

LEGAL NOTICE NO.....OF 2023

THE WAGES ACT, 1964
(Act No. 16 of 1964)

**THE REGULATION OF WAGES (BUILDING AND CONSTRUCTION)
INDUSTRY ORDER, 2023
(Under section 11)**

In exercise of powers conferred by section 11 of the Wages Act, 1964, the Minister for Labour and Social Security makes the following Order-

Citation and Commencement

1. This Order may be cited as the Regulation of Wages (Building and Construction Industry) Order 2023.
2. This Order shall come into force on the date of publication in the gazette.

Interpretation

2. In this Order, unless the context otherwise requires;

“artisan” means a skilled employee who has undergone and passed a trade test from a recognized government institution or has served an apprenticeship programme from a recognised employer;

“clerk (without certificate)” means an employee who does not hold a senior certificate of education or equivalent and who is engaged in general clerical duties;

“clerk (with certificate)” means an employee who holds a senior certificate of education and who is engaged in general clerical duties;

“cook” means an employee engaged in the preparation, cooking and issuing of food to other employees;

“crane driver (with certificate)” means an employee who operates a self propelled crane who is in possession of a recognised certificate;

“continuous employment” has the same meaning as provided for in section 2 of the Employment Act, 1980 (as amended);

“driver(light vehicle)” means an employee who holds a light duty driver’s licence whose duties, in addition to being in charge of a motor vehicle of under 5 tons laden weight, include handling of cargo to and from the tailboard and the daily maintenance and cleaning of such vehicle;

“driver (heavy duty)” means an employee who holds a heavy duty driver’s licence and a high up crane certificate whose duties, in addition to being in charge of a motor vehicle of between 5 tons and 10 tons laden weight, include the handling of cargo to and from the tailboard, operating a crane and the daily maintenance and cleaning of such vehicle;

“driver (extra heavy)” means an employee who holds a heavy duty driver’s licence and who is in charge of a vehicle in excess of 10 tons laden weight including articulated vehicles and is responsible for the safety of the load;

“driver (tractor)” means an employee who holds a tractor driver’s licence and who operates a tractor;

“earth mover operator” means an employee who operates an earthmoving machine;

“family” means, in relation to an employee, the spouse and unmarried children under eighteen (18) years, of such employee;

“first aider” means an employee who provides adequate first aid support and equipment at employer’s premises including workplaces outside the normal place of work;

“general labourer” means an employee who performs unskilled work;

“general tradesman” means an employee who does not hold a trade test certificate but has recognised ability to perform the duties of any one of the following-

- (a) block layer or plasterer
- (b) brick layer or tiller;
- (c) joiner or cabinet maker;
- (d) shutter hand or carpenter;
- (e) painter or glazier;
- (f) plumber or drain layer;
- (g) welder;
- (h) reinforcement steel fixer;

- (i) electrician;
- (j) wireman;
- (k) mechanic;
- (l) plant fitter;
- (m) structural steel erector;
- (n) boiler maker;
- (o) pipe fitter; and
- (p) scaffolding erector;

“grass cutter” means an employee who is responsible for cutting grass along public, private roads and buildings;

“Housekeeper/cleaner” means an employee who is engaged to routinely clean offices and to prepare refreshments;

“indvuna” means an employee in charge of unskilled employees;

“normal place of work” means a place where an employee reports for duty on a daily basis;

“normal place of engagement” means a work station where an employee was first engaged;

“plant” means any machinery used in the construction industry other than tools held by hands;

“plant operator” means an employee who is in charge of operating either a concrete mixer, concrete dumper, walk-behind roller, plate compactor, power float machine and compressor or any other plant used by the operator;

“registered nurse” means a nurse registered under the Nurses and Midwives Act, 1965 or its successor as the case may be;

“survey and soil technician assistant” means an employee who assists surveyors and soil technicians with surveying earth surfaces, topography and man made structures, underground areas, and prepares maps and charts;

“storeman” means an employee who is responsible for receiving stock, recording and replenishing it;

“steel erector” means an employee who erects a steel structure including scaffolding;

“watchman” means an employee who is engaged during the day or night to guard the premises, workplace or other property of the employer;

Application

3. (1) Subject to sub-regulation (2) this Order shall apply to employees specified in the First Schedule who are employed in any undertaking or part of an undertaking which carries one or more of the following activities-

- (a) the construction, structural alteration, maintenance of any railway line, siding, public or private road, thoroughfare, airfield, tunnel bridge, viaduct, waterworks, lattice work, or other structure designed solely for the support of electric lines and or earth moving and any building and civil engineering works;
- (b) the construction, structural alteration, maintenance repair or demolition of any building, fencing and preparing or laying the foundation of a building or an intended building;
- (c) the construction, structural alteration, maintenance, repair or demolition of any electrical work, plumbing, fire protection, sewerage reticulation and purification or other services related to structures;
- (d) the clearing and maintenance of the public or private road

(2) This Order shall not apply to persons employed in any undertaking or part thereof operated by-

- (a) the Government; and
- (b) a local authority

Basic Minimum wage

4 (1) The employees specified in the First Schedule shall be paid a basic minimum wage calculated at a rate not less than that specified therein, which shall not be reduced by any amount for housing or accommodation and food supply.

(2) Nothing prevents an employer from paying an employee more than the basic minimum wage stipulated in the First schedule.

(3) An employee who, at the date of commencement of this Order is in receipt of a higher wage than that prescribed by this Order, or enjoys better conditions of employment than those prescribed by this Order, shall not suffer any reduction in such wage or condition by reason of this Order.

Normal working hours

5. (1) The normal working week (other than for a watchman) shall be from Monday to Friday and shall consist of forty-five hours made up of nine working hours per twenty-four hour day;

(2) The normal working week for a watchman shall be seventy-two hours spread over six shifts, each of twelve hours, inclusive of meal breaks;

(3) No employee, other than a watchman shall be required to work for more than five hours with no break of thirty minutes.

Public holidays

6. (1) The following shall be public holidays with full pay-

- (a) Ascension Day;
- (b) Independence (Somhlolo) day;
- (c) Good Friday;
- (d) Christmas day;
- (e) **Boxing Day**
- (f) Umhlanga (Reed Dance) day;
- (g) King's birthday;
- (h) Incwala day;
- (i) Easter Monday;
- (j) May/Worker's Day;
- (k) National Secondary Elections' Day;

- (l) National Flag Day;
- (m) New Year's Day: and
- (n) Public holiday (22nd July)

(2) Where a public holiday, specified in sub regulation (1) falls on a Sunday, the following day shall be deemed to be a public holiday.

Payment of overtime

7 (1) An employee, other than a watchman, shall be paid for overtime worked at the following rates;

- (a) during the normal working week for overtime worked before midnight in excess of the normal working hours, at one and one third times the normal hourly rate of wages;
- (b) during the normal working week for overtime worked after midnight in continuation of normal working hours or other overtime worked, at twice his normal hourly rate of wages;
- (c) for any time worked on Saturday before 1.00 pm at one and half times his normal hourly rate of wages;
- (d) for anytime worked on a public holiday specified in regulation 6 (1), Sunday or after 1.00 pm on Saturday at twice his normal hourly rate of wages;

(2) Overtime in respect of a watchman shall be calculated at twice the normal hourly rate for all time worked on a public holiday specified in regulation 6 or any time worked in excess of twelve hours on any working day, and that any watchman who has been absent from work during any week without reasonable cause shall not be entitled to overtime in that week until the watchman has completed seventy-two hours of work.

Annual Leave

8. (1) On completion of three months of continuous employment with the same employer, an employee shall be entitled to accrue one day of paid leave per month to a maximum of thirteen (13) days in a twelve month period.

(2) In each year of continuous employment, an employee shall be entitled to eleven (11) days paid leave for eleven (11) months and two (2) days paid leave for the twelfth month of each year of employment.

(3) An employer and its employee(s) may agree, where it appears to them to be suitable, or convenient, on the time or period in which annual leave is to be taken.

(4) Where the employment of an employee is terminated after a period exceeding three months but not amounting to a one (1) year from the date of its commencement the employer shall pay to the employee a sum not less than one (1) day's wages for each completed month of such period.

Sick Leave

9 (1) After three months continuous employment with the same employer, and subject to the production of a medical certificate signed by a Medical Practitioner, as defined under the Medical and Dental Practitioners Act, 1970, an employee shall be eligible, in each year of employment with that employer, for maximum of fourteen (14) days on full wages and thereafter to a maximum of fourteen (14) days on half wages.

(2) Notwithstanding sub-regulation (1) a certificate issued by a registered nurse shall be accepted in place of a medical certificate if a Medical Practitioner is not available.

Maternity Leave

10. (1) Every female employee, whether married or unmarried, who has been in the continuous employment of her employer for twelve months or more shall be entitled to twelve weeks' maternity leave, so arranged that she gets six weeks before the date of confinement and six weeks after, and only at least thirty (30) working days shall be on full pay upon delivering to her employer-

- (a) a certificate issued by a Medical Practitioner or Midwife setting forth the actual or expected date of her confinement;
- (b) a certificate issued by a medical practitioner or a midwife setting forth the date of her confinement; or
- (c) such other evidence in support of the entitlement to maternity leave as is reasonable, having regard to all the circumstances of the case.

(2) Notwithstanding sub-Regulation (1), a female employee entitled to maternity leave shall be so entitled at least once after the lapse of 24 months from the last maternity leave.

(3) Every female employee shall be entitled to a one hour nursing break with pay per day three months after maternity leave.

Compassionate Leave

11. An employee shall be entitled to a total of one month compassionate leave annually but nothing in this section shall be construed as requiring an employer to pay an employee for any time spent on such leave.

Written Particulars of Employment to be provided

12. (1) Every employer shall-

- (a) within two calendar months of the appointed day, give each employee in his employment a completed copy of the forms at the Second Schedule; and
- (b) give each employee taken into his employment after the appointed day, a completed copy of the form at the Second Schedule within six weeks of the beginning of that employment.

Traveling and Subsistence Allowances

13 (1) Where an employee is temporarily employed at a place which is separated from his normal place of work by a distance of more than five kilometers by road his employer shall provide him with transport free of charge to and from his normal place of work and the place of temporary employment.

(2) An employee required to travel on duty, other than in the circumstances set out in sub- regulation (1), shall be provided either with free transport or be paid by his employer the cost of travel by public transport.

(3) An employee who is absent on duty away from his normal place of employment for longer than twelve hours, and who returns to his normal place of residence without staying overnight shall be paid a subsistence allowance of E 42.30 for each period of twelve hours or part there of such absence.

(4) An employee who is absent on duty overnight away from his normal place of employment shall in respect of each night's absence be provided by his employer with;

- (a) free food and accommodation or night allowance of E77.50 in lieu thereof, or
- (b) free accommodation and an allowance of E46.05 in lieu of food; or
- (c) free food and an allowance which is adequate or suitable to cater for the accommodation needs of the employee;

(5) An entitlement to free food, accommodation or allowances under sub regulation (4) and (9) shall not cease until the employee is back to his normal place of employment.

(6) An employee entitled to subsistence allowance under sub-regulation (4) shall not be entitled to subsistence allowance under sub-regulation (3) in respect of the same period of absence.

(7) Where an employee is transferred to another project site and such transfer prevents him from returning to his normal place of residence, the employer shall provide him with free accommodation and transfer allowance of E197.30

(8) An employee who is provided by his employer with accommodation at his place of permanent employment in which his family is residing with the consent of the employer shall if so required by his employer to transfer to another place of employment other than for the purpose of seasonal employment, be moved at the expense of that employer

(9) An employee who is absent on duty outside the country for a period not exceeding 5 days at a time shall be provided with free food, accommodation and shall be entitled to out of country allowance of E168.95 a day.

Lay- off

14. (1) where an employer is unable to provide work for any employee due to-

(a) unavailability of working material; or

(b) temporary cessation of work;

the employer may, subject to that employer giving the employee not less than twenty four hours notice, lay-off the employee without pay for a maximum period of thirty (30) calendar days, not more than three times within a period of twelve months, in the circumstances mentioned in (a) and (b).

(2) At the expiry of thirty (30) calendar days the employer shall either provide work for a minimum of 5 days for the employee, or terminate his employment under the provisions of section 40 of the Employment Act, 1980 or its successor.

(3) An employee who is engaged for a duration of a specific project shall upon commencement of work be notified of the date upon which it is estimated the project shall terminate and the notification of such date of termination shall constitute an adequate notice by the employer to the employee of the date of notice of termination of such contract of service.

Lay- off due to weather

15. (1) An employee who reports for work at his place of employment at the normal time but who is unable to start work due to inclement weather, shall be entitled to a minimum of **three hours** pay for that day.

(2) Where the employer, on consideration of inclement weather, orders an employee not to report for duty for a specific number of days shall reduce such order into writing and the employee shall be entitled to pay as specified under sub-section (1).

(3) An employee who on any day commences work and who in the opinion of his employer is unable to continue work due to inclement weather, shall be paid for the hours he has worked plus an additional one and half hours wages.

Protective clothing

16. (1) If it is necessary to protect an employee from physical, electrical or chemical injury which may arise from the work he is required to do, the employer shall supply free of charge that employee with adequate protective clothing, equipment and appliances where necessary and such employee shall use the protective clothing or equipment or appliances as instructed.

(2) The protective clothing referred to above in sub-section (1) shall include a set of two overalls and/or conti suits per year at no cost to the employee.

(3) The employer of a watchman shall provide him free of charge with boots or shoes, a police whistle, a club and a torch, and where the watchman is required to work in inclement weather during the night (from 6pm to 7 am the following day), the employer shall in addition, provide him with a hat, overcoat and rain coat.

(4) An employee other than a watchman who is required to work in direct contact with mass concrete or similar matter which is likely to cause injury to his feet shall be provided by his employer, without charge with a pair of gumboots or safety shoes.

(5) An employee other than a watchman who is required to work outdoors in inclement weather shall be provided by his employer, free of charge with a waterproof coat and cap or similar garment.

(6) The clothing appliance and equipment supplied to the employee under this regulation shall be of high quality and shall remain the property of the employer.

(7) Where protective clothing, supplied to an employee under this regulation is damaged or lost through the negligence of the employee, the employer may deduct the cost thereof, after due consideration of ordinary wear and tear, from wages due to the employee.

(8) Each employee who works on a section of a project where there is overhead activity shall be issued with a hard-hat when the work proceeds into the sections above first floor.

Uniform

17. (1) An employer may issue an employee with two sets of uniform at half the cost price per year.

(2) The issuance of uniform shall not be mandatory to employees

Retirement

18. An employee may retire at the age of 60 years.

Revocation of Legal Notice No.253 of 2022

19. The Regulation of Wages (Building and Construction Industry) Order, 2022 promulgated under **Legal Notice No. 253 of 2022** is hereby revoked.

**FIRST SCHEDULE
(Regulation 4)**

**BASIC MINIMUM WAGE
(Emalangen per hour)**

Artisan Grade III	E12.25
Artisan Grade II.....	E16.71
Artisan Grade I	E24.20
Clerk (without a certificate).....	E11.88
Clerk (with a certificate).....	E12.25
Cook.....	E12.09
Crane driver (mobile with a certificate).....	E23.47
Crane driver (tower with a certificate).....	E21.86
Driver (light duty).....	E12.75
Driver (heavy duty).....	E15.44
Driver (heavy duty with high up crane).....	E17.44
Driver (extra heavy).....	E16.76
Earthmover operator.....	E22.89

Grass cutter.....	E12.25
General Labourer.....	E11.88
General Trademan.....	E12.25
Indvuna.....	E12.89
Reinforcement fixer.....	E12.25
Small Plant operator.....	E12.89
Storeman.....	E12.38
Survey and soil assistant.....	E12.25
Structure steel erector.....	E18.30
Scaffolding erector.....	E12.25
First aider.....	E 12.89
Tractor driver.....	E12.75
Housekeeper/cleaner.....	E11.88
Watchman.....	E104.27 per shift
Watchman supervisor.....	E107.22 per shift

SECOND SCHEDULE
(Written Particulars of Employment Form)
(Regulation 12)

1. Name of Employer
2. Name of Employee
3. Date Employment began
4. Wage and method of calculation
5. Interval at which wages are paid
6. Normal hours of work
7. Short description of employee's work.....
8. Probation Period
9. Annual Holiday Entitlement
10. Paid Public Holiday
11. Payment during sickness
12. Maternity Leave (if employee female)
13. Nursing Break Entitlement (for female employee)
14. Notice employee entitled to receive
15. Notice employer required to give
16. Pension Schedule, Provident Fund Gratuity Schedule etc. (if any, other than SNPF).
17. Any other matter either party wishes to include

Notes:

(a) An employee is free to join a trade union or staff association, which is recognized by the undertaking. The address of the Trade Union of Staff Association is:

.....

(b) The grievance procedure and disciplinary procedure in this undertaking requires to be followed when a grievance arises or disciplinary action that needs to be taken.

.....

(c) When any heading is inapplicable enter NIL.

.....
Employer's Signature

.....
Witness

.....
Employee's Signature

.....
Witness

.....
Date

.....
Date

PHILA W. BUTHELEZI
MINISTER FOR LABOUR & SOCIAL SECURITY