



## SUSTAINABILITY INITIATIVE OF SOUTH AFRICA (SIZA) STANDARD (July 2012 V4)

### 1. Introduction

Since 2006, the South African fresh produce industry has been the subject of unprecedented scrutiny from the international community regarding labour practises on farms and in pack houses in the South African supply chain. This has resulted in the implementation of several “ethical trade programs” each aimed at addressing individual retailer concerns. Since 2008, the industry, through Fruit South Africa, has been developing a converged approach to ethical trade, that is South African owned, locally managed and based upon global best practise. With the inception and development of the Global Social Compliance Program (GSCP) the industry believes it has found the right vehicle to achieve this goal of a converged approach.

Fruit SA has used the GSCP reference code as the platform for the development of a standard that is aligned to local legislation and international requirements. In this way retailers can be assured that their requirements will be met. The custodian of the standard will be the Sustainability Initiative of South Africa (SIZA), an independent entity which will be managed by Fruit SA.

The SIZA standard provides a **principle statement** for each code principle. Each code principle has a list of **code requirements**. Each code requirement has: (1) a **benchmark** which refers to evidence required to indicate compliance and also identifies the applicable South African legislation; and (2) **guidance notes** to provide practical information on implementation of the requirement.

### **International Labour Conventions**

South Africa has ratified the following ILO Conventions, thereby undertaking to incorporate the requirements of the Conventions into South African legislation:

ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up:

- C87, Freedom of Association and Protection of the Right to Organise Convention, 1948
- C98, Right to Organise and Collective Bargaining Convention, 1949
- C29, Forced Labour Convention, 1930
- C105, Abolition of Forced Labour Convention, 1957
- C138, Minimum Age Convention, 1973
- C182, Worst Forms of Child Labour Convention, 1999
- C100, Equal Remuneration Convention, 1951
- C111, Discrimination (Employment and Occupation) Convention, 1958

- C95, Protection of Wages Convention, 1949
- C131, Minimum Wage Fixing Convention, 1970
- C135, Workers' Representatives Convention, 1971
- C155, Occupational Safety and Health Convention, 1981
- C161, Occupational Health Services Convention, 1985

The following ILO Recommendations are also incorporated into South Africa legislation:

- R85, Protection of Wages Recommendation, 1949
- R116, Reduction of Hours of Work Recommendation, 1962
- R135, Minimum Wage Fixing Recommendation, 1970
- R164, Occupational Safety and Health Recommendation, 1981
- R190, Worst Forms of Child Labour Convention Recommendation, 1999

South Africa further subscribes to the ILO call for Decent Work.

The ILO Conventions and Recommendations have been incorporated into the following South African laws which are referenced throughout the SIZA Standard and are included as annexures to the SIZA Standard:

Annexure 1: Labour Relations Act 66 of 1995, Chapters 1, 2 and 3

Annexure 2: Employment Equity Act 55 of 1995

Annexure 3: Sectoral Determination 13 for the Farmworker Sector

Annexure 4: Basic Conditions of Employment Act, 75 of 1997, Chapter 6

Annexure 5: Occupational Health and Safety Act of 1993 and the following regulations: General Safety Regulations 1031; Facilities Regulations 1593; Hazardous Chemical Substances Regulations 1179; OHS Asbestos Regulations 155

Annexure 6: Children's Act 38 of 2005

Annexure 7: Correctional Services Act, 111 of 1998

Annexure 8: Extension of Security of Tenure Act

Annexure 9: Constitution of South Africa, 108 of 1996

Annexure 10: Road Traffic Act, 93 of 1996

Annexure 11: SANS Building Regulations 10400 and 10401

***Section 2: Management Systems***

***Principle Statement:***

**Senior management shall define and document the business's policy on fair labour practices. The policy shall include a firm commitment from senior management to implement and uphold the principles of fair labour practice in the business as well as a commitment to comply with the requirements of the SIZA Standard.**

CODE REQUIREMENT	BENCHMARK
<p><b>2.1 The business's senior management shall provide the human and financial resources required to implement, manage, maintain and review all systems required to operate and demonstrate an effective social accountability management system. Such a commitment must:</b></p> <p><b>a) Include a commitment to conform to all the requirements of the Standard, including requirements contained in the ILO Conventions and Recommendations listed in the Standard and which are incorporated into South African legislation annexed to this Standard,</b></p>	<p><i>There is a document, signed by senior management, that clearly states the commitment by senior management to:</i></p> <ul style="list-style-type: none"> <li><i>i) Conform to the requirements of the SIZA Standard, including requirements contained in the ILO Conventions and Recommendations listed in the Standard and incorporated into South African legislation annexed to this Standard, as well as any other standard to which the business subscribes</i></li> <li><i>ii) Comply with ALL applicable laws</i></li> <li><i>iii) Apply the standard and/or law which affords the highest level of protection</i></li> <li><i>iv) Continuously evaluate and where appropriate, improve performance</i></li> <li><i>v) Communicate / inform personnel of this commitment as well as the requirements established in this, and any other applicable standard</i></li> </ul>

**and any other requirements to which the Business subscribes.**

- b) Include a commitment to comply with national and other applicable standards such as ILO Conventions and Recommendations listed in this Standard.**
- c) Include a commitment to apply international labour standards, and/or national laws or GSCP reference code requirements, whichever affords the highest level of protection.**
- d) Include a commitment to continuous improvement.**
- e) Be effectively documented, implemented, maintained and communicated to all personnel.**

***GUIDANCE NOTES:*** Senior management must be able to demonstrate knowledge and understanding of the code, its requirements and applicable legislation. This can be done through verbal confirmation, for example during management interview, or through

reference to documentation (electronic or hard copy). There should be a documented policy statement indicating the companies' commitment to implementing and upholding the principles of this standard - which effectively incorporates legal compliance - as well as a commitment to frequent monitoring, review and where applicable, improvement. Further guidance can be found in Chapter 2 of the FSA Ethical Trade Handbook. The Fruit South Africa Ethical Trade Handbook reinforces the principle of continuous improvement by including sections termed 'What is recommended?' throughout the chapters which provides guidance to employers on how to improve beyond what is required by law.

It is important to recognise that legal compliance is the minimum requirement and not the maximum requirement and that the principle of continuous improvement is intended to ensure that there are no limitations to an organisation's endeavours to ensure fair labour practices exist in the workplace. This principle is further established through the requirement that an organisation establishes an effective communication mechanism through which employees are able to communicate with management about any issues regarding working conditions and/or labour practices - the objective being for management to have a clear understanding of areas where improvement is possible – albeit that these areas might already be legally compliant.

**2.2 Senior management shall periodically (at least annually) review the adequacy, suitability and continuing effectiveness of the business's policy, procedures and performance in terms of labour practices and ethical trade principles.**

*Documentary evidence must be available to demonstrate that the policy referred to above has been reviewed by senior management at least annually.*

**GUIDANCE NOTES:** Even if the document is not changed, the review date should be recorded - either on the document itself or on a separate register - to show that this process has been completed.

<p><b>2.3 The business shall appoint, in writing, a senior management representative who shall ensure that the principles established by the business's policy are upheld.</b></p>	<p><i>A member of senior management must be identified, in writing, as the person that has overall responsibility for the implementation and management of the companies' fair labour practice policy.</i></p>
<p><b>GUIDANCE NOTES:</b> In smaller companies, this will most likely be the owner. However in larger companies, this may be a person nominated / appointed by the most senior manager. It is important that this person is able to make the necessary changes to ensure compliance or enable corrective actions to be taken in order to uphold the companies' policy.</p>	
<p><b>2.4 The business shall ensure that there is a mechanism for non-management personnel to communicate with management about issues relating to labour practices and ethical trade principles.</b></p>	<p><i>A system is in place which allows workers and non-management personnel to communicate with management about issues relating to labour practise and ethical trade. The system must be implemented and workers made aware of its function and use.</i></p>
<p><b>GUIDANCE NOTES:</b> In any business, regardless of size, there needs to be a mechanism through which workers or members of lower/middle management can raise their concerns to more senior managers who are able to address these concerns and work towards resolving labour practise related issues. It is likely that the system will differ from business to business depending on things like diversity of labour force, size of work force, seasonality and so on but it is important that whatever system is implemented is effective and that workers are made aware of such a system and are conversant in its functions and use. Also see FSA Ethical Trade Handbook, Chapter 6 - page 60.</p>	

<p><b>2.5 The business shall ensure that the requirements of the SIZA Standard are understood and implemented at all levels of the business.</b></p>	<p><i>There is evidence that management has taken steps to implement the code and communicate its contents to the work force. This evidence could include:</i></p> <ul style="list-style-type: none"> <li><i>a) Clear definition of roles, responsibilities and level of authority</i></li> <li><i>b) Training of new and/or temporary workers on hiring</i></li> <li><i>c) Periodic training and/or other awareness raising initiatives with existing employees</i></li> </ul>
<p><b>GUIDANCE NOTES:</b> In order to implement a robust system which aims to ensure that fair and legal labour practises exist in the workplace and to give value to the companies' own policy in this regard, it is important that workers - at every level in the organization - understand what the code/standard is all about and that, along with management, they too have a responsibility to ensure that labour practises are fair and legal. In order to achieve this, management must take steps to ensure that necessary components of the code are communicated to the workforce in a language and in a manner that they are able to understand. It is important that any such activities be recorded in order to be able to demonstrate this has been done although the best result will be through demonstration by the workforce that they have absorbed and understood the content of the training. This requirement is underpinned by Section 30 of Chapter 4 of the Basic Conditions of Employment Act which requires that employers inform workers of their rights.</p>	
<p><b>2.6 Where applicable, the business shall implement remedial and corrective action and allocate adequate resources appropriate to the nature and severity of the non-</b></p>	<p><i>Non-conformances identified during the monitoring process must be documented. Corrective actions must be effectively implemented and the steps taken must be recorded.</i></p>

<b>conformance identified.</b>	
<p><b>GUIDANCE NOTES:</b> The business must maintain appropriate records in order to demonstrate that remedial action has been undertaken where non-conformance has been identified - whether it be through 3rd party assessment, Department. of labour or internal audit.</p>	
<p><b>2.7 The business shall establish and maintain procedures to regularly communicate to all interested parties information regarding performance against the requirements of this standard including, but not limited, to the results of management reviews and monitoring activities.</b></p>	<p><i>There is a system whereby external parties are able to access information relating to the performance of the business in relation to this code either through participation in a 3rd party process - for example, SEDEX - or through their own communication channels.</i></p>
<p><b>GUIDANCE NOTES:</b> It is one thing to claim that standards have been implemented and are being adhered to. It is another matter to prove this. Therefore an effective method to demonstrate that a standard is in place is AS important as the implementation of that standard. The audit process is just one way of providing this assurance to prospective and existing clients and the results of audits - or any other measures taken - should be communicated to clients regularly.</p>	
<p><b>2.8 The business shall establish appropriate procedures to evaluate suppliers in terms of their ability to meet the requirements as laid down by the business policy.</b></p>	<p><i>This can be demonstrated through service level agreements; results of audits undertaken on the service provider; provision of relevant documentation such as contracts of employment; pay slips; policies and procedures, etc.</i></p>

<p><b><i>GUIDANCE NOTES:</i></b> In order to demonstrate compliance with the principles contained in this code/standard, it is important to realize and acknowledge the impact that a business has in terms of the supply-base with which it does business. In order to give this any meaning and/or value, it is equally important to identify those suppliers that are most likely to be affected by this or more accurately, those suppliers which, if found to be in contravention of labour and other applicable legislation, could affect your business. It is therefore recommended that, for the purposes of this process, each business identifies those suppliers which could/would have a direct impact on its business should they be deemed to be in contravention of this code or applicable legislation. Because this code is primarily concerned with labour practises, it is sensible that any person or that supplies labour - in any form - be considered as part of this requirement. This would typically be regarded as a "primary" or "first tier" supplier and should be regarded as priority where compliance with this requirement is concerned. For example, a business would not be required to monitor or measure compliance of their fuel supplier whereas they would be required to monitor/measure their labour broker. In this case, it would be necessary for the business to be able to demonstrate that they have evaluated that particular supplier (for example, a labour broker) and are taking necessary measures to rectify any non-conformances that have been identified.</p>	
<p><b>2.9 The business shall maintain records of suppliers' commitments to social accountability including, but not limited to the written commitment of those businesses to:</b></p> <p><b>a) Conform to all the requirements of the standard and applicable legislation;</b></p>	<p><i>There must be documented evidence that the business has informed relevant service providers of their own requirements in terms of social accountability and have asked that the supplier also commits to the same principles, to participate in the companies' monitoring activities and to continuously improving performance against the requirements of the SIZA standard.</i></p>

<p><b>b) Participate in the business's monitoring activities;</b></p> <p><b>c) Promptly remediate, correct or otherwise appropriately address any non-conformance identified.</b></p>	
<p><b>GUIDANCE NOTES:</b> Records indicating the supplier's commitment to upholding the law and the requirements of the code should be available and should be current. This commitment should be seen as a "requirement to supply" and a business should insist on receiving written confirmation before entering into any service agreement with a relevant supplier. As far as possible, these suppliers should also be obliged to participate in the SIZA program as they play an important role in the industry's ethical trade performance.</p>	
<p><b>2.10 The business shall maintain reasonable evidence that the requirements of the standard are being met by suppliers.</b></p>	<p><i>Documentary evidence must be available to demonstrate that the supplier / service provider is adhering to the requirements of the SIZA standard. Examples include: self-assessment questionnaires, 3rd party audit results, internal audits, evidence of corrective actions, sample records of workers, etc.</i></p>
<p><b>GUIDANCE NOTES:</b> Depending on the nature of the service and/or product supplied, the business should insist on some form of evidence to demonstrate that that particular supplier is a) being monitored and b) conforming to the requirements of the standard. Ideally, this should be through proof of participation in this program however if this is not the case then a self-assessment / internal audit should be regarded as a minimum requirement. Whatever the case, there must be documentary evidence to support this.</p>	

**2.11 The business shall investigate, address and respond to the concerns of employees and other interested parties with regard to conformance / non-conformance with the business's policy and/or the requirements of the SIZA Standard.**

*There should be documentary evidence demonstrating that the business has acted upon any complaints received from outside the business and/or grievances raised by employees within the business.*

**GUIDANCE NOTES:** The records must show the nature of the complaint, the date it was received, the results of the investigation, the corrective action implemented / action taken as a result of the complaint/grievance, the date when the corrective action / action was taken, and the person responsible.

**2.12 The business shall maintain appropriate records to demonstrate conformance to the requirements of this standard.**

*The business must have a robust, reliable record keeping system in place which enables it to provide evidence to demonstrate compliance with ALL the requirements of this code.*

**GUIDANCE NOTES:** These records should be maintained for at least 5 years unless legislation requires longer periods.

### ***Section 3: Forced; Bonded and Indentured Prison Labour***

#### **Principle Statement:**

**Senior management shall ensure that employment is freely chosen; that workers have the right to terminate their employment and that workers are not required to lodge deposits; their identity documents or any other form of a bond in order to obtain work.**

CODE REQUIREMENT	BENCHMARK
<p><b>3.1 The business shall adopt an appropriate recruitment policy that is capable of protecting individuals' freedom to choose.</b></p>	<p><i>Clear terms and conditions of employment are documented and available. There is evidence - either through group training or individual consultation - that prospective employees are made aware of these terms and conditions prior to entering into a contract of employment. Particular emphasis should be placed on the procedure for terminating the contract of employment.</i></p> <p><b><i>Legal reference: BCEA, Chapter 6, Section 48</i></b></p>
<p><b><i>GUIDANCE NOTES:</i></b> In terms of the BCEA (Chapter 6, section 48) there must be evidence that ALL workers have freely chosen to offer their services to the business. Part of the recruitment process should include an induction training session during which prospective employees are made aware of the process to be followed should they wish to terminate their employment. The business MUST uphold this right and ensure that nothing that it does can directly or indirectly affect an individual's right to choose. An example of an effective system can be seen in instances where workers are invited to apply for posts for the upcoming season. Sometime before the season starts, prospective workers are notified that recruitment is taking place on a specified date and at a specified place and that workers who are interested must attend the "awareness" session or recruitment session during which the nature of the work as well as the terms and conditions of employment will be discussed. At this point, the option is clearly being given to the worker and this provides a robust process whereby the individuals' freedom of choice is upheld. <u>REMEMBER: It is against the law to employ/make use of prison labour (Legal Ref: The Correctional Services Act, 111 of 1998, Chapter 4(40)5)</u></p>	

**3.2 Recruitment of labour shall not involve the requirement for workers to lodge their I.D.'s or any other personal belongings with management for prolonged periods of time.**

*Management defines the policy and procedure for obtaining proof of identity. The policy should include a clear indication of the maximum period that management will keep the documents. Where applicable, management will develop and communicate a policy for the retrieval of identity documents in instances where management is required by law to retain such documentation.*

**GUIDANCE NOTES:** While it is reasonable and even desirable that the employer obtains a copy of the identity document of each employee, it is not reasonable for the employer to hold onto that document and only return it at the end of the season or upon completion of a specified job. This is effectively bonded labour and is not permitted, either by law or by the principles of this code. It is therefore important that the employer does not request any form of deposit or anything else that could be considered a form of a bond.

**3.3 Workers shall not be required to make any payment associated with recruitment and commencement of work. In instances where workers request financial assistance from management, this shall be documented and clearly demonstrate that the transaction was voluntary on the part of the worker.**

*Deductions, of whatever nature, shall: i) be clearly documented; ii) be specific - i.e. not a general authorization for any deductions to be made; iii) indicate the nature and amount of the loan/advance; iv) indicate repayment terms / amounts to be deducted; v) be signed by the worker him/herself.*

*Repayment terms shall conform to national legislation governing deductions from wages for repayment of loans.*

**Legal reference: SD13: Section 8.1.d**

**GUIDANCE NOTES:** Recruitment and associated costs must be paid for by the employer; in other words, there should be no

fees levied to the worker for this process - this includes returnable deposits. If any "benefits" are provided to the worker at a cost, for example, transport, advance payment to purchase food / issue of rations, provision of bedding and so on, then these must be voluntary and there must be evidence that the worker has requested these items. In other words, these should not be automatically given to the worker when he/she is recruited but rather offered and accepted on a voluntary basis. Remember that an "advance" could be misinterpreted as a form of bonded labour unless there is clear evidence to show that this was done at the request of the worker. Wherever advances are made which are intended to be paid back, there must be written proof from the worker of his/her consent.

**3.4 Workers are entitled to leave their employment within the terms of their contracts. Workers are also free to leave the workplace and/or move about freely at the end of their shift.**

*There is a clear; understandable and documented termination policy - either as part of the contract or in a separate policy document. In addition, there must be evidence that the contents of this policy have been communicated to the workforce.*

***Legal reference: SD 13, Part G, Section 26(1); Basic Conditions of Employment Act Section 48***

***GUIDANCE NOTES:*** Termination must be allowed in accordance with SD13 Part G Section 26. It is important to note here that while an employee has a right to leave when they choose, they also have an obligation to give notice. It is therefore important that the business makes this clear during the recruitment stage and, if any penalties apply, that the worker is made aware of these before entering into the contract. The assessment is aimed at the employer in this instance and so it is the employer's conduct and practise that is being evaluated.

**3.5 Employment is not linked to the employment of a spouse.**

*There must be evidence that people are employed individually and that where partners are working within the same business, that their employment is not dependent on one another's*

	<i>employment status with that business.</i>
<p><b>GUIDANCE NOTES:</b> The employment of a person must be on an individual basis and the contract must exist between the individual and the contracting business ONLY. Any reference to the obligation of a spouse to be employed as a condition of employment - usually linked to housing - is not lawful.</p>	
<p><b>3.6 Men and women have separate contracts - i.e. husband's and wives or partners that are living together are not contracted on a single contract.</b></p>	<p><i>Where both husband and wife are employed by the same business, there must be a separate contract of employment for each of them.</i></p>
<p><b>GUIDANCE NOTES:</b> A contract of employment is a legally binding agreement established between and employer and an employee. Therefore, EACH individual employed MUST have a separate agreement with the business. It is unlawful to allow or expect another person to enter into a legally binding agreement on behalf of someone else and so, in instances where husbands and wives are employed in the same workplace, there must exist a separate contract made out in each of their names.</p>	
<p><b>3.7 Spouses and children of farm workers have the right to take up employment off-farm.</b></p>	<p><i>Family members of employees are able to work elsewhere without consequence - whether direct or indirect - to the employee.</i></p>
<p><b>GUIDANCE NOTES:</b> One of the principles established in the Extension of Security of Land Tenure Act (ESTA) (Section 6; 2(d)), is the right to family life. This includes the right of the family members residing with the tenant to work elsewhere and also conforms to the code principle of workers being free to choose where they wish to work.</p>	

<p><b>3.8 Any tenancy agreement between the farmer and farm worker or farm worker’s family MUST conform to national legislation (for example, Extension of Security of Tenure Act).</b></p>	<p><i>Housing/Accommodation agreements - where applicable - must be documented. The terms and conditions of these agreements must be in accordance with relevant legislation</i></p> <p><b><i>Legal reference: ESTA; SD13 Part B; Section 8.</i></b></p>
<p><b>GUIDANCE NOTES:</b> Tenancy agreements must conform to legislative requirements and may not afford the tenant less protection and rights than they would normally enjoy under applicable laws.</p>	
<p><b>3.9 The business shall ensure that disciplinary measures are metered out in accordance with business policy and that any form of forced or coerced labour as a disciplinary measure shall not be tolerated.</b></p>	<p><i>There must be a documented disciplinary policy as well as a procedure for its application. All disciplinary actions must be clearly recorded.</i></p>
<p><b>GUIDANCE NOTES:</b> Discipline is a key feature in any workplace. Productivity and quality are reliant on sound discipline and the importance of an established, structured approach towards discipline in the workplace is very important. Administering discipline must be done in accordance with the business’s own policies and any instances where discipline is applied outside of this framework could render the process unlawful. Equally important is using discipline for the right reasons. Coercion is very often indirect but can also be applied directly through intimidation of the worker through the disciplinary process. This must be avoided at all costs because not only does it infringe on the rights of the worker, it also creates a bad impression of the business’s intentions and can lead to serious consequences further down the line. Middle management and those responsible for maintaining discipline in the workplace must fully understand the correct use and administration of the business's disciplinary procedures.</p>	

***Section 4: Child Labour and Young Workers***

**Principle Statement:**

**Senior Management shall not engage the services of children and shall implement all measures necessary to prevent children from being employed directly or indirectly.**

**Where child labour is discovered, senior management shall take all measures necessary to remediate the situation taking into account the best interests of the child.**

**Where young workers are employed, senior management shall ensure that their working conditions comply with legal requirements.**

<b>CODE REQUIREMENT</b>	<b>BENCHMARK</b>
<b><i>4.1 Child Labour</i></b>	
<b>4.1.1 There shall be a documented policy which clearly defines the business approach to child labour and young workers.</b>	<i>There is a documented policy which clearly states the companies' terms of employment with regard to workers' ages. The policy must be signed by a member of senior management; communicated to relevant personnel and there must be evidence that it has been implemented and is working effectively - e.g. through verification of workers ages.</i> <b>Legal reference: BCEA Chapter 6 Section 43, Parts 1;2;3</b>

**GUIDANCE NOTES:** The policy should be simple and straight-forward and should contain 2 specific statements: 1) The business policy in terms of minimum age, for example: "The employment of persons under the age of 18 shall not be permitted" and 2) The procedure for ensuring compliance with the stated policy, for example: "No persons shall be employed unless they're able to provide proof of age". The policy could be more specific or less specific where the determination of acceptable forms of proof of age is concerned; the best form of identity is a valid/genuine South African I.D. although this might not always be practical/possible; if this is not available, other acceptable forms of I.D. could include a school leaver's certificate; affidavit from commissioner of oaths; birth certificate, etc.

**4.1.2 Where labour Service Providers and or sub-contractors are used, the business shall ensure that its own policy extends to the workers employed by the labour broker / sub-contractor.**

*There is evidence that the business has informed the labour broker / sub-contractor about its policy regarding child labour and young workers. In addition, the business should provide evidence that it is monitoring the supplier's adherence to these policies.*

**Legal reference: BCEA Chapter 11, Section 82, Part 3**

**GUIDANCE NOTES:** Labour provided by labour Service Providers and other labour providers needs to be included in the business policy and you must be able to demonstrate that this is the case. The most effective way of ensuring this would be to request copies of all of the identity documents of the workers but this may not always be practical or possible. Failing this, you should identify and implement measures that will enable compliance with this requirement, for example, establish a service level agreement with the labour provider which establishes this requirement as a pre-requisite for the job and follow this up with spot checks at regular intervals.

**4.1.3 The business shall have adequate systems in**

*Part of the recruitment process will include verification of age. It*

<p><b>place to help determine the age and suitability of applicants wanting to work in the business and these systems will form the basis of either accepting or declining the application.</b></p>	<p><i>is up to the employer to determine the most suitable and practical method to achieve this but there must be clear evidence of workers' ages obtained prior to them being appointed.</i></p> <p><b>Legal reference: BCEA Chapter 6 Section 47</b></p>
<p><b>GUIDANCE NOTES:</b> See guidance notes for 4.1.1 above. In addition, ensure that records are retained in order to demonstrate compliance with this point. Be aware of the possibility of I.D. fraud and make sure that those people appointed to verify age check the documentation carefully. Ensure that evidence of age is provided BEFORE employment commences.</p>	
<p><b>4.1.4 Where children are resident in the workplace, for example, where their parents are provided with accommodation at their workplace, they shall be prohibited from participating in any work activities or other endeavors which could expose them to harm or undue risk.</b></p>	<p><i>Verification is obtained that workers' children residing on the same premises as the workplace are excluded from performing work-related activities.</i></p>
<p><b>GUIDANCE NOTES:</b> It is important to formulate and state workplace policy clearly in this regard. Ensure that parents understand the business policy very clearly - explain the reason for the application of this policy to them so they understand the risks present in the workplace. The requirement here is not ONLY that children are not allowed to perform duties BUT also that they should be excluded from the workplace altogether; in other words, it is not acceptable for them to acbusiness their parents into the working area.</p>	
<p><b>4.1.5 In cases where child labour is found to be present,</b></p>	<p><i>Where child labour is found to be present, senior management must commit to remediate the situation.</i></p>

<p><b>the business shall take appropriate measures to remediate the situation.</b></p>	<p><i>Legal reference: Children’s Act Chapter 2, Section 6 - General Principles and Section 7 - Best Interests of Child Standard</i></p>
<p><b>GUIDANCE NOTES:</b> The remediation measures should take into consideration the best interests of the child - for example, if the revenue that the child is earning contributes to the well-being and upkeep of family members then the remediation measures should, as far as possible, seek to maintain the revenue but remove the child from the workplace. Also See FSA Ethical Trading Handbook, Chapter 4 for more information.</p>	
<p style="text-align: center;"><b>4.2 Young Workers</b></p>	
<p><b>4.2.1 Where young workers are employed (i.e. workers between the age of 15 and 18) the business shall ensure that the terms and conditions of their employment comply with the law.</b></p>	<p><i>The employment of young workers must comply with the requirements as provided in SD13 Part F Section 25 part 7 a,b,c.</i></p>
<p><b>GUIDANCE NOTES:</b> Young workers MAY be employed as long as the following conditions are met: 1) their terms and conditions of employment must be endorsed by a parent or legal guardian; 2) their working hours must be restricted to 35 hours per week; 3) they may not work any overtime or work between the hours of 18h00 and 06h00; 4) they may not operate heavy or dangerous machinery or handle chemicals; and 5) they must earn at least the minimum wage rate. In addition, it is advisable that separate records be kept for young workers in order to ensure that they are managed correctly and also in order to be able to demonstrate this.</p>	
<p><b>4.2.2 Where young workers are employed, the business</b></p>	<p><i>The records must be maintained as per SD13 Section 25, part 3.</i></p>

<p><b>shall maintain records stating the name; date of birth and address for each worker under the age of 18.</b></p>	
<p><b>GUIDANCE NOTES:</b> Refer to the Guidance notes under point 4.2.1. It is particularly important to keep on record the starting date of the young worker in order to be able to demonstrate their age at the commencement of the employment relationship.</p>	
<p><b>4.2.3 Where young workers are employed, their employment terms and conditions shall be accepted and authorized by their parents or legal guardians.</b></p>	<p><i>Authorisation by the parents or legal guardian must be given as required by the <b>Children’s Act 38, Chapter 2, Section 17 and Chapter 3, Section 18 3(b).</b></i></p>
<p><b>GUIDANCE NOTES:</b> Young people are not technically entitled to enter into any contracts until they are 18 years of age. It is therefore important that where young workers are employed, the consent of their parent/s or legal guardians is obtained prior to their appointment.</p>	

***Section 5: Freedom of Association and Collective Bargaining***

**Principle Statement:**

**Senior Management shall recognize and respect the individuals' rights to freedom of association and collective bargaining and shall not interfere with; discriminate against or otherwise prejudice workers or their representatives.**

<b>CODE REQUIREMENT</b>	<b>BENCHMARK</b>
<b>5.1 Workers shall be free to choose, establish, affiliate, bargain collectively and take action in free and independent workers' organizations, including workers committees; associations or trade unions without obstruction or interference from management. There can be no form of victimization, discrimination, and/or penalties, on grounds of union membership.</b>	<i>Workers confirm, during interviews, that there is no interference - whether direct or indirect - from management at any level should they choose to associate themselves in any form be it formally or informally.</i> <b><i>Legal reference: LRA, Chapter 2, Section 4</i></b>

***GUIDANCE NOTES:*** The freedom to associate is regarded by the ILO as one of four core labour principles. In fact, it goes even further and classifies this as the MOST important labour principle. It is important to identify the role management should play in this process as the right to associate - or not to associate - rests with the worker. The onus is therefore on the worker to make use of/exercise this basic right. There is however also an onus on the employer to provide the right environment in order for the worker to do this. While there is no responsibility on the employer to be directly involved in the process of organizing the labour, there is an expectation that there is at least an enabling environment which helps facilitate this process

and part of this is ensuring that workers are able to enjoy their rights without consequence or interference.

**5.2 Worker representatives shall be allowed to perform their functions without obstruction or interference from management or other workers. There can be no form of interference in legitimate union activities, including discrimination, penalties, victimization, obstruction and/or manipulation, that could prevent the representative from performing their duties.**

*Worker representatives confirm, during interviews, that they're able to perform their functions effectively and without threat or interference from management at any level, including being allowed access to the workplace in order to carry out their legitimate representative functions.*

**Legal reference: LRA, Chapter 2, Section 5**

**GUIDANCE NOTES:** The principle of freedom of association rests in many cases with the ability of the elected representatives to carry out their duties effectively. It is important for management to recognise this if any value is to come out of the process and if this basic right is to be afforded effectively to the workforce. Interfering with worker representatives or preventing them from carrying out their duties is, in many cases, as good as prohibiting the freedom to associate and so employers should take every precaution to make sure that they do everything reasonably practical to allow worker representatives to do what they have been elected to do.

**5.3 Details of the election process shall be documented and retained to demonstrate that representatives were genuinely selected by workers and that there was no interference from / involvement of management.**

*Evidence of the selection and election process must be available.*

**GUIDANCE NOTES:** While the election of worker representatives is a process that is left to the workers themselves, the

recording of the process is an important way to demonstrate that the process was free and fair and therefore credible. Records should therefore be obtained detailing the election process as well as the outcome so that management is able to provide evidence that the representatives are truly and fairly elected and thus authorized to engage with management on behalf of the workforce. It is also an important measure of demonstrating that ALL workers' have this right and have been represented in the process.

**5.4 Details of elected representatives shall be displayed and easily accessible to the workers without exception.**

The names (and where literacy levels dictate, pictures) are displayed in areas that are freely and frequently accessible to ALL workers.

**GUIDANCE NOTES:** Part of providing an enabling environment is taking measures to facilitate the process. This includes providing the means by which elected representatives are able to communicate with the workers and vice versa. In order for workers to benefit from their elected officials, they should firstly be informed who these people are, and if necessary, where they can be found and/or contacted. A reasonable and practical way of achieving this is by placing accessible notices in areas where workers congregate or pass through frequently so that they're able to see, read and understand the notices.

**5.5 Management should understand and be aware of the Labour Relations Act which establishes and protects the rights of workers to freedom of association and to collective bargaining.**

*Through management interviews and/or access to reference materials, management is able to demonstrate awareness of the Labour Relations Act, and specifically, the way in which it protects and upholds workers rights with regard to freedom of association and collective bargaining. Reference materials could include: a copy (current) of the LRA; access to / subscription to an external service provider that is qualified and able to advise on labour related issues; access to / subscription to a regular*

	<p><i>service - for example periodical magazines; articles; newsletters and websites; other appropriate documentation for example labour related handbooks and reference materials.</i></p>
<p><b>GUIDANCE NOTES:</b> The intention with this point is not about testing the employers' knowledge of the content of the law but rather establishing whether the employer understands the principles behind freedom of association and collective bargaining and what their role is in this regard in terms of legislation. The LRA is a complex piece of legislation which seeks to protect the rights of both the employee AND the employer who should at least know where to look to find answers and gain a greater understanding of the Act and its contents.</p>	
<p><b>5.6 Management shall take reasonable measures to inform workers about their rights with regard to freedom of association and collective bargaining.</b></p>	<p><i>There is evidence that management has informed workers of their rights in terms of Freedom of Association and collective bargaining. This evidence could be: attendance register from training during which this topic was discussed; notices placed on notice boards; additional information such as relevant publications provided to workers and/or their representatives; content of induction training at given during intake.</i></p>
<p><b>GUIDANCE NOTES:</b> Perhaps the most important step that an employer can take in this regard is creating and maintaining an enabling environment. Workers that are unaware of their rights are logically less likely to exercise them or even be aware of when these rights are being infringed. It is therefore critical that employers inform their workforce about this fundamental workplace right as the first step towards providing a work environment in which these rights are not only recognized but actively upheld.</p>	
<p><b>5.7 Management shall ensure that regular two-way</b></p>	<p><i>There is evidence that regular communication takes place</i></p>

**communication takes place between management and workers. This shall be documented and outcomes communicated to the workers.**

*between management and the workforce. Evidence could include: minutes from meetings; confirmation during worker and management interviews; evidence of resolutions reached as a result of these meetings, etc.*

***GUIDANCE NOTES:*** Communication between an employer and an employee is largely the basis of the success or failure of that relationship. Many workplace disputes arise as a result of poor communication or the breakdown in the communication process between the employer and the employee and part of the reason behind the implementation of Freedom of Association as a fundamental workplace right is to facilitate communication - between the workers themselves but also between the workers and management. It is therefore important that workers and management meet regularly to discuss issues of common concern and to try and be pro-active in addressing issues before they become disputes. Keeping records of these discussions - especially resolutions and agreements reached between the two parties - is a critical element in the success or failure of this process as it provides a constant record to which reference can be made when disputes arise. In the absence of either the meetings or the records thereof, both parties are left to their own interpretation of matters and swift, effective and amicable solutions become more difficult to achieve.

***Section 6: Discrimination, Harassment and Abuse***

**Principle Statement:**

Senior Management shall take appropriate measures to ensure that, as far as is reasonably practicable, the workplace is free from all forms of discrimination, that there are systems in place that provide appropriate protection for workers, and that all workers are assured of equal opportunities.

CODE REQUIREMENT	BENCHMARK
<b><i>6.1 Employment Equity</i></b>	
<b>6.1.1 Where applicable, the Business observing the code shall have a valid and updated employment equity plan available.</b>	<i>A designated employer, as defined in Chapter 1 of the Employment Equity Act (EEA), has an employment equity plan that is compliant with the legislative requirements stipulated in sub-sections 20 and 21 of Chapter 3 of the EEA.</i> <b><i>Legal reference: EEA, Chapter 3</i></b>

***GUIDANCE NOTES:*** The EEA provides guidelines to promote equality in the workplace by eliminating unfair discrimination, for example, by requiring employers to put affirmative action measures in place and also implementing measures that prohibit unfair discrimination. 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. It also provides the grounds for non-discrimination in the workplace including race, gender, sex, pregnancy, birth, marital status, ethnic origin, colour, family responsibility, religion, HIV status, etc. The EEA requires that designated employers have an Employment Equity Plan in place.

A designated employer as defined in the EEA is as follows: an employer who employs over 50 people or has an annual turnover of over R2M (agriculture) must take steps to include and advance previously disadvantaged people in their workforce. This means that when a business makes new appointments or promotes staff, it must give preference to properly qualified people from previously disadvantaged groups. Employers must have an Employment Equity Plan in place to help promote workplace equity. An employer who employs fewer than 150 employees must submit its report to the Director-General every 2 years and an employer who employs more than 150 employees must submit its report every year.

<p><b>6.1.2 The Business shall assign overall responsibility for employment equity in the workplace to a member of senior management and shall assign such powers and authorities necessary to effectively discharge their duties in this regard.</b></p>	<p><i>Where applicable a member of senior management is assigned overall responsibility for monitoring and implementing the Employment Equity Plan in the workplace, and during the interview process demonstrates an understanding of employment equity and designated functions in relation to the implementation of the equity plan in the workplace.</i></p> <p><b>Legal reference: EEA Chapter 3, Sub-Section 24</b></p>
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**GUIDANCE NOTES:** There must be commitment from senior management to promote equality and non discrimination in the workplace. There needs to be a clear understanding of what this means and how it will be implemented. This commitment should be in place regardless of whether or not the business is a designated employer as defined in the EEA.

<p><b>6.1.3 As part of their duty to inform, employers shall place a copy of the EEA in a location that is accessible to workers.</b></p>	<p><i>The EEA is displayed in the workplace in a location that is accessible to workers.</i></p> <p><b>Legal reference: EEA, Chapter 3, Sub-Section 25</b></p>
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<b>GUIDANCE NOTES:</b> The legal requirement in this regard is clear.	
<p><b>6.1.4 Where applicable, employers shall make a copy of their Employment Equity Plan available to workers for consultation and/or copying.</b></p>	<p><i>Workers have access to the business Employment Equity Plan.</i></p> <p><b>Legal reference: EEA, Chapter 3, Sub-Section 25</b></p>
<b>GUIDANCE NOTES:</b> The legal requirement in this regard is clear.	
<p><b>6.1.5 Equal opportunities shall exist for recruitment and hiring, pay, promotion, access to training and termination or retirement for ALL workers regardless of gender, racial identity, nature of employment relationship, belief, personal characteristics or other arbitrary grounds.</b></p>	<p><i>Where applicable the business has an Employment Equity Plan. There is a job grading system in place linking job titles and descriptions to wage. There is documentation to verify equal opportunities in the workplace with regards to employment policy or practices concerning recruitment and hiring, pay, access to promotion, access to training, termination or retirement, such opportunities are offered to workers regardless of gender, racial identity, nature of employment relationship or any other arbitrary grounds listed in the EEA.</i></p> <p><b>Legal reference: EEA, Chapter 2, Sub-Sections 5 and 6</b></p>
<p><b>GUIDANCE NOTES:</b> Recruitment and hiring, pay, access to training, access to promotion, termination or retirement, are valuable opportunities to promote equality in the workplace. A job grading system based on the business's commitment to equal opportunities will provide guidelines for the fair and effective implementation of this commitment.</p>	

## 6.2 Discrimination

**6.2.1** The Business shall ensure that measures are in place to prevent any form of discrimination in any employment policy or practice on any grounds including:

race, gender, sex, pregnancy, marital status, family responsibility, ethnic, social or national origin, colour, nationality, sexual orientation, age, disability, diseases, caste, religion, HIV status, conscience, belief, political opinion, culture, language, birth, membership in worker organizations including unions or participation in its activities, political affiliation, or any other personal characteristic, and that where it becomes aware of discriminatory practices, such practices shall not be tolerated.

*The business has a policy in place outlining its aims to promote equal opportunity in the workplace and to eliminate discrimination in any employment policy or practice on any grounds listed in the Employment Equity Act (EEA) and in the Labour Relations Act (section 5). Note that the EEA does not limit the grounds of discrimination and includes any arbitrary act of discrimination.*

*The business has a sexual harassment policy which sets out steps to be taken in reporting and dealing with incidents of this nature. All employees are aware of these policies.*

**Legal reference: EEA, Chapter 2, Sub-Section 5 and 6; LRA Section 5 (1) and (2)**

**GUIDANCE NOTES:** This principle deals with the need for employers to take the necessary steps to ensure that current and prospective employees are not treated in a discriminatory way in the workplace. In terms of the law you are required to have disciplinary and grievance rules and procedures in place to deal with issues of discrimination and non-compliance.

**6.2.2 The Business shall treat all workers with dignity and respect and shall provide a means by which**

*Grievance mechanisms exist in the workplace whereby workers can raise concerns and make management aware of any discriminatory practice in the work place. Documentary review*

<p><b>workers that feel that they are being unfairly treated or discriminated against in any way can voice their concerns and make management aware of any discriminatory practises which may exist in the work place.</b></p>	<p><i>and worker and management interviews confirm the use and effectiveness of such mechanisms. Disciplinary measures should also be in place to ensure appropriate action is taken against people responsible for discriminatory action.</i></p>
<p><b>GUIDANCE NOTES:</b> It is important that workers know what to do if they are the victims of discriminatory action in the workplace. The grievance procedure must be documented and explained to workers and the channels for laying a grievance should be accessible and trustworthy.</p>	
<p><b>6.2.3 Where issues of discrimination are raised by workers, management shall investigate these claims and act in accordance with their policy on discrimination.</b></p>	<p><i>The business has a grievance procedure and disciplinary code and procedure. All employees are aware of these policies and procedures. All records of disciplinary action taken are documented and kept on file.</i></p>
<p><b>GUIDANCE NOTES:</b> To avoid arbitrary disciplinary action in the workplace it is important for all employees to be aware of workplace policies (what the rules are) and what to do when they feel aggrieved; they also need to be aware of the disciplinary process and sanction if they are in breach of business policy. Codes and procedures must be written documents; they must be in line with the law and must be explained to all employees and implemented fairly. Disciplinary actions, even verbal warnings must be documented.</p>	
<p><b>6.2.4 The Business shall implement a system which ensures that workers receive equal pay for equal work</b></p>	<p><i>A grading system, acknowledging equal pay for equal work, is in place linking job title and description with wage. Employee job title and description and wage are stated in the contract of</i></p>

<p><b>and/or work of equal value.</b></p>	<p><i>employment.</i></p> <p><b>Legal reference: EEA, Chapter 2, Sub-Section 5 and 6</b></p>
<p><b>GUIDANCE NOTES:</b> Recruitment and hiring, pay, access to training, access to promotion, termination or retirement, are valuable opportunities to promote equality in the workplace. A job grading system based on the business's commitment to equal opportunities will provide guidelines for the fair and effective implementation of this commitment.</p>	
<p><b>6.2.5 Where appropriate, permanent employment should be offered to / made available to all workers regardless of gender, racial identity or other arbitrary grounds.</b></p>	<p><i>Where applicable, the business has an Employment Equity Plan in place. The business has a policy in place to promote equal opportunity in the workplace. The business has a non discriminatory recruitment policy in place.</i></p> <p><b>Legal reference: EEA, Chapter, Sub-Section 5 and 6</b></p>
<p><b>GUIDANCE NOTES:</b> Your policies should support your Employment Equity Plan. In other words the Plan is a statement of intention and the policies are the means of implementation. If you are not a designated employer and do not need an equity plan it is still necessary to have a policy that outlines the business's commitment to the promotion of equality and non-discrimination in the workplace. There should be policy statements regarding the following: recruitment and employment, pay rates, promotion, access to training, equal opportunities, discrimination, physical abuse and discipline, verbal abuse, other forms of violence and intimidation in the workplace, termination and retirement, sexual harassment, HIV and AIDS.</p>	
<p style="text-align: center;"><b>6.3 Discipline</b></p>	
<p><b>6.3.1 The business shall establish a documented</b></p>	<p><i>The business has documented its disciplinary procedures and</i></p>

<p><b>disciplinary procedure stipulating the process and form that any disciplinary action shall take. This shall be explained to the workers and a copy made available (in an appropriate language) for them to refer to, in addition, workers shall be made aware of their rights in terms of the disciplinary process. All disciplinary actions shall be recorded.</b></p>	<p><i>there is evidence - through provision of appropriate documentation and through worker testimony - that the disciplinary procedure has been implemented.</i></p>
<p><b>GUIDANCE NOTES:</b> Part of the implementation process includes informing workers of the existence and operation of the disciplinary code moreover what is expected from them in terms of discipline and performance in the workplace. The disciplinary procedure can be unique and adaptable to each particular situation and environment however it must take into consideration the guidelines established in Schedule 8 of the Labour Relations Act.</p>	
<p><b>6.3.2 Steps shall be taken to ensure that the disciplinary procedure is applied fairly and consistently throughout the business and that no discrimination exists in the way that disciplinary measures are meted out.</b></p>	<p><i>There is evidence through the assessment of disciplinary records as well as through worker interviews that the business applies the disciplinary procedures fairly and consistently and that the application of discipline seeks to achieve both procedural and substantive fairness.</i></p> <p><b>Legal reference: LRA, Schedule 8</b></p>
<p><b>GUIDANCE NOTES:</b> The business disciplinary procedure should be the first point of reference for all disciplinary issues. The procedure should give reference to the type of sanction applicable to each offence as well as lay out the process to be followed when administering the process.</p>	

**6.3.3 The business shall maintain accurate and up-to-date records of the disciplinary process and of any hearings, findings and actions that have been taken.**

*There are records readily available that give account of recent disciplinary action.*

***Legal reference: LRA, Schedule 8.5***

**GUIDANCE NOTES:** Comprehensive records should be maintained for each and every disciplinary action. Examples of documents typically associated with the disciplinary process include (but are not limited to): Notification of disciplinary hearing - typically this also contains details about the nature of the alleged offence (charges); Minutes of disciplinary hearing (if applicable); Record of sanction applied e.g. verbal warning; Written warning; Final written warning; dismissal etc. The main point here is that these records are maintained and easily accessible.

**6.3.4 No fines or other deductions or the threat or mention thereof shall be permitted as a form of discipline.**

*Through documentary review as well as worker interviews it is confirmed that there are no fines or threat of fines levied against workers as a result of poor performance or any other issue which is or could be related to discipline in the workplace. All deductions must be accurately recorded and all disciplinary hearings as well their outcomes must also be on record.*

**GUIDANCE NOTES:** Deductions for the replacement or repair of lost or damaged goods DOES NOT constitute a fine. HOWEVER if this is necessary, it is important that due process and procedural fairness is applied. This is especially important where the loss or damage of equipment is accompanied by a disciplinary process. Be sure to deduct ONLY for the replacement cost of the goods replaced - retain the invoice of the purchase or a copy thereof on file to demonstrate that the deduction was not a fine.

<p><b>6.3.5 The business shall ensure that no threats or intimidation in any form, including bullying and harassment, shall be tolerated either by management or by co-workers.</b></p>	<p><i>The business disciplinary procedure clearly indicates the business's stance towards this kind of behaviour. This is supported by the implementation of a robust grievance procedure.</i></p>
<p><b>GUIDANCE NOTES:</b> The Bill of Rights in the Constitution of South Africa, gives every person the right to be treated with dignity and respect; and to exist in an environment that is free from threat, coercion and intimidation. This right is underpinned by the legislative framework provided to govern the relationship between employers and employees and there must be clear indication that these rights are being upheld and maintained by the employer in the workplace. This should be established at policy level by the senior management of the business and then channeled down through all tiers of management and eventually through to the workers themselves so that they're aware: a) that these rights exist; b) that their employer has implemented measures to uphold and enforce these rights; and c) the procedure they must follow in order to access recourse should their rights be infringed.</p>	
<p style="text-align: center;"><b>6.4 Grievance Procedure</b></p>	
<p><b>6.4.1 Management shall ensure that there is an effective mechanism in place by which workers can make grievances known to management.</b></p>	<p><i>In order to enable workers to speak freely and openly about their working environment, management shall establish a documented grievance procedure which details the actions to be taken by / recourse available to workers who wish to lodge a grievance. Part of the grievance procedure must detail the confidentiality of the information provided and, where requested by the worker, respect anonymity. Evidence of the implementation and effectiveness of the procedure should be</i></p>

	<i>obtained during worker interviews and document review.</i>
<p><b>GUIDANCE NOTES:</b> Whilst there is no prescribed standard for a grievance procedure, it should cover certain basic aspects such as anonymity of the complainant; clear indication of how the process works; measures to prevent intimidation, harassment etc; give due regard for issues of a sensitive nature for example sexual harassment; who complaints can be lodged with. Most importantly, the workers must know how the process works and how they can lodge a complaint. Ideally workers should express trust in the process and feel comfortable using it and confident that their concerns are being addressed through, for example, feedback from management on actions taken on grievances that have been raised - obviously without compromising on the requirement for anonymity where relevant.</p>	
<p><b>6.4.2 The grievance procedure shall be explained to the workers and displayed in an accessible area for them to peruse at their own leisure.</b></p>	<p><i>There is evidence that workers have been informed about the grievance procedure with specific focus on how they can use it.</i></p>
<p><b>GUIDANCE NOTES:</b> Access to the grievance mechanism is important if it is to function properly. Access can be enhanced through placing notices in public areas; drawing the workers' attention to this facility through regular feedback; training supervisors, middle management and worker committee members on the proper use of the grievance procedure; and regular checks to see that the procedure is a) understood by the workers and b) utilized by them.</p>	
<p><b>6.4.3 In cases where grievances have been raised, management, whilst respecting confidentiality and anonymity restrictions, shall act on such grievances and</b></p>	<p><i>There is evidence to demonstrate that the grievance procedure has been implemented and is working effectively. Such evidence may include reports from previous grievances including - but not limited to: a) The nature of the grievance; b) The investigation</i></p>

**keep appropriate records.**

*process by management to establish root cause; c) The outcome of the investigation; and d) any appropriate action taken to rectify the cause of grievances raised.*

**GUIDANCE NOTES:** Keeping appropriate records allows you to demonstrate to 2nd or 3rd parties that the procedure exists and that it works. Without these records, the effectiveness or even the existence of the grievance mechanism is questionable and so record-keeping is an important part of an effective grievance procedure.

***Section 7: Health and Safety***

**Principle Statement:**

**Senior Management shall ensure that the working environment and facilities provided as part of the workplace (including residential facilities) are safe and hygienic and shall take appropriate measures to prevent accidents and injury in the workplace.**

<b>CODE REQUIREMENT</b>	<b>BENCHMARK</b>
<b><i>7.1 Health and Safety Systems</i></b>	
<b>7.1.1 The business shall appoint, in writing, a senior management representative responsible for the overall health and safety of the workers and accountable for the implementation and management of health and safety measures required by this standard.</b>	<i>A senior manager - i.e. one with executive authority - must be appointed in writing. The letter must be signed by the appointed person.</i> <b><i>Legal reference: OHS Act, Chapter 1 Section 16.1</i></b>
<b><i>GUIDANCE NOTES:</i></b> Make sure that the person appointed has executive authority - i.e. is able to make decisions and take any action necessary to ensure that health and safety is managed appropriately. For example, it is not acceptable to appoint a manager that first needs to obtain permission to take action or implement measures necessary to safeguard the workers in the workplace. Further, make sure that the correct details appear on the written appointment of this person and that this person has actually signed the appointment letter to acknowledge and give effect to the appointment. Include reviewing this letter of appointment in your annual review to make sure details are current and correct.	

**7.1.2 The Business shall ensure that a worker is nominated and elected by the workforce and appointed in writing to act as the Health and Safety representative. In all instances the number of appointed Health and Safety representatives shall conform to the requirements of the Occupational Health and Safety Act (and relevant regulations).**

*As per the legal requirements, there must be a health and Safety representative elected by the work force and appointed in writing by the employer (or the representative of the employer) The number of Health and Safety representatives is established in OHS Act, Chapter 1 Section 17.*

***GUIDANCE NOTES:*** Remember that the Health and Safety representative must be a permanent employee. Check OHS Act Chapter 1, Section 17 to determine the number of Health and Safety representatives that will be necessary in your business. These representatives should be elected by the workers and then officially appointed and given letters of appointment that they should sign to acknowledge and give effect to the appointment. Include the appointment of Health and Safety representatives in your annual review as some of them may have changed positions or even terminated their contracts since their appointment.

**7.1.3 Regular meetings shall take place between management and health and safety representatives. These meetings shall be documented and minutes of the meetings made available to all personnel. In cases where special resolutions have been agreed during these meetings and outcomes specifically relating to the Health and Safety of the workers are discussed,**

*There must be evidence that a) meetings have been held; b) that resolutions have been implemented and c) that detailed minutes are kept.*

***Legal reference: OHS Act, Section 19.4***

<p><b>management shall ensure that these are communicated to and understood by the workers.</b></p>	
<p><b>GUIDANCE NOTES:</b> Read through OHS Act Sections 17 – Health and Safety Representatives; 18 - Functions of Health and Safety Representatives; 19 – Health and Safety Committees and 20 - Functions of Health and Safety Committees to get a better understanding of how and what to do. Further information is also available in General Administrative Regulations, 2003 - Sections 5, 6 and 7.</p>	
<p><b>7.1.4 The Business shall undertake Risk Assessments to identify potential risks in the business and shall establish systems to detect, avoid or respond to potential threats to the overall health and safety of all personnel. These risk assessments shall consider ALL types of workers for example, pregnant or breastfeeding female workers, workers with disabilities, workers exposed to or handling dangerous substances, etc.</b></p>	<p><i>A documented Risk Assessment must be available. It should be complete, comprehensive and current.</i></p> <p><b>Legal reference: OHS Act, Section 8.2(d); Gen. Safety Regulation 1031 Section 2.1</b></p>
<p><b>GUIDANCE NOTES:</b> While the need for a risk assessment is not specified in the OHS Act, it is implied in <i>Section 8 - General Duties of Employers - Part 2(d)</i> which states that employers should establish "what hazards attached to the health and safety of persons" exist as well as "establish what precautionary measures should be taken" to mitigate or minimize these risks. The need to evaluate risk in the workplace is again referred to in <i>General Safety Regulation 1031 - Section 2.1</i>. The most effective method of achieving this is by performing a risk assessment which is a logical walk through the processes that exist in the business which involve people. The risk assessment should be regarded as a "living" document - it is not something that is</p>	

completed once and then not looked at again due to the dynamic relationship between personnel and hazards. Regularly review the risk assessment and keep a record of these reviews as well as changes that are made as a result of the review. A comprehensive risk assessment is the blue print for a well managed Health and Safety system.

**7.1.5 Risk assessments shall be used to develop an action plan to promote safe, healthy and hygienic working conditions for ALL workers including temporary and seasonal workers.**

*There is evidence that the risk assessment has been implemented.*

**GUIDANCE NOTES:** An example of how the risk assessment and follow up could work would be as follows: if the risk assessment identifies that crop protection products and spraying pose a risk to the health and safety of the workforce then appropriate responses should be implemented to reduce or remove this risk; in this case it could include training of operators and handlers; ensuring workers living near the spraying area are given early warning of the spraying to take place so that they can take the necessary precautions to protect themselves and their families. Appropriate responses should include immediate action to deal with the issue as well as procedures put in place to prevent the problem recurring in the future.

**7.1.6 In companies with more than 5 employees, a copy of the relevant acts and regulations shall be kept and readily available.**

*Acts must be on display in an area / in areas that are accessible to workers. A summary of the Acts is acceptable.*

**Legal reference: General Admin Regulation 929 Section 4**

**GUIDANCE NOTES:** The following Acts need be displayed: Basic Conditions of Employment; Employment Equity and Occupational Health and Safety. It is also advisable that as an employer, you keep the full copies of the acts available for reference as most often the Acts that are on display are summarized versions.

## 7.2 Health and Safety Training

**7.2.1 Appointed Health and Safety representatives shall receive training in how to perform their legal duties.**

*There must be evidence that appointed health and safety representatives have been provided with appropriate training*  
**Legal reference: OHS Act Section 18.4**

**GUIDANCE NOTES:** Keep records verifying that training has been given to the appointed health and safety representatives. It is always a good idea to keep a copy of the course content for reference as well as copies of certificates and/or attendance registers.

**7.2.2 ALL workers shall receive regular and recorded basic health and safety training. This shall be repeated for new and/or re-assigned workers.**

*There is evidence that regular training is given to ALL employees. This training is recorded.*  
**Legal reference: OHS Act Section 13 (a)**

**GUIDANCE NOTES:** Risk is inherent in the workplace. In many cases, accidents occur because workers forget about the risks or become complacent and adopt an "it'll never happen to me" attitude. It is therefore essential that a preventative approach is adopted and maintained. Part of this preventative strategy should be to constantly remind workers about the hazards that exist around them. This is especially important in environments such as agriculture where there are significant time delays between activities due to the seasonal nature of production. It is therefore important that awareness-raising is regular and repeated; for example at the start of every season ALL workers - including permanent workers - should receive the basic health and safety induction awareness training. It is also important to support and reinforce this training with constant reminders in the workplace such as posters and notices that are easily accessible and serve as visible and constant reminders of the hazards that exist. If these measures prevent just one accident, they have been worth the effort.

**7.2.3 Workers working with waste and hazardous substances shall receive training in the safe handling, use, storage and administration of these substances.**

*There is evidence that personnel handling and working with waste and hazardous substances are appropriately trained. This should not be restricted to provision of documentation but should extend to a demonstration of knowledge and understanding by those that have received such training. This should be determined during the interview process and may include a practical demonstration / explanation.*

**Legal reference: Regulation 1179 Section 3.1;3.2;3.3**

**GUIDANCE NOTES:** Hazardous substances need to be defined during the risk assessment process. They can range from solvents used in production facilities to acids and dangerous chemicals used in agriculture. The requirement is the same - the personnel that handle these substances MUST be trained to do so safely and properly.

**7.2.4 Workers and management shall receive training in how to use fire- fighting equipment. Where workers live in communal buildings (hostels, etc) there will be a person appointed to have overall responsibility for emergencies involving fire in or around living quarters.**

*Emergency procedures indicate personnel - both management and workers - that are responsible for responding to fires. There will be training records confirming that these individuals have received appropriate training.*

**Legal reference: OHS General Safety Regulation Section 2.5**

**GUIDANCE NOTES:** Fire in the workplace should be considered as part of the risk assessment, especially where workers are accommodated in/at the workplace and where factors are present which increase the hazard, for example, packaging materials, fuel storage, chemicals and other flammable materials. Part of the mitigation of this risk should be the allocation of resources to control this hazard in the event of an emergency. Staff should be appointed and trained in how to respond in an

emergency situation and records of this training should be kept on file.

**7.2.5 There shall be an appropriate number of trained first aiders in the work place.**

*This number shall never drop below the legally prescribed minimum of 1 per 50 workers. The appointed first aiders shall be adequately trained and it shall be made known to the workers who this person / these people is/are. In all instances, a permanent worker shall be appointed as overall responsible for first aid.*

***Legal reference: OHS Gen. Safety Regulation 1031, Section 4***

***GUIDANCE NOTES:*** Check the number of first aiders appointed - make sure that there are enough, especially during peak season. Also make sure that workers know who these people are and what their function is. When appointing first aiders, consider where they normally work; in other words, try and spread the first aiders amongst the various functions so that you do not end up with some areas with too many first aiders and some without any.

**7.2.6 Operators of machinery and drivers of vehicles shall be adequately trained and shall meet, as a minimum, the level of training / qualification required by law to operate machinery or drive vehicles.**

Drivers that transport more than 12 personnel at a time on public roads should be in possession of a Public Drivers Permit. Tractor drivers that do not transport people and operate only on the farm should be appropriately trained. In all instances, there must be evidence of the training and any permits that have an expiry date must be current.

***Legal reference: Compliance with applicable regulations, for example, OHS Reg. 295, Section 18(11)***

**GUIDANCE NOTES:** Transportation of personnel and driven machinery should, where applicable, be included in the Risk Assessment. Apart from preventative maintenance, regular checks and proper application and use of equipment, training of personnel - especially operators/drivers - should be considered as a major mitigation in the control of the risk associated with this equipment. With some equipment, training needs to be repeated - for example forklifts; check the dates on the permits and be sure to schedule re-training before the current permits expire.

**7.3 Accident, Emergency and Risk Management Procedures**

<p><b>7.3.1 There shall be a well stocked and maintained first kit available in the workplace and a trained member of staff shall be appointed to maintain the first aid kits.</b></p>	<p><i>Contents of First Aid Kit should be compliant with <b>Government Notice R2245, 1992 and OHS General Safety Regulation 3.3.b</b></i></p> <p><i>The location of the first aid kit must be indicated by means of a sign. This should include details of the trained first aider/s.</i></p> <p><b>Legal reference: OHS Gen. Safety Regulation Section 3.6</b></p>
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**GUIDANCE NOTES:** Only items listed should be kept in the First Aid box. Make sure that there are enough first aid boxes to satisfy the need; for example in farming operations it is reasonable to expect that there be several first aid kits available and that these are distributed around the farm where large geographical areas are considered. Equally, in smaller operations, it might be acceptable to have one kit available in an accessible area, for example, an office. These elements should be considered as part of the risk assessment and should include the considerations included in OHS General Safety Regulation Section 3.3.a.

<p><b>7.3.2 Management should have an accident and emergency procedure in place and should inform workers of the procedures to follow and who to go to in</b></p>	<p><i>There are documented procedures which indicate the steps to be taken in the case of emergencies or accidents. These procedures shall be communicated to appropriate personnel and shall be readily accessible in the workplace. Where applicable, such</i></p>
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<p><b>the event of an emergency and/or accident.</b></p>	<p><i>procedures should include worker housing.</i></p>
<p><b>GUIDANCE NOTES:</b> Communication should be regarded as a critical component of a successful health and safety management system. Workers need to be aware of not only the hazards that are present in the workplace but also what action they should take in the event of an accident or emergency. Awareness-raising should be regarded as an on-going process and the methods used to convey the message should be carefully selected, for example awareness-raising training given during induction could be effectively reinforced with appropriate signage and notices strategically displayed around the workplace.</p>	
<p><b>7.3.3 All accidents and incidents shall be recorded and in all cases where more than basic first aid is required, an Annexure 1 report shall be completed and the cause of the accident investigated.</b></p>	<p><i>There are records indicating that any workplace incidents or accidents have been appropriately investigated and recorded.</i></p> <p><b>Legal reference: OHS General Admin Regulation 8 and 9</b></p> <p><i>In all instances, the results of these investigations shall be communicated to the workers via the health and safety representative together with measures and corrective actions designed to prevent recurrence of such events. Results of these investigations should also be used to review the accuracy of the risk assessments and, more importantly, the measures taken to manage identified risks.</i></p>
<p><b>GUIDANCE NOTES:</b> When an incident or accident occurs in the workplace, it is important to report the accident, especially where injuries, loss of limb or even loss of life are involved, as part of your compliance with the requirements of the OHS and Compensation for Occupational Injuries and Diseases Act (COIDA) Acts. The Acts go further than just requiring the reporting</p>	

of the accident; they also require that an investigation be conducted to determine the cause of the accident. The intention here is to establish a) what the root cause of the accident was, and b) what steps/measures are necessary to prevent the same or a similar accident from occurring again. This could become important if there is an investigation commissioned by the Commissioner of COIDA. It is therefore important to record comprehensive details of the outcome and process of the investigation, ultimately the results of the investigation could prove valuable in preventing serious injury in the future.

**7.3.4 All workers that handle or come into regular contact with pesticides shall undergo precautionary screening. The frequency of such testing shall be determined through risk assessment and these shall be documented.**

*There are records indicating that workers that come into contact with hazardous substances have been through appropriate medical checks. The need, nature and type of assessment carried out must be in compliance with **Regulation 7 of Reg. 1179 - Hazardous Chemical Substances**. This should be read in conjunction with **Table 3; Annexure 1** of the same regulation.*

**GUIDANCE NOTES:** Workers that come into regular contact with pesticides should be identified in the risk assessment. Typically the focus is placed on spray operators as the most obvious candidates for testing however there are often other workers that should be considered - for example stock controllers / store clerks, workers that provide assistance with mixing, even workers that clean areas where chemicals are stored and used. Testing new operators BEFORE they commence spraying should be considered a priority.

**7.3.5 The business shall provide appropriate personal protective equipment and facilities.**

*Areas where PPE is required are clearly identified on the Risk Assessment. The Risk Assessment also indicates the type of PPE to be worn.*

**Legal reference: OHS Gen. Safety Reg. 1031 - Regulation 2**

**GUIDANCE NOTES:** PPE should be provided free of charge, should be fit for purpose and should be in good working order. Part of the health and safety management system review should include regular inspection of the PPE. While it is acceptable to place initial responsibility for checking the condition of the PPE on the user, it is good practise to follow this up with regular checks by another party, for example, the health and safety representative. Where PPE is concerned it is also important that ALL levels of management ensure that the PPE is being used.

**7.3.6 All hazards shall be clearly identified through appropriate signage in all areas where hazards have been identified.**

*There must be appropriate signage displayed in areas that have been declared hazardous or where hazardous activities occur or where hazardous substances are stored and/or handled.*

**Legal reference: OHS Gen. Safety Reg. 1031**

**GUIDANCE NOTES:** Signage must be appropriate and appropriately displayed. More importantly, perhaps, is that workers understand the meaning of the signs and the hazards that they're warning about. This should be covered in the awareness-raising session as part of the induction process.

**7.3.7 There shall be health and safety procedures for workers that handle chemicals as well as those living on the premises to ensure that the risk of exposure to chemicals is managed.**

*There are documented procedures which indicate the necessary precautions to be taken when handling hazardous substances as well as the action to be taken in the event of an accident or emergency. These procedures shall be communicated to appropriate personnel and shall be readily accessible in the workplace. Where applicable, such procedures should include worker housing if this has been identified as a risk in the risk assessment.*

**GUIDANCE NOTES:** Clear, documented procedures should be drawn up to indicate precautionary measures to be taken when handling hazardous substances. The procedures should not only address chemical handlers but should also consider other affected parties – or potentially affected parties – for example people living on the premises or in the vicinity of where the substance is to be used.

**7.3.8 Fire -fighting equipment shall be provided in the work place and at worker accommodation.**

*There is appropriate fire-fighting equipment available and the number and type of extinguishers provided complies with SANS10400, Section T.*

**GUIDANCE NOTES:** ALL permanent structures should feature as a consideration for potential fire hazards when doing the risk assessment. Do not neglect workers' housing as this is very often where the risk is at its highest or at least significantly elevated due to the presence of people, cooking and heating apparatus, etc. The solution identified is not prescribed but it must be effective and practical and, perhaps more importantly, people must know how to use it. Once installed, remember to place the items on the maintenance register if this has not already been contracted out to a recognized service provider. Make sure that the fire extinguishers are:

- the right type for the risk – for example, do not put water hydrants in areas where electrical fires have been identified as a risk;
- located in positions that are accessible;
- are not locked or otherwise secured so as to render them inaccessible;
- regularly serviced and maintained.

**7.3.9 The business shall have an asbestos policy on site where asbestos is present and will report any work involving asbestos to the Department of Labour. The**

*There is evidence that the employer is a) aware of and b) in compliance with Regulation 155. As a minimum however, the employer must: i) identify sources of asbestos in the workplace;*

<p><b>asbestos policy will include workers housing. In all instances, asbestos shall be treated as a high risk substance and will be handled according to legislation.</b></p>	<p><i>ii)inform workers of the risk; iii)inform the Department of Labour if any work involving asbestos is to be undertaken, iv) include asbestos and the management thereof in the workplace reviews; and v) provide the necessary PPE (as per regulation 17 of 155)</i></p>
<p><b>GUIDANCE NOTES:</b> Include asbestos (and all asbestos related products) in your risk assessment. Identify the areas where these products are situated and initially make an assessment of their condition and whether or not any action needs to be taken to protect human health. Once this is done, monitor these areas and keep a close eye on deterioration caused by weathering, abrasion and so on. It is advisable to include classification of risk on the risk assessment, for example, location and type of asbestos/asbestos related product. For example, asbestos roof sheeting in workers houses is probably a greater hazard than asbestos roof sheeting in a disused store or implement shed. Consider marking these areas on a site map so that people are aware of where these products are situated.</p>	
<p><b>7.3.10 Appropriate measures shall be taken to control the risk posed by latent infrastructural risks such as farm dams, dipping tanks, bulk storage facilities, CA stores, etc. Specific attention should be paid to vulnerable people such as young children.</b></p>	<p><i>Included in the risk assessment are sources of latent or indirect risk, for example, the risk is present but not necessarily related to the work being performed. Risk areas should be identified and control measures developed and implemented to reduce risk. There must also be evidence that these risks as well as the control measures associated with them have been communicated to ALL affected individuals.</i></p> <p><i>NOTE: As these risks are not necessarily related to the performance of work related activities, it is possible or even probable that people other than workers will be affected and</i></p>

*thus need to be informed. The measures taken to inform affected persons must be appropriate and effective.*

**GUIDANCE NOTES:** How to address areas of latent or indirect risk remains an area of debate. For example, how should farm dams be managed so as to prevent accidents? Should they be fenced? Is warning signage adequate? What about rivers, if we say the dam needs to be fenced must the rivers and irrigation canals also be fenced off? If so, what about livestock? The questions are endless and so are the answers; in other words, there is no "right" or "wrong" way of managing these things BUT there are a few principles that need to be considered: i) Identification of these hazards - this is the first step in developing a robust and reasonable management approach; ii) Classification of risk - once you've identified the hazard, establish the level of risk; ask yourself that following questions: What is the likelihood of the "harmful event" occurring? What are the consequences if the "harmful event" happens? For example: if a farm dam has been identified as the "hazard" and "drowning" as the "harmful event", in order to effectively address this, you need to establish the "risk", in other words, the chance of the 'hazard' causing the identified 'harmful event'. If you say that the likelihood of the harmful event occurring is high and the consequence is regarded as serious then you have a hazard that needs to be managed. In order to determine how best to achieve this, you also need to consider WHO is most at risk so that your intervention is most effective. By doing this, you have formulated a reasonably practicable mitigation of risk which might not prevent the harmful event from occurring but it does minimize the risk. This exercise needs to be repeated for all areas where latent or indirect risk exists.

#### **7.4 Condition of Buildings and Equipment**

##### **7.4.1 Machinery and equipment shall be maintained and in a good state of repair.**

*There is documented and visual evidence that machinery is maintained and kept in a good state of repair.*

**GUIDANCE NOTES:** Check equipment regularly, instill in your operators the habit of checking equipment thoroughly before use and encourage them not to use faulty equipment and to report it as soon as they're aware of it. Faulty equipment can cost

lives and so it is important that priority is placed on ensuring equipment is fit for purpose and in a good state of repair before being used.

**7.4.2 Buildings shall be maintained and in a good state of repair.**

*There is evidence that buildings and other permanent structures are maintained and in a good state of repair. This should be verifiable by either visual inspection and/or documented maintenance records. In any event, buildings and facilities should comply with the provision of **SANS 10400:19** and **OHS Regulation 1593; Regulation 9.***

**GUIDANCE NOTES:** There are many regulations governing buildings and the requirements that need to be met. These are not specifically written for housing and accommodation on farms but they can be used as a benchmark. Great care must be taken to ensure that there is no immediate risk to life or limb because of the poor state of repair of a building or other permanent structure. Take the following steps: 1) include buildings on your maintenance plan; 2) inspect buildings regularly, and 3) record any actions taken to remedy problems. Include all workers' accommodation in this list; make sure that houses are structurally sound - i.e. floors, walls and roofs are "safe". Make sure electrical installations are properly installed and in working order, and specifically check the following with regards to electrical installations: that they are not accessible; that there are no open/exposed wires; that any safety gear - such as trip switches and earth leakages are in order; that plug points are not overloaded; that wiring has not been tampered with; that electrical points in ablution facilities are appropriately insulated; that lighting and cooking / heating equipment will not be a safety hazard. It is advisable to perform frequent checks on buildings - especially workers' houses - to make sure that conditions are safe and healthy.

*There shall be adequate lighting provided in the workplace -*

**7.4.3 Workplaces shall be adequately lit.**

*where natural light is not sufficient, this shall be supplemented by artificial lighting. In any event, the lighting shall not be less than that specified in legislation.*

**Legal reference: Regulation 2281 - Environmental Regulations for workplaces, Reg. 3 - see Annexure for Lux values**

**GUIDANCE NOTES:** Check the lighting in the work place - physically stand in the various areas around the workplace and observe the lighting. While there are "official" values that need to be measured with a light meter, you will soon be able to determine whether there is enough or too little / too much lighting in an area simply by observation. Replace broken/fused globes timeously so that workers enjoy consistent lighting. Speak to the workers themselves as they will give a good indication of whether or not the lighting is adequate. If you're uncertain, obtain a measurement from an outside business and then keep these measurements on record to demonstrate that you've had this aspect of the workplace properly assessed.

**7.4.4 Fire- fighting equipment shall be maintained and regularly serviced by a South African Bureau of Standards (SABS) or Department of Labour approved contractor.**

*There is evidence that fire-fighting equipment is maintained. This can be in the form of a service contract with an approved service provider or by visual inspection of fire-fighting equipment.*

**Legal reference: SANS 1475 and 10105**

**GUIDANCE NOTES:** In order for fire-fighting equipment to be effective, it has to be in working order. You don't want to find out in an emergency situation that your fire extinguishers do not function properly because they weren't serviced. Therefore make sure that you get this equipment regularly serviced by an accredited service provider and keep records of this - in most cases the date of service and date of next service is recorded on the device itself however if this is not the case, keep a register

of all the equipment.	
<p><b>7.4.5 Where transport for workers is provided for by the business, this shall meet the minimum standards prescribed by the Road Traffic Act.</b></p>	<p><i>There is evidence that where workers are transported, the transportation meets the requirements as laid out in the <b>Road Traffic Act, Chapter 6.</b></i></p>
<p><b>GUIDANCE NOTES:</b> Vehicles used to transport workers must be fit for purpose, safe and driven by a qualified person. As soon as the vehicle enters a public road - of whatever description - the rules of the road apply. Even where workers are being transported on the farm roads only, every precaution should be taken to ensure that vehicles used are in sound working order and do not pose a risk to the people being transported. Ensure that the driver is properly trained and responsible. Check vehicles carefully before transporting people; inform the passengers about any specific safety procedures as well as the correct use of safety restraining systems (for example, seat belts) where appropriate; and make sure that under no circumstances should people transport - or even be transported - under the influence of alcohol and/or drugs of any description.</p>	
<p><b>7.4.6 Electrical installations shall be locked / closed / inaccessible to unauthorized personnel and appropriate signage shall be displayed.</b></p>	<p><i>All electrical installations are inaccessible to unauthorized personnel and are identified through displaying appropriate signage.</i></p>
<p><b>GUIDANCE NOTES:</b> Distribution boards; switch boxes and so on MUST remain locked at all times. Include these on the inspection register and get the health and safety representatives to monitor these.</p>	
<p align="center"><b>7.5 Worker Welfare</b></p>	

**7.5.1 Workers, without exception, shall have access to toilet facilities in or near their place of work.**

*Toilets, as well as hand washing facilities shall be provided in accordance with **OHS Facilities Reg. 1593, Regulation 2**. These facilities must comply with the provisions as set out in **Parts F; P and Q of the National Building Regulations- SANS 10400**.*

**GUIDANCE NOTES:** There are many different interpretations around toilet requirements - what is acceptable and what is not, how many are needed, where they must be located, what they must be made of and so on. Legislation requires toilets to be available and in a good state but does not specify that they must be flush toilets. While these might be preferable, they are, in many cases not practical and so it is important to make sure that whatever alternative is provided is suitable and practical. If non-water borne toilets are provided then these should meet the standard as set out on **Part Q of the National Building regulations SANS10400**.

**7.5.2 Workers shall have access to clean and sufficient drinking water in or near their place of work. Drinking water shall conform to the national standards established by South African Bureau of Standards. If applicable, there should be sanitary facilities for food preparation and storage.**

*Drinking water is readily available and in provided in accordance with **Regulation 7 of Facilities Regulation 1593**. The water must be tested according to a risk assessment and meet the South African **National Standard for Drinking Water - SANS 241**.*

*Sanitary facilities for food preparation and storage are available in the production area if this is applicable.*

**GUIDANCE NOTES:** The following factors should be considered when determining how best to address the following questions:

- How much water is needed? As a guide, work on 2 litres per person per day, with slightly more in hotter climates.
- Where should the water source be situated? For workers that are constantly moving from one location to another, a mobile solution might be appropriate however for those who work in a permanent location, a permanent source would probably be more suitable.
- Does the quality of the water pose a risk? Consider the source of the water; rivers are more risky than boreholes (for example) and more frequent sampling would therefore be necessary. Where water of the right quality is not immediately available, look at ways of treating the water to bring it within the specifications established in SANS241. Whatever is implemented, the objective should be to make sure that ALL workers have ready access to sufficient water of the correct quality.

It is usual in an agricultural environment for food preparation to be restricted to the living areas in which case there is no need to provide such facilities in the production areas. However, such storage facilities in the living area should be kept hygienic and clean.

**7.5.3 Housing, where provided, shall be adequate and hygienic.**

*Accommodation provided by the employer must meet the standards established in the relevant parts of the **National Building Regulations - SANS 10400 and SANS 10401**. Where the employer levies a charge for accommodation then such accommodation shall conform to the requirements established in **SD13 Part B: Section 8**.*

**GUIDANCE NOTES:** There is currently no comprehensive standard established as to what constitutes a "compliant" workers house on a farm site; however you should be guided by the general building laws and regulations and the provisions in **SD13**

**Part B: Section 8.3 a-e** which are as follows:

- a) The house has a roof that is durable and waterproof;
- b) The house has glass windows that open and close;
- c) Electricity is provided inside the house where the infrastructure exists;
- d) Drinking water is available inside the house or in close proximity which is no more than 100m from the house;
- e) A flush toilet or pit latrine is provided inside the house or in close proximity; and
- f) the house is no less than 30 square meters in size.

**7.5.4 In situations where dormitory-type accommodation is provided, there shall be sufficient and unobstructed fire exits as well as serviced and appropriate fire-fighting equipment.**

*There is evidence that accommodation provided to workers has fire exits which are sufficient; unobstructed and compliant with SANS 1040, Part T.*

**GUIDANCE NOTES:** Fire, especially in dormitory type accommodation, should be regarded as a significant risk when conducting the risk assessment. This risk could increase or decrease depending on several factors such as the fabric of the building and contents; number of workers staying in a room; electrical provisions; cooking/heating apparatus; and so on. As the risk increases so should the steps taken to reduce the risk also increase. Providing fire fighting equipment and escape routes are two important ways to reduce risk; also important is informing residents of the procedures to apply in the event of an emergency, appointing and training fire marshals, conducting drills from time to time, and applying a robust inspection and maintenance regime to ensure that a) equipment is available and operational and b) escape routes are accessible.

***Section 8: Wages, Benefits and Terms of Employment***

**Principle Statement:**

- Senior Management shall ensure that workers receive a fair wage and benefits which, as a minimum, meet legislative requirements.
- The employment relationship shall be formal, documented and compliant with national law and convention.

CODE REQUIREMENT	BENCHMARK
<b><i>8.1 Wages</i></b>	
<b><i>8.1.1 Calculation of Wages</i></b>	
<b>8.1.1.1 Workers, without exception, shall receive remuneration at least equal to the national minimum</b>	<i>Review of wages demonstrates that workers earn at least the minimum wage as established by SD13.</i>

<b>wage</b>	
<b>GUIDANCE NOTES:</b> Irrespective of the terms of employment or the work performed, workers are entitled to receive and employers are mandated to pay the applicable statutory minimum wage. This also applies when work is performed and paid according to the "piece rate" system.	
<b>8.1.1.2 Where applicable, workers shall be paid in accordance with established Collective Bargaining Agreements.</b>	<i>Documentary reviews and worker representative interviews confirm that where applicable, wages are paid according to any Collective Bargaining Agreement (CBA) that is in place. This shall extend to worker benefits agreed to by the CBA.</i>
<b>GUIDANCE NOTES:</b> This is only applicable where a collective bargaining agreement has been established.	
<b>8.1.1.3 Overtime shall be paid at a premium and in accordance with local law. Such overtime payment shall include work on Sundays and work on Public Holidays.</b>	<i>Review of wage records confirms that overtime rates are paid in accordance with SD13 Part D: Section 13 and 14.</i>
<b>GUIDANCE NOTES:</b> Overtime is 1 ½ times the normal wage rate; and 2 times the normal wage rate for work performed on Sundays and/or Public Holidays. Remember that overtime is not exclusively payable only AFTER the 45 hours have been worked. Overtime is applicable wherever a worker works longer than the contracted hours - even on a daily basis. For example, a worker that is contracted to work from 08h00 to 17h00 is entitled to overtime pay on any day where work is performed outside of these hours (before 08h00 or after 17h00). The worker therefore does not have to complete the 45 hours for the week in order to qualify for overtime pay.	
	<i>Reviews of records and worker interviews confirm that payment</i>

<p><b>8.1.1.4 Remuneration shall be paid regularly, on time and in accordance with the agreement established between the employer and the employee.</b></p>	<p><i>is made as per the terms agreed to in the contract of employment and in accordance with <b>SD13 Part B Section 5.</b></i></p>
<p><b>GUIDANCE NOTES:</b> Ensure that payment is made in accordance with the terms and conditions of employment. You must be able to demonstrate this with records so make sure that you retain copies of payslips, especially where payment is made in cash and the details of the pay are written on the envelope.</p>	
<p><b>8.1.1.5 In all instances, remuneration received by workers / paid to workers shall correspond to the information relating to that pay period in respect of: all amounts due (hours worked; overtime payment; piece rate amount (where applicable) and deductions.</b></p>	<p><i>Reviews of records and worker interviews confirm that the payment received corresponds to the work conducted.</i></p> <p><b>Legal reference: SD13 Part B Section 7.4.b</b></p>
<p><b>GUIDANCE NOTES:</b> As per requirement.</p>	
<p style="text-align: center;"><b>8.1.2 Information Regarding pay</b></p>	
<p><b>8.1.2.1 With each pay period, workers shall receive written particulars concerning their pay. Such particulars shall, as minimum, contain all of the information required by law (SD 13; Section 6)</b></p>	<p><i>Reviews of records - specifically pay slips - confirm that the information provided to workers with their pay corresponds to the requirements as laid out in <b>SD13 Part B Section 6.1.a-l and Section 2.</b></i></p>
<p><b>GUIDANCE NOTES:</b> The following Details MUST be recorded on the payslip:</p> <p>1) Employers Name and Address</p>	

<p>2) Workers name and occupation</p> <p>3) Period for which payment is being made - i.e. From-To</p> <p>4) Wage Rate and Overtime Rate (N.B. This is the rate NOT the actual amount paid)</p> <p>5) Number of ordinary hours worked</p> <p>6) Number of overtime hours worked (where applicable)</p> <p>7) Number of hours worked on a Sunday and/or Public Holiday (where applicable)</p> <p>8) Gross wage for the period</p> <p>9) Any other pay - e.g. bonus</p> <p>10) Details of any deductions made</p> <p>11) Employers' UIF number</p> <p>12) Net Pay (i.e. total actual pay)</p>	
<p><b>8.1.2.2 Management shall take reasonable measures to ensure that workers understand their pay slips.</b></p>	<p><i>Worker interviews confirm that pay slips and their contents are understood.</i></p> <p><b><i>Legal reference: SD13 Part C Section 9.2</i></b></p>
<p><b><i>GUIDANCE NOTES:</i></b> It is a good idea to explain payslips and the payment system to workers during induction training. Pay systems and records differ from business to business and it is good practice to make sure that workers understand your system before they start work. From a management point of view it is also a good way of avoiding time consuming queries on pay day.</p>	
<p><b><i>8.1.3 Deductions</i></b></p>	
<p><b>8.1.3.1 All workers (who are eligible according to the UIF Act) working for more than 24 hours a month shall</b></p>	<p><i>Review of wage records confirms that deductions for UIF are in accordance with the Unemployment Insurance Fund Act.</i></p>

<p><b>contribute no more than 1% of their earnings to the UIF fund.</b></p>	
<p><b>GUIDANCE NOTES:</b> As per legal requirement.</p>	
<p><b>8.1.3.2 Management shall demonstrate that 2% of all salary payments are paid over to the UIF Fund in accordance with the UIF Act.</b></p>	<p><i>There is evidence that the business is registered with the UIF Commissioner - this is verified through the provision of a valid UIF number. There is also evidence that money deducted from the workers is paid across to the UIF.</i></p>
<p><b>GUIDANCE NOTES:</b> As per legal requirement.</p>	
<p><b>8.1.3.3 Deductions for food provided to the worker shall not exceed 10% of the workers' wage for that pay period.</b></p>	<p><i>Reviews of records and worker interviews confirm that, where applicable, deductions made for food are in accordance with <b>SD13 Part B: Section 8.1.a</b></i></p>
<p><b>GUIDANCE NOTES:</b> You should obtain written consent from the worker for ANY deduction that is non-statutory. Even though it is acknowledged that food in lieu of payment is an acceptable and common practise this should be done with the written consent of the worker. In addition, it is good practise to keep a record of what provisions are given to the worker as well as costs of these provisions so that there is an accurate record of these transactions.</p>	
<p><b>8.1.3.4 Deductions made for housing provided to workers shall not exceed 10% of the workers' wage for</b></p>	<p><i>Reviews of records and worker interviews confirm that deductions for housing are done in accordance with <b>SD13 Part B: Section 8.1.b and 8.3.a-f.</b></i></p>

<p><b>that period except in cases where farmworkers are not 18 years old in which case NO deductions may be made for accommodation. Deductions for accommodation shall only be made for ONE farm worker living in the house.</b></p>	
<p><b>GUIDANCE NOTES:</b> Remember, young workers may not be charged for accommodation. In addition, while there are criteria that need to be met in order for accommodation charges to be lawful in terms of SD 13, this does not exempt an employer from complying with other important regulations and legislation, for example, the National Building Regulations.</p>	
<p><b>8.1.3.5 In instances where more than two farmworkers live in the same house, deductions made for communal housing shall not exceed 25% of the TOTAL wage payable to ONE farm worker for that pay period. This amount shall be split equally amongst all the workers living in that accommodation.</b></p>	<p><i>Reviews of records, worker interviews and site tours confirm that deductions made for accommodation conform to the requirements of SD13 Part B Section 8.4; 8.5 and 8.6.</i></p>
<p><b>GUIDANCE NOTES:</b> Verify that current charges levied to farm workers for accommodation comply with this particular clause as it is an easy one to miss.</p>	
<p><b>8.1.3.6 Deductions for payments to third parties may only be made upon receipt of written permission from the worker.</b></p>	<p><i>Reviews of records confirm that deductions made for payments to 3rd parties conform to the requirements of SD13 Part B; Section 8.7 a-d.</i></p>

**GUIDANCE NOTES:** Provident funds, holiday funds, medical aid, retirement plans, saving schemes, funeral policies and so on are all considered as "Third Parties" and you should keep record of the signed policy/acceptance forms for all such deductions. Where the fund is part of the employment package – for example, a provident fund/pension plan established by the employer - then the rules of this scheme should be included in the contract of employment where contributions to such a fund are a mandatory part of the employment.

**8.1.3.7 Any deductions made in respect of purchases made by the worker shall specify the nature and quantity of the goods and shall be accompanied by a proof of purchase attesting to the transaction.**

*Reviews of records and worker interviews confirm that deductions for purchases made by workers are done in accordance with **SD13 Part Section 8.10.***

**GUIDANCE NOTES:** As this is a "non-statutory" deduction and in order to avoid complications arising, there should be clear documented records indicating the nature of the purchase, the value of the purchase, the date of the purchase, and so on. This provision extends to services which are bought/paid for on behalf of the worker – for example, doctors' fees (private). In all instances, you should make sure that deductions are fully traceable through records.

**8.1.3.8 No deductions shall be made in respect of fines levied against workers. Deductions made for the reimbursement of lost or broken equipment shall comply with the provisions of law.**

*Reviews of records and worker interviews confirm that there are no fines levied against workers as per requirements established in **SD13 Part B: Section 7.3.***

**GUIDANCE NOTES:** Any deduction made as a form of punishment is regarded as a fine. If the deduction is to replace lost or damaged goods then there must be records indicating that proper procedures have been followed. Where this results in

disciplinary action then there must be clear records kept indicating action taken, particularly the sanction applied in order to demonstrate that the deduction of money was NOT the sanction. Remember also that where money is deducted to cover the replacement of property then the amount deducted may not exceed the actual cost of the item replaced and so again it is good practise to keep on record the invoice for the purchase of the replaced item/s.

<p><b>8.1.3.9 No deductions shall be made in terms of protective clothing or for any other item of personal protective equipment required by law to protect the workers' health and safety. In all instances where deductions are made for items of clothing NOT normally required as part of the PPE requirement, a written request shall be obtained from the worker requesting and authorizing the deduction.</b></p>	<p><i>Reviews of records and worker interviews establish that PPE is provided free of charge as per requirement in SD 13, Part B: 7.1.c.</i></p>
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**GUIDANCE NOTES:** It is very important that work activities requiring the worker to wear PPE are clearly identified during the health and safety risk assessment process. Normal work wear (work clothing) is NOT considered PPE and so is not necessarily a requirement for the job – in other words, the employer is not obliged to provide such clothing. If "normal" clothing is provided to the worker and a deduction is made for the clothing, then the normal rules governing such a deduction must be applied - i.e. consent obtained from the worker; deduction supported by proof of purchase and so on.

**8.2 Leave Benefits**

<p><b>8.2.1 Workers shall receive at least 1 day's paid annual</b></p>	<p><i>Reviews of records and worker interviews will confirm that</i></p>
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<p><b>leave for every 17 days worked or, where appropriate, 1 hour paid leave for every 17 hours worked.</b></p>	<p><i>annual leave entitlement is provided in accordance with <b>SD13 Part E: Leave 1 a-c.</b></i></p>
<p><b>GUIDANCE NOTES:</b> Annual leave is a benefit and normally forms part of the "remuneration" package. That said, legislation has stipulated that, providing certain qualifies have been met, workers are automatically entitled to a minimum amount of annual leave accrued as described in the relevant section of SD13 for farm workers and BCEA for all other workers. Make sure that your management system / book keeping system accounts for this leave allowance and monitors each worker so that you are able to demonstrate that this entitlement is being observed. You should be aware that payment in lieu of leave is not permitted BUT you may insist that workers take their leave at a specified time to suit the needs of the business – for example, at the end of / in between seasons.</p>	
<p><b>8.2.2 If a public holiday falls during the workers annual leave entitlement, they shall be entitled to redeem that public holiday in addition to their normal annual leave.</b></p>	<p><i>Reviews of records and worker interviews will confirm that public holiday requirements are being met in accordance with <b>SD13 Part E: Section 2.</b></i></p>
<p><b>GUIDANCE NOTES:</b> Clear records will help to demonstrate that this entitlement is being observed.</p>	
<p><b>8.2.3 The Employer shall grant 3 weeks paid leave for every 12 months of continuous work and this annual leave shall be valid and due to the worker up to 6 months after the end of the annual leave cycle.</b></p>	<p><i>Reviews of records and worker interviews will confirm that leave requirements are followed in accordance with <b>SD13 Part E: Section 4 and b.</b></i></p>
<p><b>GUIDANCE NOTES:</b> Remember to maintain records for a (minimum) period of 3 years in order to assist with demonstrating compliance with this point. Workers should sign leave forms acknowledging that a) they have been granted leave and b) that</p>	

they have taken leave.	
<p><b>8.2.4 The employer shall pay the worker leave pay equivalent to the amount that the worker would have normally earned during an equivalent period. This must be paid across to the worker immediately before the leave is taken.</b></p>	<p><i>Reviews of records and worker interviews will confirm that payment for leave is done in accordance with <b>SD13 Part E: Section 9.</b></i></p>
<p><b>GUIDANCE NOTES:</b> Pay-roll records will help to demonstrate compliance with this point.</p>	
<p><b>8.2.5 During the first six months of employment, farm workers shall be entitled to 1 day paid sick leave for every 26 days worked., thereafter, the sick entitlement is as per the entitlement provided for in SD13 Clause 22.</b></p>	<p><i>Reviews of records, worker interviews and management interviews confirm that sick leave is granted in accordance with <b>SD13 Part E: Section 22</b></i></p>
<p><b>GUIDANCE NOTES:</b> It is recommended that you keep clear records of attendance to assist with the proper management of sick leave. Sick leave is something that, if not managed properly, can be abused and cost the business a lot of money as a result of absenteeism. Make sure, therefore, that every absence that is taken as sick leave is recorded. Also remember to deduct any sick leave taken during the first six months from the total permissible sick leave allowance for the cycle (3 years calculated by multiplying the number of days normally worked during a week by 3; a 5 day per week worker is thus entitled to 30 days paid sick leave in a 3 year cycle and a 6 day per week worker is entitled to 36 days paid sick leave in a 3 year cycle.)</p>	
<p><b>8.2.6 An employer may deduct the cost of medical care</b></p>	<p><i>Document review confirms that the worker has requested that</i></p>

<p><b>from a workers wage at the request of the worker.</b></p>	<p><i>such costs be deducted from their wage as per requirement detailed in <b>SD13 Part B Section 8.10.</b></i></p>
<p><b>GUIDANCE NOTES:</b> It is important to remember that this does not apply to sickness/injury caused during the course of normal work. All work-related illness and injury is covered by COIDA.</p>	
<p><b>8.2.7 The employer shall grant paid sick leave.</b></p>	<p><i>There is documentary evidence demonstrating that sick leave is paid in accordance with legislation. This is also confirmed in worker interviews.</i></p>
<p><b>GUIDANCE NOTES:</b> Keep clear records to demonstrate that sick leave is being granted – for example, some employers maintain a sick leave register which indicates the days that employees are recorded as being absent due to illness/injury. This can be easily cross-referenced with pay records for that period to indicate whether the sick leave has been paid or not. A sick leave register is also a good way of tracking absence to identify trends.</p>	
<p><b>8.2.8 In instances where it is not practical for a farm-worker to obtain a medical certificate, payment shall not be withheld from that worker unless reasonable assistance to obtain a certificate has been provided by the employer.</b></p>	<p><i>Document review, worker and management interviews confirm that where workers are unable to obtain valid medical certificates, that payment is not withheld by the employer as per required by <b>SD13 Part E: Section 22.8</b></i></p>
<p><b>GUIDANCE NOTES:</b> It is important to note that the law entitles workers to a period of up to 2 consecutive days without producing a medical certificate. Your business policy cannot therefore be less than this as it is then not in accordance with the law. Be sure to develop and implement a robust sick leave policy which is effective in reducing or eliminating this practise.</p>	

<p><b>8.2.9 Workers that have worked for 4 months and who work for 4 days per week or more shall be entitled to 3 days paid family responsibility leave per year.</b></p>	<p><i>Document review and worker interviews confirm that, where applicable, workers are entitled to take family responsibility leave as required by <b>SD13 Part E: Section 23.</b></i></p>
<p><b>GUIDANCE NOTES:</b> It is advisable to keep clear records that specify a) when leave is taken and b) what type of leave is taken. In many instances, workers need to complete a leave request form where they specify the type of leave that is being applied for - this serves as good record to demonstrate compliance with this point.</p>	
<p><b>8.2.10 Maternity leave shall be granted to all female employees - who have been employed for a minimum of 4 months- from 1 month prior to the expected date of birth until 3 months thereafter.</b></p>	<p><i>There is documentary evidence as well as verbal confirmation through worker and management interviews that maternity leave is provided in accordance with <b>SD13 Part E: Section 24.</b></i></p>
<p><b>GUIDANCE NOTES:</b> Maintaining good records is key to ensuring and demonstrating compliance with this entitlement. Remember that previous periods of employment should be considered when determining entitlement if the worker was employed previously and the previous period of employment ended LESS THAN 12 months ago.</p>	
<p><b>8.2.11 Mothers may not return to work for six weeks after the baby is born unless a medical practitioner declares her fit to do so.</b></p>	<p><i>There is documentary evidence that mothers do not return to work too early as required by <b>SD13 Part E: Section 24.3.</b></i></p>
<p><b>GUIDANCE NOTES:</b> It should be standard practise to obtain a medical clearance certificate from ALL workers returning from</p>	

maternity leave - even if the period is more than 6 weeks after the birth.

**8.2.12 Employers shall not require pregnant women or mothers that are nursing infants to perform functions hazardous to their health, and for a period of six months after the birth of her child, the employer will offer suitable alternative employment on equal terms to those which were in place when she went on maternity leave.**

*There is documentary evidence as well as verbal confirmation through worker and management interviews that pregnant women or mothers are not required to perform functions at work in accordance with **SD13 Part E: Section 24.7 and 24.8a and b.***

**GUIDANCE NOTES:** Hazardous functions should be clearly identified in the health and safety risk assessment of the business and all relevant personnel must be instructed in these so as to prevent pregnant women or those nursing infants from performing these functions.

### **8.3 Employment Terms**

#### **8.3.1 Contracts**

**8.3.1.1 Any person deemed to be an employee and who fits the definition of an employee according to Basic Conditions of Employment Act (BCEA) Chapter 11 Section 83, shall be recognized by the business as an employee and not an independent contractor and an employment relationship shall be established with such**

*All workers (including permanent, seasonal, labour-only contracted, sub-contracted, temporary, fixed term, apprenticeships) have written contracts of employment.*  
**Legal reference: BCEA, Chapter 11, section 83; SD 13 Part C: Section 9**

<p><b>a person.</b></p>	
<p><b>GUIDANCE NOTES:</b> All work performed should be on the basis of a recognized employment relationship where both employees and management understand their obligations in terms of an employment contract. The business should have a clear understanding of the different categories of employment, i.e. permanent, seasonal, labour-only contracted, sub-contracted, temporary, fixed term, apprenticeships. Check that the employment contract accurately reflects the nature of employment.</p>	
<p><b>8.3.1.2 The employment relationship shall be established by agreement with the workers. This agreement (Contract of Employment) shall:</b></p> <ul style="list-style-type: none"> <li><b>(a) Contain all the information required by law</b></li> <li><b>(b) Be explained to the workers</b></li> <li><b>(c) Be signed by each worker</b></li> <li><b>(d) Be made available upon request of the workers (AND/OR) displayed in a prominent place for reference purposes.</b></li> </ul>	<p><i>All workers (including permanent, seasonal, labour-only contracted, sub-contracted, temporary, fixed term, apprenticeships) have written contracts of employment.</i></p> <p><b>Legal reference: SD 13 Part C: Section 9</b></p> <p><i>Contracts are explained to all workers in a language they understand. Evidence could be an attendance register of a briefing session with the workforce and confirmation during worker and management interviews.</i></p> <p><i>Contracts of employment are signed by contracting parties; in the event of 'group contracts' a document listing the names of relevant workers with their signatures as proof of agreement is available.</i></p> <p><i>Contracts of employment are kept on file and made available to workers on request. A generic contract outlining terms and conditions of employment is displayed in the workplace where workers are able to read it.</i></p>

**GUIDANCE NOTES:** Contracts must contain the following information as stipulated in SD13 Part C: Section 9: i) the full name and address of the employer; ii) the name and occupation of the farm worker, or a brief description of the work for which the farm worker is employed; the place of work; the date on which employment began (and in the case of non-permanent workers, when it will end); ordinary hours of work and days of work; wage or the rate and method of payment; rate of pay for overtime work; any other cash payments the worker is entitled to; any food or accommodation payment the worker is entitled to; any payment in kind received by the worker; how frequently wages will be paid; any deductions, both statutory and non statutory, to be made from the worker's wages; the leave to which the worker is entitled and the period of notice required to terminate employment.

At the start of each season - or when workers are employed - use the induction training session to explain the terms of employment to workers, in a language they understand. Once this has been done and workers have a clear understanding of the contract get them to sign an attendance register as confirmation. In cases where workers are recruited from different parts of the country for seasonal work, it is recommended that the terms of employment are explained to them before they depart - this will ensure that workers are able to make an informed decision about accepting the employment or otherwise.

Once the contracts have been explained to workers they must be asked to sign the contract. Contracts need to be signed by both contracting parties. In cases where seasonal workers are employed for the same length of time and under the same conditions of employment, 'group contracts' are sometimes entered into. In such cases there needs to be documented proof that the contracts have been explained to all relevant workers and a signed attendance register in acknowledgement to be kept on file. A generic version of the employment contract must be displayed in a prominent area of the workplace where workers are able to refer to it.

**8.3.1.3 Employment contracts shall be up-dated or amended when there are material changes made and**

*Contracts of employment are updated to reflect any material changes made to the terms and conditions of employment.*

***Legal reference: SD 13 Part C: Section 9***

<b>workers shall be informed of these changes.</b>	
<p><b>GUIDANCE NOTES:</b> Changes to the terms of an employment contract can only be done in consultation with the employee(s) concerned. It is therefore important to keep proof of such a process in the form of signed documents recording discussion and agreement. Changes to contracts can take the form of an addendum attached to the original contract of employment.</p>	
<p><b>8.3.2 Non-permanent Workers</b></p>	
<p><b>8.3.2.1 All non-permanent workers (including seasonal, labour-only contracted, sub-contracted, temporary, fixed term, apprenticeships) shall be formally appointed and their employment terms and conditions established through agreement in the form of a contract. Arrangements relating to non-permanent workers shall not be used to avoid obligations that would normally accrue to permanent workers.</b></p>	<p><i>All non-permanent have valid contracts of employment as required by law.</i></p> <p><b>Legal reference: SD 13 Part C: Section 9</b></p>
<p><b>GUIDANCE NOTES:</b> It is important that any arrangements relating to non-permanent workers should not be used to avoid any legal obligations, for example, excessive use of fixed-term contracts, rolling over contracts, etc.</p>	
<p><b>8.3.2.2 Non-permanent workers that leave and return to the same place of work shall accrue all leave and other</b></p>	<p><i>All non-permanent workers (including seasonal, labour-only contracted, sub-contracted, temporary, fixed term, apprenticeships) that leave and return to the same place of work</i></p>

<p><b>benefits due to them by law.</b></p>	<p><i>accrue all leave and other benefits due to them. Employment records are kept by the business as evidence that these requirements are implemented.</i></p> <p><b>Legal reference: BCEA Chapter 11 Sub-section 84</b></p>
<p><b>GUIDANCE NOTES:</b> This applies in cases where the break between periods of employment is less than one year.</p>	
<p><b>8.3.2.3 Non-permanent workers' rights shall be upheld and recognized in the Contract of Employment.</b></p>	<p><i>All non-permanent workers' contracts (including seasonal, labour-only contracted, sub-contracted, temporary, fixed term, apprenticeships) contain all recognized rights as stipulated in SD 13.</i></p>
<p><b>GUIDANCE NOTES:</b> As per legal requirement.</p>	
<p><b>8.3.2.4 The business shall maintain accurate and up-to-date records for each worker in order to establish a history of who has been employed in the past as well as the duration of their employment</b></p>	<p><i>The business has employment records for all workers to establish a history of who has been employed in the past as well as the duration of their employment.</i></p>
<p><b>GUIDANCE NOTES:</b> As per legal requirement.</p>	
<p style="text-align: center;"><b>8.3.3 Labour Service Providers</b></p>	
<p><b>8.3.3.1 The business shall establish a service agreement with Labour Service Providers establishing their</b></p>	<p><i>The business has a written service agreement with Labour Service Providers establishing their respective legal</i></p>

<p><b>respective legal responsibilities with regards to the labour supplied by the labour service provider.</b></p>	<p><i>responsibilities with regards to the labour supplied by the Labour Service Provider.</i></p>
<p><b>GUIDANCE NOTES:</b> The contract of service between the site must clearly state what is expected of the labour service provider (this must include legal requirements) and also set out the agreement in respect of payment to the service provider.</p>	
<p><b>8.3.3.2 The business shall take steps to ensure that the Labour Service Provider is adhering to the applicable legislation in terms of the workers supplied by him/her. The business shall act on any instances where non-compliances are detected.</b></p>	<p><i>There is a service agreement establishing the relationship between the business and the Labour Service Provider outlining legislative requirements and sanction in the event of non compliance. Non-compliances are dealt with by the business and such actions are documented. The business has documentary evidence supplied by the Labour Service Provider to indicate that the Labour Service Provider has undergone his/her own internal audit and is adhering to applicable legislation.</i></p>
<p><b>GUIDANCE NOTES:</b> Labour Service Providers must comply with the same employment laws and ethical code requirements that all employers have to comply with. If you use the services of a Labour Service Provider you are jointly liable for any non-compliances on the part of the Labour Service Provider. It is therefore important that you ensure the Labour Service Provider you use is fully compliant with the law. You can do this by requiring your Labour Service Provider to do an internal audit to ensure compliance with legal requirements such as registrations, employment agreements, copies of ID documents / work permits, wage slips, etc and to provide you with a report of this audit.</p>	

***Section 9: Working Hours***

**Principle Statement:**

**Senior Management shall ensure that working hours are in accordance with applicable legislation and shall implement systems to accurately monitor and record hours worked.**

CODE REQUIREMENT	BENCHMARK
<b>9.1 Normal Working Hours</b>	
<p><b>9.1.1 Ordinary hours of work shall not exceed 45 hours.</b></p>	<p><i>Working hours are recorded accurately and monitored to ensure that ordinary working hours are not exceeded. Workers confirm during interviews that they do not work more than 45 hours during the week.</i></p>
<p><b>GUIDANCE NOTES:</b> Whether you capture the data manually or electronically it is important that these details are clear, accurate and available for a period of 3 years. Ideally, there should be a clearly definable and easy to follow trail between the hours worked and the payment made. The other reason for accurate record keeping is to ensure that overtime is managed in accordance with the limits established by law.</p>	
<p><b>9.1.2 Where applicable, averaging of working hours due to seasonality shall be undertaken according to legal requirements.</b></p>	<p><i>Averaging of working hours conforms to the following: a) working hours are not extended more than 5 hours per week for a period of not more than four months in any continuous 12 month period, and b) working hours are reduced by the same number of hours during a period of the same duration in the same 12 month period.</i></p> <p><b>Legal reference: SD13 Part D: Chapter 12 Section 1a and b</b></p>
<p><b>GUIDANCE NOTES:</b> Check your hours of work during the different seasons. Remember that you are allowed to "average" hours for a period of not longer than 4 months. If your year is divided in two seasons which each have different working weeks then this is longer than the permissible time where averaging of hours is concerned. If you feel that your operation is such that the</p>	

permitted four months is not long enough it is advisable to notify the Department of Labour and see whether a dispensation from them would be possible. Be sure to keep any correspondence in this regard on record - even if the matter has not yet been resolved - this will help demonstrate a) that you are aware of the requirement, and b) that you're actively seeking a resolution.

**9.1.3 Agreements made as described in 9.1.2 shall not extend the workers ordinary hours of work beyond 10 hours per day.**

*Time and attendance, wage and other applicable records as well as worker interviews confirm that in no circumstances are "normal" working hours extended beyond the maximum 10 hours per day.*

***Legal reference: SD13 Part D: Chapter 12 section 2***

***GUIDANCE NOTES:*** Working hours should be verified through attendance registers.

**9.1.4 In the case of such agreements, the farmworker shall be paid their normal working wage during periods of extended AND reduced working hours and in instances where workers cannot or will not benefit from the reduced hours of work (e.g. fixed term / seasonal workers) such workers will be compensated at a premium rate for the additional hours worked in accordance with applicable overtime regulations.**

*Wage records, employment files and other relevant documentation as well as worker interviews confirm that payments made to workers who terminate their services or who's services are terminated during the period of extended hours are compensated for the additional hours worked at the correct overtime rate.*

***Legal reference: SD13 Part D: Chapter 12 Section 4***

***GUIDANCE NOTES:*** Remember with averaging of hours that workers who have worked the longer period and then leave thereafter are entitled to receive overtime payment for the additional hours worked as they will not be around to benefit from the shorter working hours.

**9.1.5 Any agreement reached in terms of averaging hours of work must conform with legal requirements.**

*There are documented agreements concerning averaging of hours. Where such an agreement is concluded, the employer must: a) supply a copy of the agreement to the workers and b) record any extended or reduced hours of work in terms of the employment contract.*

***Legal reference: SD13 Part D: Chapter 12 Section 5a and b***

***GUIDANCE NOTES:*** SD 13, Section 12 (1) states "A worker and an employer may conclude a written agreement" to extend the ordinary hours of work. It is important, therefore, that records of such an agreement exist - i.e. it must be documented rather than an informal verbal arrangement. It could, for example, be stated in the contract but in order for the agreement to have affect, obviously the contract must be given to the worker.

**9.1.6 Management shall define the policy in the case of rain days and this shall be communicated to the workers.**

*There is a documented policy - either a separate document or included in the terms and conditions of employment - which clearly stipulates the manner in which rain days or any other situation in which work cannot be performed are managed. This must be communicated to the workers so that they understand what will happen in the event that rain or any other factor beyond their own control effects their ability to perform their normal duties. Workers should be able to demonstrate an understanding of this policy.*

**GUIDANCE NOTES:** The policy for instances in which work cannot be performed should be clearly spelled out in the contract and there should be a clear procedure followed in the event that work cannot be performed due to an event beyond the control of the worker. It should be remembered that the availability of the worker to perform their duties at the workplace places an obligation on the employer to provide work for that worker if no agreement has been made otherwise. In other words, it should not be at the discretion of the employer as to whether a worker may work or not. Cases where work cannot be performed, for example, rain days, should, as far as possible, be defined and the procedure included in the terms and conditions of employment. This should therefore be documented rather than an informal verbal agreement.

## **9.2 Overtime**

### **9.2.1 Any overtime worked shall conform to legal requirements as follows:**

- a) be voluntary;**
- b) be by agreement with workers;**
- c) be less than 15 hours per week for farm workers and 10 hours per week for other enterprises;**
- d) not cause the worker to work more than 12 hours in any one day.**

*Time sheets, wage records; employment contracts, any other relevant documentation as well as worker and management interviews confirms that any overtime worked complies with SD 13, Clause 13; Part D, and BCEA Chapter 2 Part 10 for companies that fall outside the scope of SD13 (for example, stand-alone packing houses).*

**GUIDANCE NOTES:** Overtime can be a complex issue to manage in a seasonal industry such as agriculture where production is influenced by a number of factors which very often are beyond the control of the employer. It is therefore normal practice that the requirement to work overtime has become regarded as "standard practise" in the agriculture sector and is very often included in the terms and conditions of employment (contract). An accurate method of monitoring hours worked becomes

essential where effective management of overtime is concerned. Another good practice is to identify key functions where overtime is likely to occur, for example, spray operators, fork lift operators, lorry drivers, irrigation personnel and security guards.

### **9.3 Work on Sundays**

**9.3.1 Work done on a Sunday shall be compensated according to legal requirements.**

*There is evidence (documentary and verbal confirmation) that work done on Sundays conforms to the requirements established in SD 13, Part D, Clause 16 and BCEA, Chapter 2, Clause 16.*

**GUIDANCE NOTES:** As per legal requirements.

**9.3.2 In addition:**

**(a) Any work done on a Sunday shall not be taken into account when calculating normal working hours but shall be used to calculate overtime;**

**(b) A farm worker that does not reside on the farm and works on a Sunday, is deemed to have worked at least 2 hours on that day;**

**(c) If a shift worked by a farm worker falls on a Sunday and another day, the whole shift shall be compensated as Sunday, unless the majority of the shift falls on the other day in which case the whole shift is deemed to**

*There is evidence (documentary and verbal confirmation) that work done on Sundays conforms to the requirements established in SD 13, part D, Clause 16 and BCEA, Chapter 2, Clause 16.*

<b>have taken place on the other day.</b>	
<b>GUIDANCE NOTES:</b> As per legal requirements.	
<b>9.4 Work on Public Holidays</b>	
<b>9.4.1 Workers shall not be required to work on a public holiday unless an agreement has been reached.</b>	<p><i>In instances where work is performed on public holidays, there is a documented agreement signed by the workers.</i></p> <p><b>Legal reference: SD13 Part D. Clause 20.1</b></p>
<p><b>GUIDANCE NOTES:</b> It is common practice in agriculture for public holidays to be exchanged for another day during a more suitable period. This arrangement should be documented and any agreement reached with workers recorded. As far as possible, the day granted in exchange for the public holiday MUST BE a normal working day - i.e. a day on which the workers would normally have worked. If public holidays are "banked" i.e. worked and then ALL granted simultaneously - for example at the end of the season - then there must be clear records of this.</p>	
<b>9.4.2 Work undertaken on a public holiday shall be compensated according to legal requirements.</b>	<p><i>Wage records, pay slips, contracts of employment and any other relevant documentation as well as workers confirm that payment received for work performed on a public holiday is rendered in accordance with SD13 Part D. Clause 20.2; 20.3 and 20.5.</i></p>
<b>GUIDANCE NOTES:</b> Applies where work is performed on a public holiday which is NOT going to be exchanged for another day.	
	<i>Payslips and wage records as well as workers themselves confirm</i>

<p><b>9.4.3 Compensation for work done on a public holiday must be paid to that worker during that pay period.</b></p>	<p><i>that payment for work done on public holidays is paid to them during the same pay period.</i></p> <p><b>Legal reference: SD13 Part D: Clause 20.4</b></p>
<p><b>GUIDANCE NOTES:</b> As per legal requirement.</p>	
<p style="text-align: center;"><b>9.5 Night Work</b></p>	
<p><b>9.5.1 Any night work shall only be performed under agreement with workers and if –</b></p> <p><b>(a) The employer pays the worker and allowance of at least 10% of the daily wage of that workers and;</b></p> <p><b>(b) if transport is provided from the workers residence at the start and end of the night shift</b></p>	<p><i>There is documentary evidence that clearly indicates that, where night work is performed, workers are paid the statutory night work allowance.</i></p>
<p><b>GUIDANCE NOTES:</b> As per legal requirements.</p>	
<p><b>9.5.2 Where workers are required to perform night work on a regular basis, management shall inform the farmworker, either in writing or orally in a language that the worker understands of any health hazards associated with that work and of the workers’ right to undergo medical examination for the account of the</b></p>	<p><i>There is documentary evidence that the employer complies with this provision as established in SD13 Part D: Clause 17.3a and b read together with 17.4.</i></p>

<b>employer concerning those hazards.</b>	
<b>GUIDANCE NOTES:</b> Remember that 'regular basis' is defined as having performed night work on at least 50 days during the course of the year.	
<p><b>9.5.3 Where there is evidence that the worker is suffering ill-health as a result of the night work and where it is practicable, the employer shall find alternative day-time work for the worker.</b></p>	<p><i>There is evidence that the requirements as stipulated in SD13 Part Clause 17.3.c are being met or, at least considered in the business policy.</i></p>
<p><b>GUIDANCE NOTES:</b> Where an employer requires an employee to work during the night on a regular basis (see point 9.5.2 above for definition of "regular basis") the employer must transfer the farm worker to suitable day work within a reasonable time if-</p> <ul style="list-style-type: none"> <li>(i) the farm worker suffers from a health condition associated with the performance of night work; and</li> <li>(ii) It is practical for the employer to do so.</li> </ul>	
<b>9.6 Rest Periods and Meal Intervals</b>	
<p><b>9.6.1 Workers that work more than 5 consecutive hours shall be given a meal interval of at least 1 continuous hour. This may be reduced to 30 minutes by collective agreement with the workers or dispensed with completely for workers that work for 6 hours or less.</b></p>	<p><i>Workers confirm during interviews that they are allowed to take a break as per the requirements of SD13 Part D: Clause 18.1-5. This is confirmed by the working hours as stated in the business policy.</i></p>
<b>GUIDANCE NOTES:</b> As per legal requirement	

<p><b>9.6.2 Meal intervals incurred during overtime shall not be reduced to less than 15 minutes.</b></p>	<p><i>There is confirmation that rest periods granted during overtime are not less than 15 minutes.</i></p> <p><b>Legal reference: SD13 Part D: Clause 18.6</b></p>
<p><b>GUIDANCE NOTES:</b> As per requirement</p>	
<p><b>9.6.3 Workers shall receive a daily rest period of not less than 12 consecutive hours between ending work on one day and starting work the next.</b></p>	<p><i>Time sheets, business policy, employment contracts and other relevant documentation as well as workers confirm that there is a break of not less than 12 hours between the end of one shift and the start of another.</i></p> <p><b>Legal reference: SD13 Part D: Clause 19.1.a</b></p>
<p><b>GUIDANCE NOTES:</b> As per legal requirement</p>	
<p><b>9.6.4 Workers shall receive a weekly rest period of not less than 36 hours which shall include a Sunday (unless otherwise agreed).</b></p>	<p><i>Documentary evidence, such as time sheets, and worker interviews confirm that they receive a weekly rest period of at least 36 hours and, unless a written agreement is reached which states otherwise, this rest period shall include a Sunday.</i></p> <p><b>Legal reference: SD13 Part D: Clause 19.1.b read together with 19.3</b></p>
<p><b>GUIDANCE NOTES:</b> As per legal requirement. As with overtime, identify functions where this might occur, for example, irrigation, and keep accurate records to demonstrate compliance.</p>	