



SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL

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**TO: CHAIRPERSON: DIVISIONAL EXECUTIVE COMMITTEES
DIVISIONAL BARGAINING COMMITTEE MEMBERS**

**CHAIRPERSON / SECRETARY: LOCAL LABOUR FORUMS
MEMBERS OF LOCAL LABOUR FOURMS**

REGIONAL SECRETARIES:

Gauteng/Johannesburg/Tshwane Division	Ms. E Sekgweleo	(012) 665 1014
Eastern Cape Division	Mr. C. Gqeke	(041) 581 3648
Western Cape/Cape Metro Division	Ms. W Brink	(021) 917 1145
Northern Cape/Free State Division	Mr. T Mqobongo	(053) 831 3608
North West/Mpumalanga/Limpopo Division	Ms N Hlangwani	(012) 342 7015
KwaZulu-Natal/eThekwinini Division	Mr. V Nzuzza	(031) 201 9752

CIRCULAR NO.: 01/2021

CODE OF GOOD PRACTICE: COLLECTIVE BARGAINING, INDUSTRIAL ACTION AND PICKETING

1. The Minister of Labour promulgated the Code of Good Practice: Collective Bargaining, Industrial Action and Picketing (The Code), in Government Gazette NO. R.1396, on 19 December 2018.
2. Prior to the enactment, the Executive Committee, on 27 November 2018 adopted, the draft Code of Good Practice issued by NEDLAC.
3. The Executive Committee, on 3 July 2019, 11 December 2019, 4 March 2020 and 11 March 2021, considered the Code of Good Practice: Collective Bargaining, Industrial Action and Picketing (The Code); approving and adopting the following:
 - a) The Good Faith Declaration (attached)
 - b) The ACCORD (attached)
4. The Good Faith Declaration, to be read with the Code, must be signed by representatives of the municipality or SALGA (where applicable), IMATU and SAMWU at both Divisional and Local Labour Forum level.

5. The ACCORD must be taken into account by all delegates to the various committees, at Divisional and Local Labour Forum level, as this should be the basis of good faith bargaining, engagement and discussion between the bargaining partners.
6. The Chairperson and Secretary of Local Labour Forums must:
 - a) Table the Code of Good Practice, at the Local Labour Forum meeting, for noting. This is a voluminous document which can be downloaded from the Department of Employment and Labour website: www.labour.gov.za
 - b) Table the Accord, at the Local Labour Forum meeting, for noting.
 - c) Table the Good Faith Declaration.
7. Every negotiator at Local Labour Forum level is required in terms of the Code of Good Practice to sign the Good Faith Declaration when a new matter is being negotiated each time at the Local Labour Forum level. The Local Labour Forum must observe the powers and functions as envisaged in Clause 11.8.2 of the Main Collective Agreement. For ease of reference Clause 11.8.2 follows:

Powers and Functions of the Local Labour Forum

- 11.8.2.1 The *Local Labour Forum* shall have the powers and functions of negotiating and/or consulting:
 - 11.8.2.1.1 On matters of mutual concern pertaining to the workplace and which do not form the subject matter of negotiations at the *Council* or its Divisions.
 - 11.8.2.1.2 On such matters as may from time to time be referred to such forum by the *Council* or its Divisions.
 - 11.8.2.1.3 Provided that it may not negotiate on any matter, which has been reserved for exclusive bargaining in the *Council* or the Divisions.
 - 11.8.2.1.4 Concluding of *Minimum Service Agreements*.
- 11.8.2.2 Disputes over what is negotiable, what are the matters that are for consultation and over whether a specific process constitutes sufficient consultation are to be resolved through the dispute resolution mechanism of the *Council*.

8. Furthermore, in terms of the levels of bargaining in the Main Collective Agreement, every negotiator at local labour forum level, must comply with clauses 10.2 and 10.3 in respect of the bargaining subjects.

10.2	The following matters shall be the subject of collective bargaining at a national level only:
10.2.1	Wages and salaries.
10.2.2	Medical aid.
10.2.3	Retrenchment policy and severance pay.
10.2.4	Retirement funds.
10.2.5	Homeowners' allowance.
10.2.6	Annual leave.
10.2.7	Maternity leave.
10.2.8	Sick leave.
10.2.9	Hours of work; and
10.2.10	Family responsibility leave.
10.3	In furtherance of the intent to establish uniform conditions of service, the following matters shall be the subject of collective bargaining at a divisional level only:
10.3.1	Special leave.
10.3.2	Acting allowance.
10.3.3	Night work allowance.
10.3.4	Standby allowance.
10.3.5	Shift allowance.
10.3.6	Long service bonus.
10.3.7	Emergency work.
10.3.8	Legal indemnification.
10.3.9	Additional paid sick leave.
10.3.10	Administrative measures for the taking of sick leave; and
10.3.11	Measures to manage the taking and accrual of sick leave.

No municipality or local labour forum member is permitted to negotiate any subject matter as listed in 10.2 and 10.3 of the MCA, as listed above. Put another way, the LLF member undertakes not to negotiate on these Divisional and Central Council matters.

The Good Faith Declaration must be signed by the local labour forum member when negotiating matters reserved for the local labour forum.

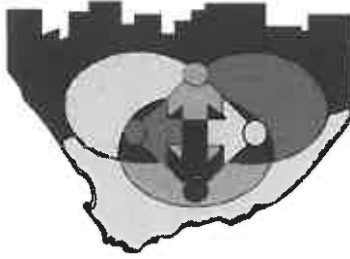
9. The parties are advised that any party who breaches the levels of collective bargaining, such non-compliance should be reported to the:
- a) Regional Secretary of the Division, in the case of a collective agreement, concluded at the relevant Division or;
 - b) General Secretary of the Central Council, in the case of the MCA or any other collective agreement concluded at the Central Council level.

10. All Regional Secretaries must table the Code before the Executive Committee and Bargaining Committee at Divisional Level for implementation.
11. Your co-operation in implementing this very important Code of Good Practice is appreciated.

Yours faithfully



Mr S. S. Govender
GENERAL SECRETARY



COLLECTIVE BARGAINING: GOOD FAITH DECLARATION

In the Negotiations / Meeting Between:

SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION (SALGA)

Or

_____ **MUNICIPALITY** (INSERT NAME OF MUNICIPALITY)

And

SOUTH AFRICAN MUNICIPAL WORKERS UNION (SAMWU)

INDEPENDENT MUNICIPAL AND ALLIED TRADE UNION (IMATU)

On

SUBJECT MATTER OR MEETING:

BRIEF DESCRIPTION:

I (NAME) _____ representing :

SAMWU IMATU SALGA MUNICIPALITY at the :

National Level

Divisional Level

Local Labour Forum Level

Declare that:-

1. I will engage in the negotiations with SAMWU, IMATU and SALGA or Municipality in good faith with the sincere intention of concluding a collective agreement or concluding the matter tabled for discussion if possible.
2. I will adhere to the principles of good faith bargaining contained in the Code on Collective Bargaining and Industrial Action.
3. I will treat the negotiators representing the SAMWU, IMATU and SALGA or Municipality with respect and conduct the negotiations / meeting in a rational, constructive and courteous manner.
4. I will not deliberately delay negotiations / meetings by failing to respond quickly to communications, to agree dates and times for negotiation meetings, to attend negotiating meetings, and to attending meetings without a mandate.
5. I will, accordingly, ensure to the best of my ability that I and the other members of our negotiating team:
 - 5.1 Will attend agreed negotiating and conciliation meetings and, if for good reason we are unable to do so, I will ensure that reasonable notice of our non-attendance is given to avoid wasteful expenditure and inconvenience;
 - 5.2 Are properly mandated when we attend negotiation and conciliations meetings.
6. I will faithfully communicate any proposals or counter-proposals arising from negotiations or meetings to our members / mandating structures / Executive Committee.
7. I will not conduct myself in any way that may constitute conduct that undermines the negotiations / purpose of the meeting.

Signed on this _____ day of _____ 20 _____.

NAME	
DESIGNATION / STATUS	
TELEPHONE	
EMAIL	





**ACCORD
ON
COLLECTIVE BARGAINING AND INDUSTRIAL ACTION**

Preamble

Recognizing the constitutional rights-

- the freedom and security of individuals
- the freedom to assemble peacefully and unarmed,
- the freedom of association
- to strike and
- to engage in collective bargaining,

Recognizing the constitutional obligations on the State to respect, protect, promote and fulfill those rights.

Recognizing that collective bargaining within the local government sector takes place at the central, divisional as well as local labour forum level.

Recognizing the principles stated in the Ekurhuleni Declaration on 4 November 2014 as well as the Bargaining Council considerations of the said principles at its meeting in Durban on 28/29 March 2018, the Parties to the Accord affirm-

- that the constitutional right to strike and the statutory right to lockout must be peaceful, free of intimidation and violence, including violence and intimidation that may be associated with police action
- strike action by workers and trade unions is a legitimate exercise of power to pursue demands
- prolonged strike action has the potential to cause serious harm not only to strikers and their employers but also to others inside and outside the workplace

The Parties and signatories to this Accord commit themselves and their members to this Accord.

Parties to the Accord

1. NEDLAC constituencies
2. The trade union parties to the Accord are:
 - 2.1. The trade union federations that are represented on the National Economic Development Labour Advisory Council (NEDLAC);
 - 2.2. The trade unions and the members of such trade unions that are members of those federations;
 - 2.3. The trade unions and their members that do not belong to any of those federations that have signed this Accord.
3. The employer parties to the Accord are:
 - 3.1. The federations of employer associations that are represented on NEDLAC;
 - 3.2. The employer associations of those federations;
 - 3.3. The employer associations and members of those associations that are not members of those federations that have signed this Accord; and
 - 3.4. Any employers that are not members of those associations, that have signed this Accord
4. The Government
 - 4.1. The Government in so far as it is directly or through its agencies and institutions required to implement this Accord.
 - 4.2. The State, in its capacity as employer at national, provincial and local level, and as employer in State Owned Enterprises.
5. Agencies
 - 5.1. Commissioner for Conciliation Mediation and Arbitration;
 - 5.2. Bargaining Councils;
 - 5.3. Sector Education and Training Authorities;
 - 5.4. The National Skills Authority;
 - 5.5. The Private Security Industry Regulatory Authority.

6. Other Private Sector Organizations and Institutions;
 - 6.1. The federations of private security companies;
 - 6.2. Private security companies that have signed the Accord; and
 - 6.3 Trade unions in the private security industry.

All parties to this Accord commit:

7. In the case of violence, intimidation, and the threat of harm to person or property associated with industrial action, to build capacity; expedite processes and assign sufficient and senior staff to the resolution of issues.

Employer and trade union undertakings

8. The employer and trade union parties to the Accord and their members undertake-
 - 8.1. to abide by and implement the Code of Good Practice: Collective Bargaining, Industrial Action and Picketing;
 - 8.2. to abide by the terms of collective agreements;
 - 8.3. to mutually respect all parties and to uphold the principles of good faith bargaining and the law;
 - 8.4. that during the course of negotiations, dispute resolution processes and strike or lockout action make public statements calling on all members that they must always act in compliance with this Code and in a law abiding and peaceful manner.
 - 8.5. to secure that their negotiators undergo the training contemplated in the Code of Collective Bargaining and Industrial Action including refresher training at regular intervals;
 - 8.6. to secure that any bargaining council to which they belong signs the Accord;
 - 8.7. encourage parties to only contract with security companies that abide by the Accord and Code of Good Practice on Collective Bargaining, Industrial Action and Picketing;
 - 8.8. to only make lawful requests of employees of private security companies; and
 - 8.9. to refrain from acting in a manner that makes any conflict worse, and;
 - 8.10. to monitor and evaluate, together with government and under the auspices of NEDLAC, whether the commitments made here are effective in promoting the principles contained in the Preamble.

Employer and trade union declaration against violence, loss of life or harm to persons and property

9. The trade union and employer parties to the Accord and their members hereby-
- 9.1. declare that the resort to violence, intimidation, loss of life or threat of harm to persons and property under all circumstances and more particularly during strikes, lockouts, pickets and protest action is intolerable;
 - 9.2. undertake to take all necessary measures to prevent violence, intimidation and damage to property and, if it does occur, to take all the steps necessary to discourage such conduct and to comply with a court order interdicting the violence, intimidation or damage to property;
 - 9.3. declare that they are committed to adhering to the provisions of the Code of Good Practice Collective Bargaining and Industrial Action and the related declaration on good faith bargaining.

Role of Public Order Policing in strikes, lockouts, pickets and protest action

10. SAPS, in relation to Public Order Policing undertakes-
- 10.1. to comply with the Code of Collective Bargaining and Industrial Action and the Code of Good Practice on Picketing in so far as those Codes apply to it and to take the necessary steps to ensure that its members do so;
 - 10.2. to ensure sufficient capacity and that its members assigned to monitor strikes, lockouts, pickets and protest action are trained in public order policing and those Codes;
 - 10.3. that its presence at strikes, lockouts, pickets and protest action is minimal and unobtrusive unless there is good cause for it to be otherwise;
 - 10.4. that its members will refrain from acting in a manner that escalates the conflict and will only use minimum force and make use of non-lethal weapons to prevent or respond to breaches of the Codes;
 - 10.5. to ensure monitoring and engagement with employees and employers participating in a strike, lockout, picket or protest action.
 - 10.6. to investigate and submit for prosecution any perpetrators of violence, intimidation or damage to property on an expedited basis.

Role of private security companies

11. The private security companies that are bound by the Accord undertake to-
 - 11.1. to comply with the Code of Collective Bargaining, Industrial Action and Picketing in so far as those Codes apply to them and to take the necessary steps to ensure that their employees do so;
 - 11.2. to ensure that its security officers tasked with protecting property during industrial action are adequately trained in crowd management and the Code of Collective Bargaining and Industrial Action in order to ensure that they act appropriately if conflict escalates during the course of industrial action;
 - 11.3. that the presence of its security officers at strikes, lockouts, pickets and protest action does not escalate conflict and is minimal and unobtrusive unless there is good cause for it to be otherwise; and
 - 11.4. that its security officers are only armed with non-lethal weapons to prevent or respond to breaches of the Code.

Role of the CCMA and Bargaining Councils

12. The CCMA and bargaining councils undertake to provide-
 - 12.1. dispute resolution and prevention services contemplated in giving effect to the Code of Collective Bargaining and Industrial Action and the Code of Good Practice on Picketing;
 - 12.2. training of negotiators in accordance with that Code based on the materials provided by the CCMA and adapted for the sector by that Council;
 - 12.3. workplace capacity building programs and services to trade union and employer representatives as may be provided for in terms of its existing policies and procedures;
 - 12.4. services to support the establishment of workplace participatory structures where parties have agreed to the establishment of such structures.

Role of Department of Higher Education and Training (DHET) National Skills Fund (NSF) and Sector Education and Training Authorities (SETAs)

13. The DHET, NSF, SETAs undertake to facilitate and make funding available for the training of negotiators in their respective sectors. This training should be developed by the CCMA and appropriately adapted for a sector by that SETA.