifications or relevant experience are not the only reasons for deciding whether a person is suitable for a job or not.

Employers must prepare and implement an Employment Equity Plan, which will help to promote employment equity in their workplace.

An employer who employs fewer than 150 employees must submit its report to the Director-General every 2 years on the first working day of October. An employer who employers 150 or more employees, must submit a report every year on the first working day of October.

**LABOUR RELATIONS ACT, CHAPTER 2(S)**

Protection of employees and persons seeking employment

No person may discriminate against an employee for exercising any right given in the Act.

**Protection of Employees’ Rights**

Every employee has the right to:
- make a complaint to a trade union representative, a trade union official or a labour inspector concerning any alleged failure or refusal by an employer to comply with this Act;
- discuss his or her conditions of employment with his or her fellow employees, his or her employer or any other person;
• refuse to comply with an instruction that is contrary to this Act or any Sectoral Determination;
• refuse to agree to any term or condition of employment that is contrary to this Act or any Sectoral Determination;
• inspect any record kept in terms of this Act that relates to the employment of that employee;
• participate in proceedings in terms of this Act;
• request a trade union representative or a labour inspector to inspect any record kept in terms of this Act and that relates to the employment of that employee.

Every trade union representative has the right, at the request of an employee, to inspect any record kept in terms of this Act that relates to the employment of that employee.

**PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT, 2000 (4 OF 2000)** This Act prevents and prohibits unfair discrimination and harassment; promotes equality and eliminates unfair discrimination; and prevents and prohibits hate speech.

**B. Harsh and inhumane treatment**

**SA CONSTITUTION** This Bill of Rights protects the right of people to be free from all forms of violence from either public or private sources, and not to be treated or punished in a cruel, inhuman or degrading way. It also protects the right to fair labour practices.

**OCCUPATIONAL HEALTH AND SAFETY ACT** The Occupational Health and Safety Act (OHSA) requires employers to provide their employees with a place of employment that is safe and free from hazards that may harm employees. A safe workplace also means an employer, who becomes aware of threats or intimidation or other types of violence, must take steps to implement a workplace violence prevention programme.

**CODE OF GOOD PRACTICE ON HANDLING SEXUAL HARASSMENT** The objective of this Code is to remove sexual harassment in the workplace and to provide for appropriate procedures to deal with matters involving sexual harassment. Employers should have a policy and procedure in place to deal with these issues and to drive a workplace that is free from sexual harassment where employers and employees respect one another’s integrity and dignity, their privacy, and their right to equity in the workplace.
GUIDELINES TO THE LAW AND BEST PRACTICE

The following Guidelines describe various issues that fall within the scope of this Code principle and what the law requires you to do or not do. Under each issue there is also a guide to Best Practice which gives advice on how to improve conditions on your farm beyond the law.

RECRUITMENT

What does the Law say? Medical testing of an employee is only allowed when legislation requires testing or when this is justifiable for various reasons. HIV testing without the consent of the person is not allowed unless the Labour Court has agreed to this.

When you are advertising a job be careful not to discriminate, for example, by including a requirement about age, gender, etc, unless this is a specific requirement for the job being advertised.

See [website for an example of a Recruitment and Selection Policy](#).

What is Recommended? You should have a company policy on recruitment which includes the principle of non-discrimination and should be driven by your Employment Equity (EE) Plan.

You should recruit people according to your EE Plan.

Advertise jobs in areas where you will get a more diverse response from people.

When you are interviewing a person do not use language that could be seen to be discriminatory, for example, ‘Are you pregnant’ or ‘Do you plan to have children in the next year?’ if this has no relation to the job.

Your Comments

EQUAL PAY FOR EQUAL WORK

You must pay equal pay for equal work; there can be no discrimination regarding remuneration and benefits for
people performing the same job irrespective of gender, permanent or seasonal employees.

What is Recommended? If you have cases where work is not paid equally, bring the lower wage into line with the higher wage to ensure that employees are being paid the same amount for the same work.

You should have a formal job grading system and remuneration policy in place to manage this issue in the workplace. People are then paid according their specific pay grade which is determined by clear measurables such as the job specification, length of service, performance and so on.

Your Comments

TRAINING AND BUILDING COMPETENCY

What does the Law say? You must allow all employees to have equal access to training and development opportunities, regardless of race, gender, position, etc.

You must have a Skills Development Plan in place which defines the training programme for the year; you can claim back from the Skills Development Fund for a portion of the training costs.

Also see Chapter 11 for information on how to claim back from the SDF.

Keep training records for all employees, preferably on a data-system.

What is Recommended? Training should be done during working hours and free of charge to the employee.

Keep copies of training certificates on record and give original documents to employees.

Keep a data base of employees and their training record.
PROMOTION

What does the Law say?  
Allow all employees to have equal access to opportunities for promotion.
When opportunities arise for promotion there should be no discrimination in allowing people to apply and be considered for positions.

What is Recommended?  
Selecting people for promotion should, as far as possible, be done in an open and transparent way.
Transformation should be driven from the bottom up so encourage employees to receive training that will enable them to be ready for opportunities for promotion.

Your supervisory / management level should reflect your workforce.

Your Comments

TERMINATION

What does the Law say?  
There can be no discrimination in the application of disciplinary procedures and termination of employment.
Grievance and disciplinary procedures must be in place and employees must understand how they work.

Your Comments

What does the Law say?

Employees who become disabled during employment should, where practicable, be re-integrated into work.

If an employee is, or becomes a person with a disability, you should keep in touch with the employee and where practical, encourage early return-to-work. This may require vocational rehabilitation, transitional work programmes and where appropriate, temporary or permanent flexible working time.

If an employee is frequently absent from work for reasons of illness or injury, you should consult with him to assess if the cause of the illness or injury is a disability that needs you to make an alternative plan. If practical, you should offer alternative work, reduced work or flexible work placement, so that employees are not forced or encouraged to apply for benefits if they could, with reasonable effort, continue to work.

If an employee becomes disabled while working for you, you need to try and find a reasonable alternative to allow the employee to continue working for you.

Also see Accidents and the COIDA Act on page 79.

What is Recommended?

You should have a policy on People with Disabilities which states there is no unfair discrimination against a person on grounds of their mental or physical disability.

Where practicable, make sure the workplace site is suited to people in wheelchairs. It should be noted here that a working farm is a high risk environment and is not necessarily a suitable environment for people with restricted or limited mobility. It might therefore be completely appropriate to restrict access to certain areas to authorized personnel.
**HIV AND AIDS**

**What is Recommended?**
You should have a policy on HIV Aids in place.

Implement a holistic HIV/Aids programme that deals with:
- HIV testing;
- Prevention;
- Treatment and care;
- Employee benefits.

There are professional organisations that provide a holistic service. *See website for an example of a HIV/Aids Policy.*

**Your Comments**


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**PREGNANCY AND MATERNITY**

**What does the Law say?**
You cannot discriminate against a person on grounds of her being pregnant.

You must allow women off for 4 months maternity leave. While the employee is away, you can temporarily fill her place but you must keep the position (or similar position) open for her when her leave is over.

**What is Recommended?**
Do a risk assessment of the work being done by a pregnant woman to ensure that she, or her unborn child, is not being exposed to any risks.

**Your Comments**


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RETIREMENT

What does the Law say? You should not employ pensioners, who are receiving a state pension, on a full time basis.

What is Recommended? The same retirement age should apply to all employees. You should inform employees of the retirement age and arrangements for pensioners, such as rights to housing.

When employees reach retirement age, provide assistance in applying for state pensions.

Your Comments

DUTY TO CREATE A SAFE WORKING ENVIRONMENT

What does the Law say? You have a duty to create a safe working environment which includes preventing and dealing with incidents of violence and sexual harassment.

You must have disciplinary and grievance procedures in place to deal with specific incidents.

You must explain to all employees how the health and safety procedures work.

What is Recommended? Draw up a statement of intent that says what behaviours will not be tolerated in the workplace, such as harsh physical treatment, bullying (mental and physical), and sexual harassment. Use this to explain the responsibilities of supervisors and managers and the procedures for managing complaints.

Put this statement up in a public place.

Create an environment where employees feel safe and cared for by implementing systems that facilitate and create a safe environment. Often, in cases involving abuse, the person who is being abused is unable or unwilling to voice their problem – this should be considered when developing a response. There are different
ways to deal with people's fears, for example, by creating a whistle-blowing facility that employees are able to use anonymously, or provide access to alternative options for raising complaints. Whatever grievance mechanism is put in place, it should be seen to be independent of interference by members of management – e.g. supervisors, foremen, team leaders, etc.

You can use the industry's Grievance Mechanism Toolkit to help you put the correct procedures in place to deal with issues like this.

Your Comments

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**PHYSICAL ABUSE**

**What does the Law say?**

Physical abuse is a criminal offence and you should therefore lay a criminal charge against anyone who is responsible for physical abuse.

Take disciplinary action against a person guilty of physical abuse in the workplace.

Keep records of all cases.

**What is Recommended?**

The wellbeing and safety of employees is the direct responsibility of the employer. It is therefore very important that you create and maintain the environment to guarantee that this right is upheld. You should raise general awareness amongst employees about this as well as develop the skills of the managers to deal with any forms of violence in the workplace. Cases involving physical or verbal abuse often create opportunities for parties to respond in an irrational way which only serves to make matters worse.

Your Comments
VERBAL ABUSE

What does the Law say?  This is regarded by law as workplace violence. Take disciplinary action against a person who is responsible for any form of verbal abuse.

What is Recommended?  Verbal abuse is a common problem and includes people swearing at each other or using discriminatory or derogatory terms when speaking to each other. As the employer you need to set the tone here and ensure that both employees and management understand that verbal abuse will not be tolerated.

Your Comments

GRIEVANCES

What does the Law say?  Manage grievances in terms of the LRA and BCEA.

What is Recommended?  Use the industry’s Grievance Mechanism Toolkit to manage grievances in the workplace in a more holistic way. The Toolkit gives advice on the training that needs to take place on using and implementing a grievance mechanism. It looks at both informal and formal procedures for dealing with grievances.

Explain to all employees how the grievance procedure works, most importantly, how they must lodge a grievance.

Put the procedure for taking up grievances in a public place and ensure employees know who to approach if they have a grievance. It is far better to deal with a problem in its early stage rather than wait until it becomes a negative force in the workplace.

Your Comments
DISCIPLINARY PROCEDURES

What does the Law say?
Manage disciplinary issues using a proper *disciplinary procedure*. Discipline should be managed according to the LRA and BCEA.

Keep records of all disciplinary proceedings.

What is Recommended?
Disciplinary issues *must* be documented – even verbal warnings. Keep these on file for each individual for a minimum period of 3 years.

The disciplinary policy and procedure must be consistently applied.

Explain to employees, in a home language, how the disciplinary procedures work as part of their induction.

Your Comments
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________________________________________

SEXUAL HARASSMENT

What is Recommended?
A specific policy on sexual harassment as an unfair labour procedure should be part of the staff policies and explained to all employees.

Provide training for management and employees on the meaning of sexual harassment, the implementation of the sexual harassment policy and how to deal with issues that arise. *See website for an example of a Sexual Harassment Policy* ❥

Your Comments
________________________________________

________________________________________
WHAT MUST I DO?

The following is a Checklist for you to complete as a guideline to compliance.

1. **Policy**
   
   You have policy documents on the following:
   
   - Recruitment and employment
   - Pay rates
   - Promotion
   - Access to training
   - Equal opportunities
   - Discrimination
   - Health and Safety
   - Physical abuse and discipline
   - Abusive tone or language
   - Other forms of violence and intimidation in the workplace
   - Termination and retirement
   - Sexual harassment
   - HIV and AIDS

2. **Equity Plan**
   
   - You have an Employment Equity Plan (EEP) in place (if you employ more than 50 employees).
   - You submit an Employment Equity Report to the Director General (every 2 years if you employ less than 150 staff, or every year if you employ more than 150 staff).
   - You appoint a senior manager to implement and monitor your EEP.
   - You make resources available to drive this EEP.

3. **Working conditions**
   
   - Employees are paid equally for the same jobs.
   - All employees employed in the same roles have the same terms and conditions.
   - Employees all receive the benefits and other rewards to which they are entitled.
   - No deductions are made for disciplinary reasons.

4. **Pregnant employees**
   
   - Records are kept of maternity leave taken.
   - Employees can take their full maternity leave and have the same or similar job to return to when the leave is over.
5. **Record-keeping**

   *Employee's records include:*
   - Record of all employees indicating gender, race, employment level and remuneration.
   - Training records.
   - Employment contract.
   - Attendance records.
   - Termination records.
   - Records of action taken in disciplinary matters and where grievances are lodged.

6. **Training and development**

   *You keep training records that are signed by employees and dated.*

   - The training records include training on:
     - Discrimination policy.
     - Disciplinary and grievance policies and procedures.
     - Equal opportunities policy.
     - Equality of treatment policy.

7. **Communication with employees (including permanent and seasonal employees)**

   *Employees are aware of their rights and responsibilities in relation to the policies and procedures (listed above under point 1).*

   - Employees understand how to use the disciplinary and grievance procedures in the workplace.
   - Employees know how to lodge a grievance in terms of the grievance procedure.
   - Grievances are dealt with effectively by management according to the grievance mechanism.
   - You communicate the methods of how to lodge a grievance to all employees.

8. **Management knowledge of policies and procedures**

   - Managers, supervisors and anyone in a position of authority, are aware of the law and the company policies on discrimination, harassment and abuse.
   - You have implemented a system as part of your grievance procedure, which allows employees to lodge a complaint in a non-threatening environment.
   - Any advertisement to recruit a new member of staff is compliant with the law on non-discrimination.
   - You do not require people to have a pregnancy test as part of the recruitment process.
6.6 COMMON QUESTIONS AND ANSWERS

1. **During an interview for recruitment, can I ask a female applicant to tell me whether she is likely to get married soon?**

   No, such a question is not relevant in a job interview and would be seen as discriminatory. Only questions that directly relate to the applicant’s ability to perform in the job are allowed.

2. **What is the difference between direct and indirect discrimination?**

   - **Direct discrimination:** This is when an individual is not favoured, only because of something like his age. For example: A person who is 46 yrs old applies for a job. He satisfies all the criteria laid out for the job but his candidate is rejected because he is regarded as too old.
   
   - **Indirect discrimination:** This is when the same conditions or practices are imposed on all employees, with the result that one group is negatively affected more than another group. For example, you must be married, must be 1.8 m tall, and must be able to attend Friday meetings.

3. **An employee on my farm has reported that one of my managers has been calling her ‘liefling’? Is this sexual harassment?**

   Yes this is sexual harassment. Although some people might see this as normal practice or just a mild transgression, any act that is offensive to a person is regarded as harassment.

4. **I advertised for a job for a tractor driver for my farm. A woman has applied for the tractor-driver job that I advertised but I don’t think women are suitable for this type of work. Can I refuse to give her the job?**

   No, not if she qualifies in all other aspects for the job.

5. **I want to employ a manager and according to my EE plan this must be a person of colour. How do I advertise such a job and requirement without it looking like discrimination?**

   You must say that you are an equal opportunity employer, and if applicable, state that preference will be given to applicants from designated groups, i.e. only affirmative action candidates will be considered.
6. What is my responsibility as an employer if there is a threat of violence in the workplace?

You have a legal duty and a moral obligation to provide a safe workplace. You therefore need to have a policy and procedure in place to prevent violence from occurring in the workplace. These policies may include how you identify the potential for violence, the procedures to prevent the violence from happening, and how you will respond to violent incidents if they happen.

7. An employee physically abused his wife over the weekend. What is my responsibility in this case because the incident took place out of working hours and in the privacy of the employee’s home on the farm?

Cases of assault should be referred to the Police where a charge should be laid by the assaulted person. As the employer you have little say where the abuse has taken place in the privacy of an employee’s home. However you can take the following actions:
- Get a social worker or a welfare organisation involved in a process of counselling the family concerned.
- At the same time implement disciplinary procedures against the offending employee.

8. How should I manage alcohol abuse as this can lead to physical abuse and poor performance?

Alcohol and drug abuse is a big issue in our society, including on farms. Apart from the damage to individuals, families and societies as a whole, absenteeism and poor productivity also result from alcohol abuse and cost the industry many millions of rands. As a responsible employer you should develop a response to deal with alcohol abuse and specifically, the consequences of this.

If an employee is under the influence of alcohol (or drugs) in the workplace then disciplinary action should be taken against the person in terms of the disciplinary code of the company. If the problem continues with the same employee, you should implement ‘Incapacity’ procedure rather than procedures for ‘Misconduct’. This will investigate the employee’s capacity to be able to perform his job as required and should look at constructive ways of assisting the employee with the problem.

If the alcohol abuse takes place outside of the workplace, for example on weekends, then it will likely have an impact on the employee’s performance. It is therefore advisable that you try to remediate the situation through providing professional counselling (social welfare), raising awareness about the hazards of alcohol abuse or, in severe cases, applying some form of sanction (for example implementing disciplinary procedures). In any event, it is important that action is taken and that workers understand that from a company standpoint, alcohol abuse is unacceptable and will be dealt with appropriately.
All employers have a legal duty to ensure, as far as is reasonably practicable, that the work environment is safe and will not be a risk to the health of the employees.

Where there are possible dangers the employer must inform employees of these dangers, how they may be prevented, how to work safely and provide other protective measures for a safe workplace.

However, health and safety (H&S) is not only the responsibility of the employer. Both employers and employees must take responsibility for dealing with possible H&S risks in the workplace through communication and cooperation. For example, there should be a close working relationship between the H&S representatives who should inspect the workplace regularly and report to a H&S committee, who in turn may submit recommendations to the employer. Both parties must take responsibility for identifying possible risks and developing control measures to make the workplace safe.
WHAT DOES THE CODE SAY?

1. Suppliers shall provide safe, secure and clean conditions in all work and residential facilities and shall establish and follow a clear set of procedures regulating occupational health and safety.

2. Suppliers must take adequate steps to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment. Appropriate and effective personal protective equipment and clothing shall be provided as needed.

3. Suppliers shall provide access to adequate medical assistance and facilities.

4. Suppliers shall provide all employees with access to clean toilet facilities and to drinkable water and, if applicable, sanitary facilities for food preparation and storage.

5. Suppliers shall ensure that residential facilities for employees, where provided, are clean, secure and safe.

6. Suppliers shall assign the responsibility for health and safety to a senior management representative.

7. Suppliers shall provide regular and recorded health and safety training to employees and management, and such training shall be repeated for all new or reassigned employees and management.

8. Suppliers shall provide adequate safeguards against fire, and shall ensure the strength, stability and safety of buildings and equipment, including residential facilities where provided.

9. Suppliers shall undertake sufficient training of employees and management in waste management, handling and disposal of chemicals and other dangerous materials.
WHAT DOES SOUTH AFRICAN LAW SAY?

**THE OCCUPATIONAL HEALTH AND SAFETY ACT 85 OF 1993 (OHSA)**

Employers must ensure that the workplace is free of anything that can cause injuries, damage or diseases. Where it is not possible to remove the potential danger, the employer must make the employees aware of the dangers, and how they can avoid it. The employer must enforce health and safety regulations.

Employees must take reasonable precautions over their own health and safety at work. They must follow precautions and rules about safety and health. They must report any unsafe circumstances or accidents as soon as possible to the safety representative or supervisor.

*Specific rules and regulations under the OHS Act are included in Guidelines to the Law and Best Practice.*

**COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT 61 OF 1997 (COIDA)**

The Compensation for Occupational Injuries and Diseases Act, 1997 (COIDA) offers protection to employees if they are injured, or become ill or die in the course of carrying out their duties. COIDA does this by paying benefits to the employee or their dependants. The injury, illness or death must arise from an accident in the workplace.

*Specific rules and regulations under COIDA are included in Guidelines to the Law and Best Practice.*
HEALTH AND SAFETY ENVIRONMENT, MANAGEMENT AND SYSTEMS

What does the Law say?

You must have a policy that sets out how you manage health and safety.

Appoint a senior management representative to be responsible and accountable for H&S. The H&S officer serves along with the H&S representatives on the H&S committee and has to meet at least every three months. The H&S officer is usually also responsible for risk assessments and audits.

You must ensure the health, safety and welfare of employees by taking adequate steps to minimise the risks to which they are exposed. The workplace must be free of anything that can cause injuries, damage or diseases. Where it is not possible to remove the potential danger, you must make the employees aware of the dangers and how they can avoid it.

It is the responsibility of every CEO to ensure that the OHSA is enforced.

Employees must likewise take reasonable precautions over their own health and safety at work. They must follow precautions and rules about health and safety. They must report any unsafe circumstances or accidents as soon as possible to the H&S representative or their supervisor.

If an employee is in a dangerous situation, he must be able to remove himself without fear of being disciplined or losing his job.

The general health and safety duties of the employer are to:

• Inform all employees of the dangers in the workplace through relevant training;
• Make sure that someone who knows the workplace is supervising operations to ensure the safety of the employees;
• Keep the workplace and emergency exits clear so that employees can escape from danger when necessary.
Follow all administrative procedures including keeping minutes of H&S meetings, appointment letters, delegated authorities, incident reports and training records.

Make sure your registration in terms of COIDA is up to date and all documentation for reporting work related accidents is in place.

Laws on health and safety must be displayed in the workplace.

You must display a copy of the Health and Safety Policy, signed by the CEO, in the workplace where employees normally report for service.

What is Recommended?

The owner, manager or CEO of the farm or packhouse must be public in his support of the health and safety programme and play an active role in driving a 100% safe working environment as one of the goals of the organisation.

The senior management representatives should hold regular consultations between management, employers, H&S representatives and employees to address ways of minimising risks in the workplace.

Remember to include employees and their families that reside on the farm in your H&S management system, even though they are not part of your work force, they are exposed to some of the same risks, for example, exposure to chemicals, such as pesticides.

Your Comments

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RISK ASSESSMENT

What does the Law say?

A health and safety risk assessment is a careful examination of the workplace to assess what could cause harm to people. The risk assessment should look at all hazards (for example, fire, chemicals, dust, noise, heat, cold, slips and trips) and then assess the level of risk (the chance, great or small, that someone will be harmed by the hazard). This review should cover all areas of the production site. Once a risk has been identified, an action plan should be formulated to set out what will be done in that area to remove or minimise the risk and to protect employees. The action plan should state what will be done, by whom and by when.

There are different health and safety risk assessments that you will have to conduct at different times in your workplace. Generally a baseline (overall) risk assessment is completed with a H&S audit at least once every 12 – 14 months.

You should also conduct an initial or baseline risk assessment before you implement any new process or introduce any new substance or equipment into the workplace or with every construction project. This should then form part of your ongoing risk assessment process.

Conduct risk assessments as follows:

• Walk around the site with H&S representatives;
• Work through the Risk Assessment Sheet and identify where there are risks and what can be done to remove or reduce the risks;
• Agree on who will take the necessary action and a target date for completion;
• Check that the actions have been completed.

What is Recommended?

A comprehensive risk assessment is the blueprint to an effective H&S management system/programme. The risk assessment determines the actions and interventions that management takes to safeguard the health, safety and welfare of its employees. You should therefore take time to compile your risk assessment, involve the H&S representatives in drawing it up and regularly update it. To keep it current, consider including the risk
assessment as an agenda item on the H&S committee meetings to discuss performance against the guidelines in the risk assessment. Any changes should be authorized by the appointed management representative, (for example, the Managing Director, CEO or owner) and communicated through the H&S representatives to the employees. Make sure that you include seasonal employees in your communication plan as the H&S representatives are normally permanent staff members.

Train H&S representatives in how to use the Risk Assessment Sheet so they can use this to monitor health and safety on a daily basis.

**HEALTH AND SAFETY REPRESENTATIVES AND COMMITTEES**

**What does the Law say?**

H&S representatives should be nominated for the workplace. There should be one H&S representative for every 50 employees; or at least two H&S representatives for every 100 employees. So, if a site has 110 employees, three H&S representatives are needed.

In every workplace where there are two or more H&S representatives there must also be a H&S committee. The committee must deal with all health and safety issues that affect employees. A H&S committee should be made up of managers, supervisors and employees, but management may not number more than the H&S representatives on the committee.

The functions of H&S representatives are regarded as part of their normal duties as employees. All activities relating to the appointment, functions and training of H&S representatives must take place during normal working hours. The functions of H&S representatives are:
• Do regular health and safety checks by means of health and safety audits;
• Identify potential hazards in the workplace and report these to the H&S committee;
• Report incidents and complaints regarding health and safety in the workplace and give a written report;
• Inspect possible areas in the workplace where there could be health and safety problems;
• Give advice to the employer and H&S committee regarding health and safety issues in the workplace; if this is not taken up, the H&S representative can report this to the labour inspector;
• Inspect the workplace after notifying the employer of the inspection;
• Attend H&S committee meetings.

The H&S committee must meet at least every three months.

What is Recommended?  
Elect a H&S representative for every division, rather than for every 50 employees.

Introduce a mentoring programme between H&S representatives and the H&S manager/officer to support communication and a holistic approach to managing health and safety in the workplace.

Your Comments

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TRAINING

What does the Law say?  
Provide induction training on health and safety every year for all employees, including seasonal employees.
All new employees, or if an employee changes jobs or roles, should receive health and safety training particular to that division and/or job.
Train people in fire drills.
Record the training that is given.
Train H&S representatives on their responsibilities in the workplace.
Train H&S representatives in First Aid, fire fighting and emergency procedures.
Train people in how to use chemicals, dangerous substances, machinery or equipment.
Train people on how and when to use personal protective equipment and clothing.

What is Recommended?
Provide ongoing information sessions to all employees on how they can take personal responsibility for their
own health and safety in the workplace as well as for those around them.
Put up posters that reinforce this message.
Training is a good way to motivate people, additionally, it provides extra cover for employers when key staff
members are absent or on leave.

Your Comments

TOILET FACILITIES, DRINKING WATER AND FOOD STORAGE IN THE WORKPLACE

What does the Law say?
Provide access to clean toilet facilities, drinking water and hand-washing facilities in the workplace as required by
law. If appropriate, provide sanitary facilities for food storage.
SANS10400 – Part P is the standard to refer to for guidance on the provision of sanitary facilities. As a guide, an
employer should provide one toilet and one hand wash basin for every 30 employees and these should be provided
separately for each sex.
You should provide clean, safe drinking water in sufficient quantities for all employees. (These should also be
provided when working in the orchards).

What is Recommended?
Note that not all water available on a farm or in a pack house is safe to drink. You should therefore clearly
demarcate drinking and non-drinkable water through use of signage or different colour taps/piping.
### PROTECTIVE EQUIPMENT

**What does the Law say?** You must provide employees with protective clothing and equipment where necessary. This should be free of charge. Protective clothing can include clothing, face masks, ear plugs or goggles.

**What is Recommended?** According to the Occupational Health and Safety Act (OHSA), it is the responsibility of the employer to provide protective clothing and equipment and also to manage and enforce its use. H&S representatives should be responsible for monitoring this and should report any non-compliances to management immediately. These issues should form part of the discussions during the H&S committee meetings and minutes kept of the outcomes of these discussions, so that performance can be reviewed and improvement measured.

**Your Comments**
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### SAFETY SIGNS

**What does the Law say?** Put up safety signs in all relevant languages.

**What is Recommended?** Include an explanation of the meaning of the signs used in your health and safety induction training session. In some instances, especially where literacy levels might be low, employees might misinterpret the sign and thus miss its meaning. Hold refresher courses during the season and ask employees specifically about the meaning of the various signs that they see around them – this is also a good way to measure the effectiveness of your induction training.

*Symbolic safety signs can also be used.*

**Your Comments**
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FIRE

What does the Law say? South African Building regulations require any owner of a building to install sufficient fire extinguishers and hoses (according to the regulations). Make sure the fire extinguishing equipment complies with SABS specifications and maintain and service these (at least on a yearly basis by an SABS registered company). Failure to do this is an offence in terms of these regulations. The owner of the building must also ensure that there are adequate escape routes and effective emergency equipment and these are accessible at ALL times.

Keep fire exits clear.

For more information and guidance regarding fire protection measures in buildings can be found in Part T of the building regulations (SANS10400).

Put up fire drill and evacuation procedures and routes in a public place.

What is Recommended? The safety and well being of the employees should be the driving factor behind the development and implementation of suitable fire controls. Make sure that employees’ accommodation has fire controls in place as this is often an area of increased risk. Employees’ accommodation should therefore be clearly indicated as part of the risk assessment and should also form part of the regular controls implemented by the H&S committee.

Make sure all fire prevention, fire fighting and fire safety measures are in place and regularly checked. This should be part of the risk assessment. Give fire evacuation drills at least every six months to the whole workforce so they know where the fire exits are and what procedures to follow in the event of a fire. Make sure all fire fighting equipment is properly serviced and in working order (at least on an annual basis by a SABS registered company).

Appoint someone (manager or supervisor) to be in charge and to conduct fire risk assessments either for her/his division or overall site/plant/building/farm. But the overall responsibility still lies with the CEO, director or owner.
EXPOSURE TO FUMES

What does the Law say? Put measures in place to protect employees from exposure to fumes. Where sites are going to be sprayed with chemicals, make sure employees or their families are not at risk by being exposed to these chemicals.

What is Recommended? Agro-chemicals are a common risk on commercial farms. They are a risk to the end-user, to those that handle them and those that work or live near them. If employees’ houses are situated very close to the boundary of a productive block or field, these employees and their families face an increased risk because of this. You therefore need to take reasonable steps to protect people living in such circumstances. These include:

1. Inform residents of your spray program – tell them where and when you will be spraying and recommend that they take precautions to prevent accidental contamination – things such as closing all doors and windows on the side being sprayed; remove laundry and other items that might become contaminated; keep children indoors while the chemical application is taking place.

2. Make sure that residents are informed about the risks of exposure to chemicals and side effects that they know what to do if they do get some spray residue on them or inhale it.

3. Have the H&S representatives perform checks during an application so they can assess the risk themselves.

4. Establish a buffer zone on edges of the orchard or field, particularly the side where employees’ houses are situated and instruct operators that these buffer zones are not to be sprayed. Keep in mind any risk posed from pest activity in these “safe” zones.

5. Create a barrier which prevents spray drift from entering the area where people live. For example, planting a wind break along the edge of the inhabited area using appropriate (evergreen) trees.

6. Conduct yearly medical check-ups for spray operators and consider residents as well.

Re-entry into a production area following the application of a chemical is also something that needs to be considered. Many products remain hazardous for a period after they have been applied and may still pose a risk to people. This should also be considered when developing procedures to keep employees and their families safe.
MACHINERY AND EQUIPMENT

What does the Law say?

You should have an inventory of all equipment.

Keep the H&S representative or operator’s daily/weekly or monthly inspection checklists on file. These records all become very important in case of an incident and incident investigation.

Keep preventative maintenance schedules and maintenance records.

Make sure that dangerous machines are in good working order and safe to work with. Dangerous machines must carry warnings and notices and have proper, secure safeguards over moving parts.

A maintenance logbook (with information on what was wrong, what was discovered was the fault, what was done to repair it and what spare parts were replaced, etc.) can be kept at the machine or in the supervisor’s office for this purpose.

Employers should also have an inventory of all equipment.

Any employee using a machine or equipment must receive proper training. There must be a record of this training on file.

H&S representatives should conduct at least monthly inspections which must include equipment and machinery in his division. The operator and division supervisor must also complete daily/weekly checklists to ensure good operation. A risk assessment will be used to identify the hazards and risks associated with the machinery, not so much the day-to-day maintenance and checks.

What is Recommended?

All maintenance records must be kept on file.

Keep checklists that machinery can be checked against on a regular basis.

Keep a maintenance programme that says when machinery needs to be checked by when.

The H&S representative and/or manager should organise to do random pre-shift checks and follow-up checks.
CHEMICALS

What does the Law say?

All chemicals must preferably be kept in a separate building or storage facility on the site and people can only enter if they have permission from someone in authority.

Chemicals must be clearly marked and stored in their original packaging, if not, it must be clearly marked with name and hazard sign/s.

Chemicals must be stored in an area that is:

• Well lit;
• Well ventilated by ventilation holes/grids or extraction system;
• Sound and secure;
• Able to retain spillage (up to 110% of the total volume of product stored within);
• Equipped to deal with accidental spillage eg. chemical spillage kit;
• Equipped to deal with accidental operator contamination eg. emergency shower and eyewash station;
• Equipped to deal with fire – the structure itself should be constructed from materials that are fire resistant and have at least a 1 x 9 kg powder fire extinguisher close by;
• Used exclusively for the storage of agro-chemicals, eg. pesticides and herbicides.

Employees who work with chemicals must be properly trained.

What is Recommended?

Chemicals must be stored securely at all times. Many are very dangerous and cause serious harm or even death if mishandled and so access must be restricted to those authorized and trained to use them.

Empty chemical containers are another high risk area. It is your responsibility as an employer to prohibit the re-use of chemical containers (often people use these for domestic use) and to prevent it. You should therefore develop and implement a policy that makes it an offence for employees to re-use empty chemical containers that is punishable through the disciplinary process. You can also make the containers unusable by giving the
empty containers a triple-rinse and puncturing holes in the sides and bottom of the container. Make sure your
operators enforce this procedure and get the H&S representatives to do regular checks on this. Include the
employees’ houses in your checks as this is where they are very often used for domestic purposes. Implement a
recycle program. There are recycle companies and in some cases the suppliers will collect empty containers.

Your Comments

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ACCIDENTS

What does the Law say?

Make sure you are registered with the Compensation Commissioner under COIDA.

Report all accidents that take place in the workplace to the Compensation Commissioner in the Department
of Labour. Do not move any evidence or body at an accident before an inspector has given permission, unless
someone has been badly injured and needs treatment.

If an employee has been injured on duty, you must pay 75% of the employee’s wages. You can claim this back from
the Compensation Commissioner. If the employee is off work for more than three months the money must be
claimed directly from the Commissioner.

Keep a record of all accidents and health and safety incidents in the workplace. Certain non-accidents or near-misses
must also be reported to the Department of Labour. All incidents must be reported to the supervisor and H&S
representative of that area.

Follow up on all necessary documentation in terms of COIDA and keep the injured employee informed as to what is
happening.
Provide information during induction training on what employees need to do and where to go if there is an accident.

Put the name and number/frequency of the First Aider up on a public board.

Any employee, including casual employees, if injured on duty, can claim compensation from the Compensation Commissioner. Dependents of an employee who has died as a result of an injury at work, can also claim compensation.

**What is Recommended?**

Agriculture is classified as a high risk industry, this means without exercising caution and control, it is very likely that at some stage, someone could get seriously injured.

Accidents are, almost always, someone's fault. You should always try and answer these two questions after an accident in the workplace: what was the cause and who is responsible. It is not about blaming someone, but rather about finding out the cause so that steps can be taken to prevent that same thing from happening again. Investigating the accident is therefore as important as reporting it so make sure that you react swiftly and involve the H&S representatives. It is good practice and also a good investment to send members of the H&S committee – both management and employees – for training specifically aimed at investigating accidents, determining cause and developing appropriate corrective actions.

Be proactive in your management of health and safety – communicate to employees continuously about the dangers in their workplace, create and maintain awareness so that employees are able to contribute to managing their own health and safety.

Monitor even the small injuries that take place (keep a log of incidents and do regular checks and trend analysis). These are indicators to you and could well be an early warning of more serious incidents to come.

Finally, explain to all employees during induction training how compensation works for people injured on duty.
LABOUR BROKERS

What does the Law say? COIDA applies equally to a person who works for a labour broker. If you use the services of a labour broker or contractor, make sure they are registered with the Compensation Commissioner for COIDA.

FIRST AID

What does the Law say? There must be a First Aider for every 50, or part of 50 employees (seasonal employees working longer than four months included).

The name of the person responsible for first aid must be told to all employees during induction and the names and contact number of these people must be put up on a board in a public place in the workplace.

First aid boxes must be regularly checked to ensure they are properly stocked. Replace used items immediately and make notes of expiry dates of items and replace when necessary.

What is Recommended? Make sure that employees are aware of who the first aiders are. People need to know who or where to go to for help in the case of an accident and it is important that as an employer, you ensure that they know this. Include this in your induction training. Put the names and photos of First Aiders on the notice boards to remind people.

Monitor your first aid kit contents and injury logbook – there are two good reasons for this: 1) the contents cost money, and 2) as an employer, you should know who is being treated and for what – seemingly small, insignificant injuries can soon become serious.

Unless you are a registered professional, avoid dispensing ANY medication from your first aid kit. The Medicines and Controlled Substances Act prohibits this and also, you could cause harm by dispensing medication to a person with an allergy or some other condition which might cause an adverse reaction.
### YOUNG PEOPLE

**What does the Law say?**
People younger than 15 years may not do any farm activities. Young people between the ages of 15 and 17 years are not allowed to work with hazardous equipment or chemicals or in any environment which is hazardous to their health, for example, a function that involves excessive noise or exposure to dangerous fumes and gasses.

Young people who do work should only be given light duties which are not harmful to their health and safety.

**What is Recommended?**
While it may be preferable that young employees are not employed, we live in a society where there are very good reasons why such individuals must work, not necessarily out of choice but out of circumstance (for example, they might be supporting younger siblings or ill parents). To every extent possible, therefore, young people should only be employed out of necessity and where this is the case, only under the following conditions:

- Make sure that their parent or legal guardian (in some cases, this might be the state) gives their consent for the person to work;
- Develop a separate contract specifically for this category of employee;
- Make sure that all management (including supervisors; team leaders and other operational staff) are aware of the conditions of work for these individuals;
- Ensure that the conditions in which they work conform completely to the law.

**Your Comments**

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CLEAN, SAFE ACCOMMODATION AND HOUSING

What does the Law say?
Where accommodation is provided it must be clean, safe and secure, and meet the basic needs of people living in it. This means the accommodation should be structurally sound and weatherproof.

What is Recommended?
Housing and accommodation should have the following:
- Adequate floor covering;
- Ceilings;
- Toilet facilities and waste disposal;
- Running water;
- Electricity or another type of energy for heating, cooking and lighting.

The accommodation should be maintained in terms of an agreement with the ‘tenant’. The agreement with the employee should include how many people can be accommodated in the house / accommodation to avoid overcrowding. “Overcrowding” means:
- a residential occupancy in excess of 12 occupants per sanitary convenience and/or;
- occupancy of habitable rooms (being all rooms in a dwelling excluding kitchens, bathrooms and sanitary conveniences) for sleeping purposes where such occupation exceeds one adult person per 4 m² and/or one child under 10 years of age per 2 m².
- Where housing is provided, sign a housing agreement with the tenant.

See website for a Guide to Best Practice for Housing and Accommodation on Farms

It is highly recommended that you sign a Housing or Accommodation Agreement with people living in accommodation on your site. This should say what your responsibilities are as an employer for maintaining the house and what the responsibilities are of employees. See website for an example of a Housing Agreement.

Your Comments
TRANSPORT

What does the Law say?

All drivers who drive vehicles must have a valid driver’s licence.

Vehicles used to transport employees must be in a safe and roadworthy condition. In this case a public transport permit (PTP) will be required and must comply with those regulations. The transport vehicle should provide seating, a canopy against weather and seat belts. All passengers must be seated at all times.

The driver of a vehicle must have a PrDP – Professional Driving Permit if they (even occasionally) drive a bus, vehicle or minibus with seating for more than 12 persons (whether or not it has enough seats) where it is used to transport people for payment, for example, a taxi.

Employees who are exempt are those who drive a tractor, fire-fighting vehicles or special vehicles, for example, farming equipment.

The vehicle must be registered and licensed; have a roadworthy certificate; and display an operator’s disc in the windscreen.

According to the National Road Traffic Regulations, the circumstances under which people may be carried on a goods vehicle, such as a farm ‘bakkie’ or truck, are as follows:

• The portion of the vehicle which is carrying the people must be enclosed to a height of at least 350 millimetres above the surface upon which the people are seated; or at least 900 millimetres above the surface on which the people are standing.
• The material must be strong enough to prevent a person from falling from the vehicle.

What is Recommended?

Transporting farm employees has been the subject of a lot of media attention recently with some serious accidents involving the transport of farm employees.

Traditionally, employers have used farm vehicles (or production vehicles) to serve the transport of employees.
These vehicles are however often not designed or manufactured for this purpose and so already present a risk. It is therefore very important that employers take steps to minimize the risk of injury of employees being transported in company vehicles, including:

1. Drivers must be trained to understand the serious health and safety responsibility involved in transporting employees, and to be disciplined in their approach to driving. For example, check vehicles before use and report faults; never take short-cuts; comply with speed limits; never drink and drive; etc.
2. Ensure vehicle load restrictions are not exceeded.
3. Ask employees to report bad driving and deal with the offence immediately.
4. Make sure the vehicle complies with the regulations.

PREGNANT WOMEN

What does the Law say?

Pregnant women are allowed four months maternity leave. Usually this includes four weeks before the birth of the child and six weeks after (provided a medical practitioner or midwife certifies that she is fit to do so).

The mother’s employment in the same or a similar position must be guaranteed.

An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth.

You may not require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her child.

During an employee’s pregnancy, and for a period of six months after the birth of her child, you must offer her
suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if:

a) the employee is required to perform night work or the work she has to perform is a potential danger to her health or safety or that of her child, and

b) it is practicable for you to do so.

What is Recommended?
The employer can assist mothers with babies in the following ways:

• provide a place for mothers to feed their babies up to a certain age, and;
• provide child care facilities for young babies while their mothers are working.

Arrangements should be made for pregnant and breast-feeding employees to be able to attend antenatal and postnatal clinics as required during pregnancy and after birth.

Arrangements should be made for employees who are breastfeeding to have breaks of 30 minutes twice per day for breastfeeding or expressing milk each working day for the first six months of the child’s life.

Your Comments

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____________________________________________________
WHAT MUST I DO?

The following is a Checklist for you to complete as a guideline to compliance.

1. **Health policy**
   - You have a health policy in place.
   - The policy is in writing.

2. **Building, equipment and drills**
   - You have evidence of the following:
     - Valid equipment inspection certificates as required by law.
     - Machine maintenance reports.
     - Fire drill reports.
     - Relevant building licences or construction approval given by local authorities.

3. **Health and Safety Committees**
   - You have evidence of the following:
     - Names of appointed H&S representatives.
     - One H&S representative appointed for every 50 employees.
     - H&S committee reports and any minutes from committee meetings, including issues raised and actions undertaken.
     - Training reports for H&S representatives on their responsibilities.

4. **Risk assessments**
   - You have an accident / injury / sickness register.
   - You have risk assessment documents (e.g. reports and records) for work and housing facilities.
   - You have corrective action plans for removing or reducing the effect of the risks identified in the risk assessment.
   - You have employment site safety certificates.

5. **Water safety**
   - You have evidence of the following documents:
     - Water test records to ensure that water is consistently safe to drink.

6. **Waste management**
   - You have evidence of the following documents:
     - Hazardous waste inventory and tracking records (e.g. disposal certificates, waste manifest, etc.)
     - Employment site waste management systems, processes, procedures and controls.

7. **First Aid**
   - You have evidence of the following documents:
     - Blood policy and procedures
8. **Electricity**

   You have evidence of the following documents:
   - Electrical safety policies and maintenance checks.

9. **Insurance**

   The employment site has insurance for the following:
   - Workplace structure and contents.
   - Employers’ liability.
   - Employee accidents.
   - Fire.

10. **Health and safety training**

    - All employees annually receive basic induction training in health and safety.
    - Employees receive relevant health and safety training for the work that they do, including:
      - Handling machinery and other equipment.
      - Handling chemicals and dangerous substances.
      - First aid.
      - Fire drills.
      - Emergency exits.
      - Other job-related training.
    - All new employees or reassigned employees are given a refresher training course on health and safety.
    - Employees who work with hazardous materials are given appropriate training.

11. **Food hygiene**

    You have the following documents to indicate:
    - Hygiene certificates of the food preparation area are up to date.
    - The site conforms with relevant food hygiene laws and regulation.
    - Kitchen staff are properly trained.

12. **Machinery**

    You have the following documents to indicate:
    - Machinery safety certification for each piece of machinery.
    - Machinery / equipment inspection and maintenance records are up to date and demonstrate that all machines are working properly.

13. **Chemicals and hazardous materials**

    You have the following documents to indicate:
    - A Material Safety Data Sheet for each hazardous chemical held on site.
    - Risk assessment reports provide information on chemical exposure if this has happened.
    - Waste management records are available for hazardous materials.

14. **Ventilation**

    You have the following documents to indicate:
    - Assessment report and action plan to ensure adequate ventilation on-site.
    - Inspection records are up to date.
    - Air quality tests show that the air quality is sufficient.
This principle recognises that all work performed should be on the basis of a recognised employment relationship where both employees and management understand their obligations in terms of an employment contract. Employees should be provided with written information about their employment conditions before they enter into employment.

Due to the seasonal nature of the agricultural industry, it is common practice around the world to employ temporary or seasonal employees. However, while the seasonal nature of the industry is recognised, employers are encouraged to consider regular employment for their employees. The fruit industry aims as far as possible to have a seasonal workforce ‘permanently’ employed so that while these employees may be moving around and working on different sites, they are in fact employed for the majority of the year.

‘Contracted employees’ who are employed either by a labour broker or an independent contractor, are equally covered by South African labour laws and the ethical code requirements. The fruit industry is working with labour brokers to ensure that there is legal and ethical compliance.

In accordance with the Sectoral Determination for Farm Workers, a minimum wage is stipulated. This however differs from a living wage, a term used to describe the minimum hourly wage necessary for an individual to meet basic needs, including shelter (housing) and other incidentals such as clothing and nutrition, for an extended period of time or a lifetime.

A minimum wage is set by law and may fail to meet the requirements of a living wage.

In this handbook we will only concentrate on the minimum wage.
WHAT DOES THE CODE SAY?

1. Work performed must be on the basis of a recognised employment relationship established in compliance with national legislation and practice and international labour standards, whichever affords the greater protection.

2. Labour-only contracting or sub-contracting arrangements, apprenticeship schemes where there is no real intent to impart skills or provide regular employment, excessive use of fixed-term contracts of employment, or any comparable arrangements shall not be used to avoid obligations to employees under labour laws and regulations arising from the regular employment relationship.

3. Suppliers must compensate their employees by providing wages, overtime pay, benefits and paid leave which respectively meet or exceed legal minimum and/or industry benchmark standards and/or collective agreements, whichever is the higher. Compensation shall meet basic needs and provide some discretionary income for employees and their families.

4. Suppliers shall provide all employees with written and understandable information about their employment conditions including wages, before they enter into employment; and about details of their wages for the pay period concerned each time they are paid.

5. Suppliers shall not make any deductions from wages which are unauthorised or not provided for by national law. Suppliers shall not make any deductions from wages as a disciplinary measure.

6. The supplier shall provide all legally required benefits, including paid leave, to all employees.

7. Suppliers shall always compensate all employees for all overtime at a premium rate, as required by law and, where applicable, by contractual agreement.

WHAT DOES SOUTH AFRICAN LAW SAY?

THE BASIC CONDITIONS OF EMPLOYMENT ACT (BCEA)

The BCEA provides for basic working conditions, such as hours of work, leave and notice period. The purpose of this law is to ensure that employees are not exploited and that they do not have to negotiate for these basic conditions of service.
Minimum wages
These are set as part of the overall conditions of service.
The Minister increases the minimum wages every year and this is linked to the consumer price index (CPI). The current minimum wage for farm employees from 28 February 2011 to 29 February 2012 is R1 375.94 per month.

Department of Labour inspections
The Department monitors and enforces the requirements of the Sectoral Determination 13, including the payment of minimum wages. Employers who fail to comply may face fines and negative publicity.

GUIDELINES TO THE LAW AND BEST PRACTICE

<table>
<thead>
<tr>
<th>MINIMUM WAGE</th>
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</table>

What does the Law say?
A minimum wage is set for employees in terms of Sectoral Determination 13 for Farm Employees. You have to pay the minimum rate prescribed by law for all employees, including seasonal employees and young employees between 15 and 17 years.

What is Recommended?
You are encouraged to pay a rate that is higher than the minimum wage rate and which is more in line with a living wage. A living wage means employees have enough to meet their basic needs such as food, clothing, shelter and education, and money left over for discretionary spending.

If you use a labour broker make sure you are paying rates that cover the minimum wage plus the legal deductions that the broker must make (UIF, tax) and a fee for the broker.
CONTRACTS OF EMPLOYMENT

What does the Law say?

Every employee, permanent, seasonal (fixed-term) or contracted, must be informed of the terms and conditions in the contract of employment. The BCEA: Chapter 4 (29) lists the conditions of employment to be included in a contract of employment. These include:

- Type of contract (fixed-term, seasonal, casual work);
- The wage rate and how it is calculated;
- How wages will be paid and the frequency of payment;
- Working hours;
- Benefits and insurance;
- Deductions (including statutory and non-statutory);
- Public holidays;
- Leave (annual, sick, maternity, paternity, family responsibility);
- Overtime requirements and payment;
- Emergency work requirements;
- Night work provisions (if applicable);
- Disciplinary and grievance procedures;
- Termination of the contract. See website for an example of an Employment Contract.

You need to inform employees of the contents of the contracts of employment in a language they understand. Preferably get them to sign the contract (a thumbprint on the contract can also be used).

Keep all employees' contracts on their files and supply copies if requested. It is advisable to put a generic copy of the contract on the notice board.

REFUSAL TO SIGN A CONTRACT If an employee refuses to sign a contract (particularly if the employee is illiterate and might mistrust the process) there are two options in the way to respond to this:
If you are using a labour broker or contractor, check the contracts of employment, conditions of employment and pay slips of their employees to ensure they comply with the law.

At the start of each season – or any appropriate time when seasonal employees are recruited – arrange an induction awareness-raising session which you use to explain the terms and conditions of employment to employees, in a language they understand. Allow employees to ask questions about their contracts and encourage them to read through the document. Where literacy is a problem, ask an employee representative or member of management to clarify the contents of the contract to the employees. If requested, give a copy to each employee. You can display a copy on a notice board and allow employees time to refer to the document and ask questions about it. Once you have provided this information to the employees, ask them to sign an attendance register stating that they were present when the contents were explained to them.

What is Recommended?

Clearly understand what the different categories of employment mean, i.e. permanent, seasonal, independent contractor, labour broker.

1) You do not enter into the contractual relationship; or

2) You go-ahead on the basis of a 'tacit acceptance' of the contractual relationship. To make this happen you should ask an employee representative or fellow employee to be with the employee when you go through the full contract. You need to inform the employee that if he proceeds to work then it will be in accordance with the provisions of the contract. It is important in this case, to get the employee representative or witness to verify that you have communicated the terms of the contract to the employee, that the terms and conditions were understood by the employee, and that he has been notified that his proceeding to work will be on the terms stated in the contract.

CHANGING THE TERMS OF THE CONTRACT You can only change the terms of a contract of employment if you have consulted with the employee.
A useful tip: Keep your contracts simple. Complicated contracts filled with “legal language” are not easy to explain to employees – even less easy to understand!

REGULAR EMPLOYMENT Employ permanent employees as far as possible. Avoid the use of ‘rolling’ fixed term contracts – this is where an employee stays on after the fixed term contract has expired. In allowing the employee to do this, the employer is (a) creating an expectation of work, and (b) demonstrating that the nature of the work is actually permanent – in other words, there is a consistent need which is not necessarily linked to the function or type of work that the employee is performing.

NO EXCESSIVE USE OF FIXED TERM CONTRACTS OF EMPLOYMENT

What does the Law say? Keep all records of all employees.

What is Recommended? If you use fixed term contracts specify the term of employment. Appoint employees on a full time basis as far as possible.

Your Comments
<table>
<thead>
<tr>
<th>What does the Law say?</th>
<th>Labour brokers and contractors must comply with the same laws that all producers have to comply with.</th>
</tr>
</thead>
<tbody>
<tr>
<td>What is Recommended?</td>
<td>Check that the labour brokers and/or independent contractors you use comply with legislation in terms of UIF, WCA and Skills Development Fund.</td>
</tr>
<tr>
<td></td>
<td>Sign a contract of service with the broker or contractor that clearly states what is expected of him or her. This contract will also set out the agreement in respect of payment to the broker or contractor.</td>
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<tr>
<td></td>
<td>Make sure that the broker supplies you with an exemption certificate (IRP30) as proof of wages paid.</td>
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<td></td>
<td>Check that brokers and contractors you use are compliant with the ethical Code requirements. Encourage them to attend industry awareness-raising workshops on the ethical Code.</td>
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<td></td>
<td>Before you use a broker or contractor ask them to do an internal audit to provide assurance that they comply with the legal provisions and the ethical Code. Also check all legal provisions such as registrations, employment agreements, ID book copies, salary slips, disciplinary codes and procedures, etc.</td>
</tr>
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<td></td>
<td>Ask for internal audit results of the labour broker or contractor on a regular basis – at least once a year.</td>
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<tr>
<td></td>
<td>If the broker of contractor fails to comply with statutory provisions, you can avoid the risk by employing the employees in your own name, registering employees and providing employment contracts. In this case, the broker or contractor can receive a recruitment fee from the company for the supply of employees.</td>
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</tbody>
</table>

Your Comments

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PAYSLIPS

What does the Law say? Employees must receive a pay slip setting out their gross wages, deductions and net wages. The following information must be included on the payslip:

- employer’s name and address
- period in respect of which payment is made
- number of ordinary hours worked for that period
- deductions
- employee’s wage
- details of any other pay arising out of the employee’s employment
- employer’s registration number with UIF and employee’s contribution to the UIF

See website for an example of a Payslip

What is Recommended? You must keep a copy or record of each statement of payment for three years. Payslips should also include leave status.

Your Comments

PAYMENT OF WAGES

What does the Law say? You must pay wages on the normal pay day agreed to in writing or on:

- the completion of the period for which the wages are paid, or
- the termination of the contract of employment.

You can pay wages in cash, by cheque or by direct deposit into an account given by the employee.
You cannot withhold payment of wages or a portion of the wages for:
• the employment or training of an employee;
• the supply of any work equipment or tools; or
• the supply of any protective clothing.

If wages are paid in cash or by cheque, it must be given to each employee:
• at the workplace or at a place agreed to by the employee;
• during the employee’s working hours or within 15 minutes of the start or finish of those hours; and
• in a sealed envelope which becomes the property of the employee.

**What is Recommended?**

Paying electronically is the safest method of payment. In order to do this, employees will need to have bank accounts. If possible, assist them to open these accounts.

**Your Comments**


**DEDUCTIONS**

**What does the Law say?**

You cannot deduct from wages unless it is allowed by law or if the employee has agreed to deductions in writing.

**Legal (statutory) deductions** refer to UIF, income tax and court orders (for example, a maintenance order).

**Other non-statutory deductions** that employees can agree to in writing include:
• holiday, sick, medical, insurance, savings, provident or pension fund of which the employee is as member;
• Subscriptions for a registered trade Union;
• Money to pay back a bank for a housing loan or other loan that was made;
• Money for food and accommodation;
• Payment for rent of a house or accommodation occupied by the employee;
• For loss or damages suffered at work provided the employee has been given an opportunity to explain the facts. The amount that can be deducted in these cases should not be more than 25% of the employee’s wage.

You can deduct the following from an employee’s normal wage:
• Up to 10% for food;
• Up to 10% for accommodation;
• An amount which the employer has paid on behalf of the employee to a 3rd party so long as the employee agrees to this in writing;
• Up to 10% of the employee’s wage towards the repayment of any amount loaned or advanced to the employee by the employer;
• An amount which the employer is required to deduct by law or in terms of a court order or arbitration award.

FOOD AND ACCOMMODATION You can only deduct for accommodation and/or food if:
• this is provided free of charge by the employer;
• this is provided on a consistent and regular basis as a condition of employment;
• no additional deduction is made for food or accommodation;
• the deduction is not more than the cost to the employer of supplying food and accommodation.

You cannot deduct for protective clothing, farm equipment or other items that are essential for an employee to perform his or her job.

You cannot deduct for accommodation for an employee who is under 18 years of age.

You can deduct 10% from the wages of one farm employee living in a house. If more than two employees live together in accommodation, the maximum deduction that you can make is 25% of the minimum wage for an individual employee.

Example: You have three employees living together in a house. If the minimum wage is R1 375.94 per month, the
maximum deduction that you can make in total from the employees is 25% of the minimum wage, which is R343.99 per month. If you have three employees this amounts to R114.66 per employee. This amount should not be higher than 10% of the employee’s wage. In this case 10% of the employee’s wage is R137.59 so you would be legally correct in deducting this amount.

HOUSING REQUIREMENTS You can deduct for housing if the house meets the following requirements:
• it has a roof that is durable and waterproof;
• it has glass windows that can be opened;
• electricity is available inside the house if the infrastructure exists on the farm;
• safe water is available inside the house or close by (not more than 100 metres from the house);
• a flush toilet or pit latrine is available or close to the house, and
• the house is not less than 30 m² in size.

Always get employees to sign for deductions made (except for legal deductions such as UIF).

LIVESTOCK AND GRAZING You cannot deduct for the grazing of an employee’s livestock.

DEDUCTIONS AS A DISCIPLINARY MEASURE You cannot deduct from wages as a disciplinary measure.

Any deduction that is not required by law (non-statutory) requires the employee’s consent and even where the employee gives their consent, further restrictions are applicable in terms of the maximum amount that can be deducted. Make sure therefore, that for every deduction that is non-statutory you have the employee’s written consent. Also make sure that the deductions do not exceed the maximum amount prescribed for the particular deduction.

GIVING A LOAN The practice of providing loans to employees on a regular basis can have unintended consequences which the employer needs to be aware of. From an employer’s point of view, while the intention might be honest and well meaning, it can be interpreted differently from the outside and create the perception that employees are bonded
to the employer as they are in constant debt. The following questions should be asked when considering a loan:

1. What is the reason for the loan? Develop a company policy around loans that establishes clear criteria that must be met before money is loaned to employees.

2. Is the employee able to pay the money back? Does the employee have a history of borrowing money – in other words, does she take one loan out to pay off another? As a guide, establish the principle that no further loans will be made until any outstanding loans have been repaid. Also, consider imposing a loan frequency limit, for example, employees may only take one loan per season or per year or per quarter or whichever interval makes most sense in a situation.

3. Are you aware of any damaging habits that such a loan might be supporting? For example, if it is known that the person applying for the loan has an alcohol dependency problem then this should be considered.

4. What will the employee realistically be able to repay without getting into further debt?

5. What is the maximum amount that you are prepared to lend to any employee? The law regulates the amount of money that can be deducted from an employee’s wage to repay a loan to 10% of the wage. For example, a employee earning R450.00 per week may not have more than R45.00 deducted from this to repay a loan.

6. What is the maximum time that you will allow the employee to re-pay the loan over?

7. Using the figures from points 5 and 6 above, you can establish a clear guideline on the amount and term of the loan. For example, if you set the maximum term of the loan at 3 months – in other words, the employee must repay the amount over this time period - how much can you loan an employee who is earning the minimum wage of R1 375.94 per month? If the legal maximum that you may deduct per month is 10% of R1 375.94 = R137.59, and the maximum period for repayment is 3 months, then this employee may borrow up to R137.59 x 3 = R412.77.
You cannot require an employee to purchase any goods from the employer or from any person, shop or other business suggested by the employer.

Any deduction that is made for the repayment of goods or services purchased from the employer must be accompanied by a proof of purchase.

Employees MUST sign for each and every purchase. It is common practice to write everything up in a book and then total it up at the end of the month for that particular pay period and then deduct the amount owing from the employees’ wages. This is not compliant with the principle of a “proof of purchase”. When you buy goods using a credit card, you are immediately given a receipt listing all the goods purchased as well as an invoice which you sign to authorize the transaction. The principle of a farm shop transaction where the person is buying on credit rather than with cash is no different and so the same controls should exist. Of course it does not have to be as sophisticated as a credit card transaction but the principle of the employee authorizing the transaction must apply – in other words, at the time of each purchase, the employee should sign to authorize the deduction from their wages.

Do not allow employees to get into too much debt through buying from a farm shop or through another system.

Develop an agreement with employees around the limits to loans made for groceries.

Loans to buy household goods should therefore be limited to what has been agreed to.
FINES AND REPAYMENTS

What does the Law say?
You cannot levy a fine against an employee.
You cannot require an employee to:
• repay any amount or wage paid except for overpayments previously made by the employer as a result of a mistake made in the calculations of the employee’s wage; or
• acknowledge receipt of an amount greater than the wage actually received.

Your Comments

PIECEWORK

What does the Law say?
If piecework is paid, the negotiated wages must be guaranteed. Employees must receive at least the minimum daily wage.

Employees who do not complete the task set in the time allocated, should be dealt with through other appropriate channels, for example, using disciplinary procedures for non-performance; they should not be paid below the minimum rate.

What is Recommended?
Employees MUST always receive at least the minimum wage – regardless of whether production targets are achieved or not.

It is advisable to set a task that is easily achievable by the majority of the workforce. You are entitled to employ people for a probationary period which will allow you to assess whether that person is capable of performing the task that you have set. Discuss this with the people up front – make sure that they understand that their performance is going to be assessed over the duration of that period and that they understand what is expected of them – for example, to pick so many crates per day (or however you plan to measure).
ALCOHOL

What does the Law say? Alcohol cannot be a substitute for wages or part payment of wages.

What is Recommended? Support employees with alcohol and drug dependency problems with rehabilitation programmes through local NGOs and/or government networks.

Your Comments

HOUSING AND ACCOMMODATION

What does the Law say? If an employer supplies free accommodation, not more than 10% of the current minimum wage may be deducted from the employee’s wages. A deduction may only be made for a house that meets the following requirements:
- a roof that is durable and waterproof;
- glass windows that can be opened;
- electricity inside the house if the infrastructure exists on the farm;
- safe water is available inside the house or close to the house (not more than 100 metres from the house);
- a flush toilet or pit latrine is in or close to the house; and
- the house is not less than 30 m² in size.

What is Recommended? Apart from the minimum requirements for the 10% deduction we strongly recommend that accommodation provided must be clean, safe, and meet the basic needs of people living in it. This means the accommodation should be structurally sound and weatherproof and have the following:
- Adequate floor covering;
- Ceilings;
- Toilet facilities and waste disposal;
• Running water;
• Electricity or another type of energy for heating, cooking and lighting.

See website for a Guide to Best Practices for Housing and Accommodation

DISCRIMINATION

What does the Law say?  You cannot discriminate in payment of wages between men and women, permanent or seasonal employees or between employees doing the same job at the same level.

What is Recommended?  The ILO established the Convention of Equal Remuneration to remove the tendency that exists for male employees to automatically earn more and qualify for better working conditions. The basis of this Convention says that employees – regardless of gender – should be paid equally for “work of equal value”. This places the emphasis on the work and not the individual and so as part of ensuring compliance in this regard, organizations should establish pay grading systems which are calculated according to the value of the work performed.
WHAT MUST I DO?

The following is a Checklist for you to complete as a guideline to compliance.

1. **Policy**
   
   *You have a policy in place that includes the following:*
   - The use of fixed-term contracts, seasonal work, casual work and contracted employees (through labour brokers and contractors).
   - The legal minimum wage.
   - Wage calculations.
   - How wages will be paid and the frequency of payment.
   - The standards for employees’ compensation (basic needs must be met for all employees after applicable deductions have been taken off, such as payment for accommodation and food).
   - Benefits and insurance.
   - Equal pay for work of equal value.
   - Equal opportunities.
   - The prohibition of fines as a form of punishment for wrongdoing.
   - Deductions (including statutory and non-statutory).
   - Employees’ right of appeal regarding fines.
   - Payment for public holidays.
   - Sick leave.
   - Maternity leave and benefits.
   - Payment of overtime.
   - Coverage of health and safety of employees.
   - Night work provisions.

   *Staff have a handbook that covers all these aspects of employment as well as:*
   - Annual and sick leave.
   - Standard working hours.
   - Overtime regulations including the right to refuse to work.
   - Overtime.
   - Wage rates.
   - Holidays.
   - Benefits.
   - Promotion process.
   - Discipline.
   - Grievance procedures and termination policies.

2. **Contracts of employment**
   
   *Your contracts of employment include information on wages as well as how employees will be paid and when they will be paid. All employees (permanent and seasonal) are informed of the contents of the contract of employment.*
   - The contract of employment is explained to the employees in a language they can understand.
   - Employees can obtain a copy of their contract of employment.
   - Seasonal employees can obtain a copy of their contract of employment.
You keep signed contracts of employment for all employees in their personnel files.
- Contracts of employment include all the legal requirements.
- Leave and benefits are recorded in employees’ files.

3. **Pay slips**
- Pay slips record all information required by law, including deductions and the method of payment.
- Employees receive a payslip each time they are paid.
- You keep a copy or record of each statement of payment for three years.
- You provide guidance to employees to help them understand their pay slips.
- Payslips are presented in a language that the employees can understand.

4. **Payroll and attendance**
- You have an up to date list of employees – including permanent, casual, seasonal, vocational trainees, and employees contracted through brokers/contractors.
- All employees receive at least the minimum wage for all standard working hours.
- You have records of all payments.
- Employees sign payslips if you don’t use an electronic system.
- Employees are paid regularly, at least once per month, and in line with their contract of employment.
- Employees are paid by cash, cheque or bank transfer and not in kind (for example, food).
- Night employees are paid a premium which is at least in line with the law.

You have evidence of the following documents for ex-employees:
- Final salary payments.
- Pay for unused leave and other outstanding payments.
- All required benefits.
- Any severance pay due.
- Attendance records, pay records and holiday records are consistent with each other.

You have evidence of the following regarding piecework employees:
- Wages are calculated according to legal requirements.
- Piecework employees are paid at least the minimum wage for all hours worked.
- Piecework employees are paid at the same time as other employees.
- Wage records demonstrate how overtime rates are calculated for piecework employees.

Overtime is paid according to the rates established by law and is paid for:
- Work over normal daily working hours.
- Work over normal weekly working hours.
- Work on weekly rest days.
- Work on public holidays.
5. Deductions
- Deductions are clear, legal and in proportion to the total wage (as required by law).
- Deductions for the reimbursement of loss or damage to the employer’s property, is legally allowed and the employee has accepted responsibility for this.
- Employees sign a consent form (kept in their personnel file) for any non-statutory deduction.

6. Labour brokers and contractors
- You have a service agreement with the broker or contractor.
- There is a contract of employment between the broker / contractor and each employee on site and you are entitled to check these.
- The charge rates of the broker / contractor are sufficient to pay employees the minimum wage and other entitlements as well as broker costs.
- Brokers / contractors undergo an internal audit to prove they are complying with all laws and you can access these results.

7. Communication with employees (including casual and contract employees)
- Employees understand:
  - How their wages are calculated, and their hourly and total pay rates.
  - What statutory deductions come from their pay.
  - What non-statutory deductions can be made from their pay and that they have agreed to this.
  - All benefits to which they are entitled.
  - They can take paid maternity or paternity leave, as well as paid sick leave.

8. Management knowledge of policies and procedures
- Management is aware of the law on:
  - Employment.
  - Wages, overtime pay and benefits, employees’ basic needs and discretionary income.
  - The need to communicate employment conditions to the workforce.
  - Deductions.
  - Compensation for overtime.
COMMON QUESTIONS AND ANSWERS

1. What is the difference between a permanent employee, a fixed-term employee, a casual and a contract employee?

The employment contract that the employee signs will give him status as an employee.

- A permanent employee agreement is signed by employees who are employed for an indefinite period. When employed there is no indication of when the employee’s services will be terminated and the contract ends when the employee resigns, retires, dies or is laid off.
- A fixed term agreement applies when an employee is employed for a specific period or to do a specific task. When employment begins it is already agreed when the agreement will be terminated; for example, if Jonny is employed from a specific date until the end of picking time. This is a fixed term contract. These fixed-term contracts are used for ‘seasonal’ or ‘temporary’ employees. A temporary contract of employment is another name for a fixed term contract and the same conditions apply.
- Casual employees only work a day here and a day there. They do not work for a fixed term, but only when and if work for them is available. A casual employee is someone who works for 24 hours or less in a month.
- Contract employees. Many businesses use labour brokers or independent contractors to provide employees. These employees are then employed by the broker or contractor and the broker or contractor signs employment contracts with them, whether they are permanent, fixed term, or casual employees. The brokers and contractors are responsible for all legal aspects of the employees in their service.

2. Can fixed term employment agreements be used back-to-back?

Fixed term contracts can be used for employees who are not permanently required. An employee can be employed for a second term when his fixed term appointment ends. Fixed term contracts should however not be used to avoid permanent contracts. Regular renewals of contracts with either short breaks in between or back-to-back may be regarded as a way of avoiding permanent employment.

3. Is it possible to agree on a condition of service if this contradicts the law?

No. For example, you cannot enter into an agreement with an employee to deduct more than 10% of his salary for loans because the law puts this limitation in place. However you can agree on a condition if it improves on the law.
4. Are employees who work as managers also covered by the Basic Conditions of Employment Act?

Yes, although management (people currently earning more than R149,731 per annum or managers that can “hire and fire” and/or represent the company internally as well as externally) are excluded from certain of the sections of the Act. For example, no employee can be forced to work overtime.

5. I have a restaurant and guest house on my farm. What should I pay the employees who are employed there?

The requirements of the law for the hospitality industry will apply to employees working in the guest house and restaurant. The hospitality industry’s minimum wage is higher than agriculture so you should pay the higher rate which applies.

6. Do I have to keep a record of hours worked by all employees?

Yes, it is mandatory for an employer to have a timekeeping system, in order to record the time worked by each employee. The system can be a clock card system, a “swipe card” system, or a normal attendance register.

7. If an employee is living off the farm, does he receive any payment in kind for this which is added to his wages?

Not necessarily, but may be negotiated as part of his total package to company.

8. If I use the services of a labour broker during the picking season, do I have to make sure that he has paid UIF for his employees?

You need to determine whether the person supplying labour is a labour contractor or a labour broker because this will determine your responsibility towards the employees. If you simply pay the person a lump sum for the labour and he supervises the labour and you have no further involvement, then you do not have any legal duty to check the wages of the employees as he is a labour contractor. However, if the person has only played the role of dropping off employees and you are responsible for supervising them, then you will be jointly responsible for ensuring that legal deductions like UIF are made.
## LABOUR BROKER VS INDEPENDENT CONTRACTOR

<table>
<thead>
<tr>
<th>Nature of Services Rendered</th>
<th>Labour Broker</th>
<th>Independent Contractor</th>
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<tbody>
<tr>
<td>Labour broker is contracted to provide staff for a client, for a fixed period.</td>
<td>Independent Contractor is contracted by client to provide a specific, pre-agreed outcome to the client.</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Product</th>
<th>Labour Broker</th>
<th>Independent Contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff, either unskilled labour or highly specialised labour</td>
<td>Specific outcome-oriented product, eg. Pruning of trees, harvesting, preparation of land, etc.</td>
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</tbody>
</table>

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<thead>
<tr>
<th>Billing</th>
<th>Labour Broker</th>
<th>Independent Contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Client compensates the Broker based on the number of employees hired, eg. 10 general employees • R100 per person/per day. No mention is made of services provided by staff, only job title/job level, rates and hours worked.</td>
<td>Client reimburses Contractors for product for outcome oriented service, eg. pruning of 100 trees • R10 p/tree. No mention is made of the number of employees/hours used for product delivery, only a description of outcome/product, number of units and price per unit.</td>
<td></td>
</tr>
<tr>
<td>PRIMARY EMPLOYER</td>
<td></td>
<td></td>
</tr>
<tr>
<td>--------------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Labour Broker</td>
<td>Broker is the primary employer. The Broker is hiring his staff to the client.</td>
<td></td>
</tr>
<tr>
<td>Independent Contractor</td>
<td>Contractor is the primary employer and uses his own staff to provide product/solution to client.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COMPENSATION TO EMPLOYEE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labour Broker</td>
</tr>
<tr>
<td>Independent Contractor</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>STATUTORY BENEFITS Leave, sick leave, UIF, pension, etc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labour Broker</td>
</tr>
<tr>
<td>Independent Contractor</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>RIGHT TO ORGANISE Trade Union membership and organizational rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labour Broker</td>
</tr>
<tr>
<td>Independent Contractor</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DISCIPLINE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labour Broker</td>
</tr>
<tr>
<td>Independent Contractor</td>
</tr>
</tbody>
</table>
### ORGANISATION** / REPORTING

<table>
<thead>
<tr>
<th></th>
<th>Labour Broker</th>
<th>Independent Contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ORGANISATION</strong> / REPORTING</td>
<td>Employees are subject to and report to the client’s authority structure and form part of the client’s organization chart/organogram.</td>
<td>Employees are subject to and report to the Contractor’s authority structure and form part of Contractor’s organization chart/organogram.</td>
</tr>
</tbody>
</table>

### PROVISION OF EQUIPMENT AND TOOLS **

<table>
<thead>
<tr>
<th></th>
<th>Labour Broker</th>
<th>Independent Contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PROVISION OF EQUIPMENT AND TOOLS</strong></td>
<td>Broker provides no tools or safety equipment, but is responsible for occupational injuries.</td>
<td>Contractor is responsible for providing all tools, safety equipment and casualty claims.</td>
</tr>
</tbody>
</table>

### TRANSPORT **

<table>
<thead>
<tr>
<th></th>
<th>Labour Broker</th>
<th>Independent Contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TRANSPORT</strong></td>
<td>Broker is usually not responsible for employee’s transportation to site.</td>
<td>Contractor is responsible for transporting employees to and from clients’ premises.</td>
</tr>
</tbody>
</table>

**In these cases, especially in agriculture and mining sectors, an overlap between the definitions of Labour Broker and Independent Contractor could take place.**

### 10. What responsibility do I have to ensure that Brokers or Contractors used on my farm are paying contract employees the minimum wage?

You and the Broker or Contractor are jointly and severally responsible for compliance with all statutory provisions. In other words, if your Broker/Contractor is paying an employee below the minimum wage, this is against the law and you will be held equally liable in terms of the law. It is therefore your responsibility to check the Broker/Contractor’s staff contracts of employment and pay slips to ensure that the minimum wage is being paid, that all statutory levies (such as UIF) are being deducted and that employees are paid out for various leaves, such as sick leave. You
should also check that the Contractor is registered with the Workmans Compensation Commissioner.

What does this mean in practice? Producers cannot make use of Brokers or Independent Contractors in order to remove any legal responsibilities towards employees. ‘Collective and individual responsibility” means that if an Independent Contractor does not pay the employees paid leave, the employee can claim from the producer. The same applies if an employee from an Independent Contractor has a work injury and the Independent Contractor is not registered with the Workmen Compensation Commissioner, the employee can then claim against the producer.

11. **What rights do employees have if they are not South African citizens?**

You can only employ someone who is legally entitled to be employed in South Africa and who has the correct legal documentation. If the person has the right legal documents, as an employee they are entitled to the same rights and protections as any other employee.
Many countries regulate the work-week by law, such as setting minimum daily rest periods, annual holidays and a maximum number of working hours per week. The same happens in South Africa where working hours are regulated by the Sectoral Determination 13 for farmworkers.

Internal and external pressures on producers within the fruit industry can make it difficult to predict, plan and keep to production schedules, especially during peak season periods so working hours should be planned and communicated to employees within the required legal framework.
WHAT DOES THE CODE SAY?

1. Suppliers shall set working hours that comply with national laws or benchmark industry standards or relevant international standards, whichever affords greater protection to ensure the health, safety and welfare of employees.

2. Suppliers shall respect that the standard allowable working hours in a week are 48, excluding overtime. Employees shall not on a regular basis be required to work in excess of 48 hours per week. (Please note that South African labour legislation specifies 45 hours per week).

3. Overtime shall be voluntary, shall not exceed twelve hours per week and shall not be requested on a regular basis.

4. Suppliers shall respect all employees right to at least one free day following six consecutive days worked as well as public and annual holidays.

WHAT DOES SOUTH AFRICAN LAW SAY?

SECTORAL DETERMINATION 13: FARM WORKER SECTOR

Regulation of working time

Every employer must regulate the working time of each employee:

• in accordance with the provisions of any Act governing occupational health and safety;
• with due regard to the health and safety of employees;
• with due regard to the Code of Good Practice on the Regulation of Working Time issued under section 87(1)(a); and
• with due regard to the family responsibilities of employees.

The laws on working hours are included in the section below: *Guidelines to the Law and Best Practice*. 
ORDINARY WORKING HOURS

What does the Law say?
The standard ordinary working hours are as follows:
• 45 hours a week; and
• nine hours a day if the employee works five or less days a week; or
• eight hours a day if the employee works more than five days a week.
• One meal interval of an hour after five hours of work (this can be reduced to 30 minutes by agreement and in writing)

Record working hours for all employees including employees doing piecework.

Record working hours on a simple time sheet or by using an electronic time-recording system.

You must keep these records for three years.

What is Recommended?
Monitor how long people are working by keeping a daily check on the time sheet.

Monitor employees who have reached (or nearly reached) the working time limit and make sure they do not work over the set limits on hours.

Draw up a working hour roster for one year in advance; agree on this with employees.

Check the working hours of employees working for labour brokers to make sure they are working within the legal limits.

Your Comments
### YOUNG EMPLOYEES (BETWEEN 15 AND 17 YEARS)

**What does the Law say?** Young employees between 15 and 17 years are not allowed to work more than 35 hours in a week. They may also NOT:

- work before 6 a.m and after 6 p.m;
- do any overtime or extended working hours.

**What is Recommended?** Make sure anyone managing young employees is aware of the limits on hours.

**Your Comments**

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### RISK ASSESSMENTS

**What does the Law say?** Working conditions, including long working hours, should not put employees at risk.

**What is Recommended?** Include working hours in your Health and Safety Risk Assessment checklist. Particularly if people are working with machinery, long hours could put them at risk.

Consider other employees as part of the risk assessment – a driver of a vehicle that transports workers is not only a risk to him or herself but also to all the workers being transported.

**Your Comments**

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REST PERIODS

What does the Law say? Employees must have:
• a daily rest period of 12 hours; and
• a weekly rest period of 36 consecutive hours (must be Sundays, unless otherwise agreed) and could be 60 consecutive hours every second week, if agreed in writing;
• one hour lunch break; you can reduce the lunch break to 30 minutes so long as the employees agree to this in writing.

What is Recommended? If you finish late on one day, you need to make sure that employees get 12 hours rest before they start work the next day. This may mean delaying their start time.

Your Comments

OVERTIME

What does the Law say? Overtime may not exceed 15 hours per week and three hours per day.

If you need employees to work overtime, you need to explain this to them and get their agreement.

The agreement regarding overtime must be entered into when the employee commences work or within three months and lapses after one year.

RECORD ALL HOURS OF OVERTIME Overtime work and work on public holidays and Sundays should be voluntary. If you need employees to work on these days, this needs to be agreed to in advance and recorded in writing.

Employees must be paid for overtime at the following rates:

In wages:
• 1 ½ times the normal wage;
• For work on a public holiday, double the normal wage
• For work on Sundays:
  One hour or less = double the wage for one hour
  One to two hours = double the ordinary wage for time worked;
  Between two and five hours = ordinary daily wage;
  More then five hours = double the wage payable in respect of time worked OR double the ordinary daily wage (whichever is greater).

In time off:
• Employees must be paid the same as the ordinary wage for the overtime worked and in addition receive at least 30 minutes time off on full pay for every hour of overtime worked; OR
• Get 90 minutes paid time off for each hour of overtime worked.

Time off must be taken within one month of overtime having been worked. An agreement can increase this to 12 months. However this agreement is only valid for 12 months so should be annually renewed if necessary.

**What is Recommended?**

Due to the nature of the industry, overtime is almost a certainty in agriculture; make sure this is mentioned in the contract up front so that the employee can accept or decline the terms before starting the job. Explain the overtime requirements to any new employee and have them agree to it before they start working.

Work on public holidays and Sundays also requires that you get employees to agree to this. It is common practice on farms in South Africa for employers to exchange the public holiday for another paid working day. While this is acceptable practice, employees should know and agree to this up front.

It is good practice to give employees sufficient notice about upcoming overtime requirements. While it is not always easy to predict far in advance when and how much overtime is going to be required, it is recommended that you give as much notice as possible to employees as they have other responsibilities to be managed.
Employees that have agreed to work overtime as a contractual agreement cannot automatically refuse to work overtime when it is requested. However it is good practice to find out the reasons behind this reaction as it may be family related or there might be some other very good reason why that particular employee is unable to work overtime.

Remember that the law says an employer “may not require, nor permit” any employee from working in excess of the 15 hours overtime per week.

EXTENSION OF ORDINARY WORKING HOURS

What does the Law say?

Employees can work extended working hours by *no more than five hours per week for a period of up to four months.* You must then reduce the working hours by the same number of hours during a period of the same duration in the same twelve month period. For example, if Joe works 15 hours extra over a four week period in January 2011, he should be given 15 hours off during a quieter period before the end of January 2012.

If you want employees to work extended hours, they must agree to this in writing. If you would like to extend this arrangement for a longer period of time, you should discuss this with the employees concerned and get their agreement in writing. You must first obtain permission from the Department of Labour to implement this agreement. In return, normal working hours must be reduced by the same amount during the quieter periods.

You must pay the employees the wage they would have received for their normal hours worked.

All extended hours must be recorded.

If hours have been extended and not reduced at a later stage, then the hours must be paid as overtime.
If an employee’s employment terminates and he has worked more extended ordinary hours than reduced ordinary hours, you must pay the employee for the extended hours at the overtime rate.

Seasonal employees must be paid overtime rates if it is not possible to reduce their working hours after extended hours have been worked.

**AVERRAGING OF WORKING HOURS** 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 collective agreement. However, in such a case, an employee cannot be required to work more than 45 ordinary hours a week over an agreed period, and an average of five hours’ overtime in a week over the agreed period. A collective agreement lapses after 12 months.

**COMPRESSED WORKING WEEK** Employees may agree in writing to work up to 12 hours a day, including meal breaks, without getting overtime pay. However they cannot work more than the weekly limit of 45 hours.

What is Recommended? Provide transport to employees if they have had to work extended hours as their usual mode of transport will probably not be available. If the hours have been very long, they could also be at risk if they drive themselves.

Your Comments

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**EMERGENCY WORK**

What does the Law say? Employees cannot refuse to work overtime in emergency situations. For example, if there is a veld fire, flooding or outbreak of crop disease. You must still pay the employee for the time worked, at either ordinary rates or overtime rates, whatever the case is.

What is Recommended? You should have a policy on emergency work in place.
NIGHT WORK

What does the Law say?

If you need an employee to work at night, they must agree to this, and:
• you must pay an allowance of at least 10% of the employee’s ordinary daily wage, and
• you must provide transport between the employee’s home and the worksite at the beginning and end of the shift.

If you need an employee to work at night on a regular basis (at least five times per month or 50 times per year) after 8 p.m. (20h00) and before 4 a.m. (04h00), you must inform the employee in writing, or verbally if literacy is a problem, in a language that the employee understands, of any health and safety hazards linked to the work, and of the employee’s right to have a medical examination. If the employee requires a medical examination, you need to arrange and pay for this.

If the employee suffers from a health condition associated with the performance of night work, you need to transfer him to suitable day work within a reasonable time if this is practical for you to do so.

Provide transport if necessary for employees who have to work at night as they may be at risk if they drive.

What is Recommended?

You should have a policy in place regarding night work.

Your Comments

__________________________________________________________

__________________________________________________________

ANNUAL LEAVE

What does the Law say?

You must give an employee at least three weeks annual leave or 1.25 days for every month worked or one day for every 17 days worked.

Additional leave is given for each public holiday that falls inside the employee’s leave period.
WHEN CAN ANNUAL LEAVE BE TAKEN. Annual leave must be taken according to an agreement with the employee or, if there is no agreement, at a time that you determine. You cannot require an employee to take annual leave during any other period of leave to which the employee is entitled, or during any period of notice of termination of employment.

You may not pay an employee instead of granting paid leave except on termination of employment. You also cannot have an employee work for you while he is on leave.

Keep records of all leave taken for all employees. These records should be kept for three years.

What is Recommended? Record the balance of leave owing on employee’s payslips.

Put a mechanism in place which allows employees to request leave. Explain to employees how this works.

You should have a policy that covers all leave entitlements; this must be explained to employees and must be included in employment contracts.

Your Comments

SICK LEAVE

What does the Law say? An employee qualifies for 30 days sick leave at full pay over a three year period (36 days for a six day working week). During the first six months sick leave is one day for every twenty six days worked. (Seasonal employees’ sick leave can be calculated as one day for every 26 days worked).

Employees must provide medical certificates if absent for more than two days.

Sick leave not taken lapses after the cycle.
What is Recommended?

Develop a sick leave policy that establishes clear guidelines on what an employee must do if they become ill. The law says an employee only has to provide a medical certificate if sick for more than two consecutive days or on more than two occasions in an eight-week cycle. This means that an employee who is absent for one day and claims to have been sick does not have to provide a medical certificate to qualify for payment. It is therefore important that you establish criteria that must be met in order for employees to receive the benefits that they are legally entitled to. For example, make it clear to employees that, while they might have the right to receive sick pay, they also have responsibilities. It is suggested that in your sick leave policy you make clear the employees’ responsibility to notify management within a reasonable time of their absence. As an employer, you have the right to seek a second opinion with your medical practitioner if you have any reason to suspect the validity of the claim.

Your Comments

______________________________________________________________

______________________________________________________________

FAMILY RESPONSIBILITY LEAVE

What does the Law say?

An employee is entitled to three days paid family responsibility leave (at normal rates of pay) during each 12 months of employment (after completing four months of service) provided she works at least four days per week. Family responsibility leave can be taken:

- when the employee’s child is born;
- when the employee’s child is sick;
- if the employee’s spouse or partner dies; or
- if the employee’s parent, guardian, grandparent, child, adopted child, grandchild or sibling dies.

You can ask for reasonable proof of the event before paying the employee.

Family responsibility leave does not carry over into the new leave cycle – it lapses at the end of the annual leave cycle.
## MATERNITY LEAVE

**What does the Law say?**

Women are entitled to four months maternity leave; usually one month before the birth and three months after the birth. An employee could take earlier maternity leave if a medical practitioner or midwife certifies that her health or the health of her unborn child is at risk.

An employee cannot work for six weeks after the birth of her child, unless a medical practitioner or midwife agrees to this.

An employee who has a miscarriage during the last three months of pregnancy, or bears a stillborn child, is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee has started her maternity leave at the time of the miscarriage or stillbirth.

**What is Recommended?**

When discussing terms and conditions of employment, make sure you clearly explain how maternity leave works.

Make sure the employee knows about claiming her UIF for maternity leave and where possible assist with making the UIF claim.

**Your Comments**


## PUBLIC HOLIDAYS

**What does the Law say?**

If you want employees to work on a public holiday you must have an agreement with the employees concerned.

You should arrange this in advance.

Due to the nature of farming, especially where fresh or perishable produce is concerned, it is common practice for public holidays to be exchanged for another, more suitable paid working day. If you need to do this there are certain guidelines that should be followed:
1. Make this known to the employees at the start of their contract.
2. Get their agreement in advance for this system.
3. Publish the dates of all public holidays so that employees know exactly which days are affected – this can be done as part of the contract or on a notice board in a common area.

If an employee leaves before they have taken the substituted day and after having worked a public holiday, they are entitled to receive double pay for the public holiday – this should be clearly stated on the final payslip.

**WHAT MUST I DO?**

The following is a Checklist for you to complete as a guideline to compliance with this principle.

1. **Policy**
   - You have a clear policy on working hours.
   - Your policy on working hours is included in the contract of employment.
   - The policy on working hours includes:
     - Ordinary working hours and days.
     - Entitlement to rest days.
     - Overtime requirements and pay.
     - Night work.
   - Annual leave, sick leave, maternity leave and family responsibility leave requirements and pay.
   - Disciplinary and grievance procedures for lateness and other attendance issues.

2. **Keeping records of working hours**
   - You have an accurate procedure for recording employees’ hours.
   - If you need to extend working hours you discuss this with employees every year and this agreement is in writing and signed by the employees annually.
You have communicated with employees, and agree upon, the company’s policy on overtime with new employees before they begin work.

Your production records separate ordinary hours and overtime hours.

Your payslips and payroll details show the total number of hours worked.

Meal breaks are one hour unless you have shortened this according to an agreement with employees.

Your working hours match your pay records.

You have a copy of any required legal authorisations (for example, agreement with employees or from the Department of Labour), giving permission for a variation in ordinary hours.

Working hours are included in your health and safety risk assessment.

You allow employees to claim all statutory leave including:

- Maternity leave.
- Sick leave.
- Family responsibility leave.
- Annual leave.

3. **Physical site**

You have an area away from the production area where employees can rest or eat.

4. **Communication with employees (including casual and contract workers)**

Employees understand what leave they are entitled to and the different requirements for each type of leave.

You communicate arrangements regarding a change in ordinary working hours, for example, extending working hours, or compressing working hours to all employees in an effective way and using a language that is understood.

5. **Management knowledge of policies and procedures**

*Management is aware of the law on:*

- Working hours, leave and breaks.
- Rest periods.
- Night shift requirements.
COMMON QUESTIONS AND ANSWERS

1. My employees have asked me whether they can work extra hours overtime to earn more. Is this allowed?

You must first check to see how many hours the employees have worked. There are limits on the number of hours overtime that an employee can work and even if employees want to work more than these hours they are not allowed to do so. As an employer, you may not allow this.

2. If an employee is earning above a certain threshold, do I still need to pay her for overtime?

A Ministerial Determination lays down what is known as the “earnings threshold”, which means that certain sections of the Basic Conditions of Employment Act (BCEA) do not apply to employees earning above this threshold amount.

This particular law has caused huge confusion among employers who have interpreted the relevant sections of the BCEA which refer to certain exclusions from the Act, to mean that employees who earn over the ‘earnings threshold’ can be made to work any number of normal working hours to suit the employer, any number of hours overtime without payment for the overtime, and to work on public holidays without payment for public holiday work.

An interpretation of the law however makes it clear that no employer has the authority to demand that employees earning over the ‘threshold’ should work excessive hours, overtime, or on public holidays, without payment.

Every employee – regardless of what she earns - is entitled to be paid for her labour.

All employees who earn over the threshold amount have the full right to negotiate with the employer for compensation for overtime worked, or for public holiday or Sunday work, and if the employer refuses to compensate, then the employee can refuse to work the overtime.

3. Can I decide when an employee must take leave?

Yes, but this should preferably be done in agreement with the employee.
4. **Should I pay an employee if he is absent the day before or after a public holiday?**

Yes, if the employee is off sick, the normal sick leave policy must apply.

5. **Are tea breaks included or excluded in working hours?**

Tea breaks are included in working hours. Only lunch breaks are not included.

6. **I employ a number of permanent employees as well as seasonal employees. Last week it rained and it was impossible for people to work on the farm. Do I have to pay for the rainy day?**

You have to pay permanent employees for rainy days. You do not have to pay seasonal employees if they don’t work as a result of rain (or other reasons like unavailability of fruit) but only if this was agreed to before employment commenced and with due notice. It is therefore necessary to agree on these terms before entering into the employment contract. You can also agree with an employee that you will pay the employee an agreed daily rate for the rainy day(s) if the employee agrees to work back the time, for example, as overtime or on a public holiday.
Broad based black economic empowerment (BBBEE) is a form of economic empowerment initiated by the South African government to address the restrictions that exist within the country for black individuals (including Coloureds, Indians and Chinese) to participate fairly in the economy.

Businesses are divided into three categories:
- Turnover more than R35 million: generic enterprises
- Turnover between R5 million and R35 million: qualifying small enterprises
- Turnover less than R5 million: Exempted Micro Enterprises (EME)

Different requirements for compliance with BEE apply to each of these categories. You get different BEE certificates, from level 1 to 8, depending on what contributions you have made towards black economic empowerment from your business. If you have a BEE certificate, your customers can claim BEE points on their BEE scorecard for buying from your business. Although formal verification is not mandatory you will only score points if you have an accredited verification agency to audit your BEE scorecard.

Agriculture does not yet have an industry BEE score card and employers are advised to use the generic score card.

There are a number of potential overlaps between activities falling under the ethical trade programme and BEE scorecard requirements.
THE SCORECARD

The BEE Scorecard consists of seven elements of BEE contribution. The different elements have different weightings and targets. For example, ownership counts for 20 points where the target is 26% of equity; contributing to the development of empowerment enterprises counts for 15 points and the target is 3% of profit after tax. A BEE score is calculated by adding up the weighting points for all the elements. The Chart below shows the seven elements of the scorecard and their weighting points.

<table>
<thead>
<tr>
<th>B-BBEE ELEMENT</th>
<th>WEIGHT</th>
<th>BEE Status</th>
<th>Qualification</th>
<th>BEE PROCUREMENT RECOGNITION LEVEL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ownership</td>
<td>20.00%</td>
<td>Level One</td>
<td>≥100 points</td>
<td>135%</td>
</tr>
<tr>
<td>Management</td>
<td>10.00%</td>
<td>Level Two</td>
<td>≥85 but &lt;100</td>
<td>125%</td>
</tr>
<tr>
<td>Employment Equity</td>
<td>15.00%</td>
<td>Level Three</td>
<td>≥75 but &lt;85</td>
<td>110%</td>
</tr>
<tr>
<td>Skills Development</td>
<td>15.00%</td>
<td>Level Four</td>
<td>≥65 but &lt;75</td>
<td>100%</td>
</tr>
<tr>
<td>Preferential Procurement</td>
<td>20.00%</td>
<td>Level Five</td>
<td>≥55 but &lt;65</td>
<td>80%</td>
</tr>
<tr>
<td>Enterprise Development</td>
<td>15.00%</td>
<td>Level Six</td>
<td>≥45 but &lt;55</td>
<td>60%</td>
</tr>
<tr>
<td>Socio Economic Development</td>
<td>5.00%</td>
<td>Level Seven</td>
<td>≥40 but &lt;45</td>
<td>50%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Level Eight</td>
<td>≥30 but &lt;40</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Non Compliant</td>
<td>&lt;30</td>
<td>0%</td>
</tr>
</tbody>
</table>
Once you have assessed your overall rating according to the scorecard, it is awarded a level of compliance and this reflects your BEE status. There are eight levels of compliance ranging from a level one contributor which is the highest level of compliance available, to a level eight and finally a non-compliant contributor. A level one contributor indicates that the company has scored more than 100 points on its scorecard and is 135% compliant. A non-contributor will have scored between 0% and 30%.

If your business turns over between R5 million and R35 million it is called a QSE and only has to comply with any four of the Scorecard elements. The QSE scorecard allocates 25 points for each element giving a total of 100 points for the four elements. Where a selection is not specifically made by the business, the four best element scores will be used to calculate the final result. This means that an enterprise can still achieve a reasonable BEE rating, in spite of not performing well in three of the seven elements. If your business turns over less than R5 million per annum it is called an Exempted Micro-enterprise (EME) and is exempt from having to comply with any BEE requirements. An EME is automatically given a level four compliance rating.

**Does everyone have to comply with BEE requirements?**

The law does not force anyone to comply with BEE. Compliance with BEE targets will be driven by the principle of preferential procurement which means an organisation will prefer to buy from suppliers that are BEE compliant because this will add to their scorecard. These suppliers will in turn only purchase from suppliers that are BEE compliant for the same reason. This will have a multiplier effect on all organisations involved with these transactions and over time it will become increasingly difficult not to be BEE compliant.

**HOW DO ETHICAL TRADE INITIATIVES SUPPORT THE BEE SCORECARD?**

Ethical Code compliance requirements can support your BEE scorecard. For example, ethical Code standards emphasise training and development, provision of equitable opportunities for promotion for designated employees, ensuring that working conditions are adequate, etc. A workplace leadership development programme, for example, can support the Scorecard in terms of ‘Management’, ‘Skills Development’ as well as ‘Employment Equity’. Providing a creche or after-school facility links to the ethical Code standard on child labour but can also support the element of socio-economic development on the scorecard. Health and safety training of health and safety representatives is an ethical Code compliance requirement but also adds to the ‘Skills Development’ element of the BEE Scorecard.
South Africa is experiencing a serious shortage of skilled staff and this is an obstacle for international competitiveness.

The Skills Development Act (SDA) was introduced to develop and improve the skills of people in the workplace. The SDA provides a framework for the development of skills, it builds these development plans into the National Qualification Framework (NQF), provides for learnerships that lead to recognised occupational qualifications, and it provides for the financing of skills development by means of a levy-grant scheme and a National Skills Fund.

Each sector has a sector education training authority (SETA) to whom employers are required to pay levies based on a percentage of the payroll. The agricultural sector is handled by the AgriSETA. Employers whose annual salary bill is over R500 000 are required to pay a levy to the AgriSETA which can be claimed back if they submit a skills development plan and do the training.

An employer can claim up to 40% (plus a further 10% grant for special training) of the levies paid to the SARS through a system of grants.
For more information on the AgriSETA contact www.agriseta.co.za and for the codes for the different SETAS visit SARS website: www.sars.gov.za

**WHAT IS THE SKILLS DEVELOPMENT LEVY?**

If your wage bill is more than R500 000 per annum and you have registered with SARS you will have to pay a levy to the AgriSETA.

Your SDF submits a workplace Skills Plan and Annual Training Report and claims the Skills Development Levy Grant from the SETA (and/or claim the tax rebates as stipulated for Learnerships).

**SKILLS DEVELOPMENT LEVY**

80% of levies go to SETAS and 20% to the National Skills Development Fund.

Pay 1% of the total salary bill (including overtime payments, leave pay, bonuses, commissions and lump sum payments) to SARS before the 7th of each month (this may not be deducted from Employees’ wages).

- Appoint a Skills Development Facilitator (SDF).
- Set up a training committee.
- Develop a workplace skills plan.
- Train employees.
COMMON QUESTIONS AND ANSWERS

1. **Can I claim back 100% of my Skills Development Levy contribution?**

You can claim up to 40% of your Skills Development Levy paid to SARS. This is referred to as mandatory grants, and is paid in four instalments in September, December, March and June. Each of these payments is about 50% of the instalments received by the AgriSETA, with the final payment made in June (when workplace skills plans and training reports need to be submitted to the SETA) covering the balance outstanding. In addition employers may apply for a further grant (average 10% - depending on uptake) to fund any Pivotal Learning (professional, vocational, technical or academic learning identified by the SETA).

2. **What is the first step I need to take to claim from the Skills Development Levy?**

The first step is to register a Skills Development Facilitator (SDF). The SDF is an employee, or consultant to the employer, who will perform a liaison and information-sharing role with the Seta. The SDF is required to keep up-to-date with changes within the skills development arena and to communicate these back to the employer and the employees within the organisation.

3. **What is a workplace skills plan (WSP)?**

The WSP identifies training agreed with employees and planned for the period 1 April to 31 March. The WSP needs to be completed in the particular SETA’s format and submitted by the deadline of 30th June. The WSP is the most important grant application as it is a requirement for participation in all other Seta grants and incentives.

4. **How do I submit a training report?**

The Annual Training Report on training implemented for the period 1 April to 31 March the previous year must be completed in the Seta’s specified format and submitted together with the WSP by 30th June.
5. How do I set up learnerships?

Learnership grants are available to employers who meet specific SETA criteria, which differ from year to year.

You can choose a learnership and apply for a learnership grant. Once you have completed this, you can set up contracts and learnership agreements with learners. A competent and accredited training service provider can help you with this process.

**Step 1:** Choose a learnership. Decide which skills you need and choose a learnership from the list.

**Step 2:** Apply for a grant. Apply for a grant from the SETA once you have signed a learnership agreement. It is important to first contact the SETA before signing the learnership agreement to make sure that the SETA has enough money. The SETA will also explain how to apply.

**Step 3:** Find a guide. Appoint someone in your organisation to guide the learners and help them with problems.

**Step 4:** Choose a training provider. Choose someone to do the academic part of the learnership. The training provider must be accredited by a SETA.

**Step 5:** Choose learners. Choose learners from your employees their workers or get unemployed people for the learnership. If they want unemployed people for learnerships, they can contact the nearest labour centre for a list of available candidates. Employer do not have to give the unemployed learners work after the learnership.

**Step 6:** Sign the learnership agreement. Employers, training providers and learners must sign a learnership agreement.

**Step 7:** Sign employment contracts with unemployed learners. Sign a contract that complies with the Sectoral Determination for Learnerships with unemployed learners. It is not necessary to sign new contracts with workers already working for you.

**Step 8:** Register the learnership agreement with the SETA.

**Step 9:** Start the learnership once all above steps have been finalised.
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