

SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL

HEAD OFFICE

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13 November 2015

TO: All Municipal Managers
All Human Resources Directors or Managers
The Chairpersons of the Local Labour Forums
Local Labour Forum Members
The Chairpersons of the Shop Steward Committee (IMATU & SAMWU)
Regional Managers: IMATU
Provincial Secretaries: SAMWU
Program Managers: SALGA

Dear Sir/Madam

Circular: No 12 / 2015

Minimum Service Collective Agreement to be concluded in the Local Labour Forum

The SALGBC recently conducted local labour forum training, which incorporated a section on Essential Services dealing with the conclusion of Minimum Service Collective Agreements (refer to Section 6 on pages 123 to 152 of the Training Manual).

The parties to the Council concluded and signed a new Main Collective Agreement, dated 9 September 2015.

The Executive Committee, in giving effect to Section 12 on Essential Services in the Main Collective Agreement at its meeting held on the 12 November 2015, resolved that the Council issue a circular together with the approved Framework Agreement and relevant annexures.

The enabling legislation under which the Minimum Service Collective agreements are concluded is the following:

- Sections 70 to 74 of the Labour Relations Act ;
- Section 12 of the Main Collective Agreement; and
- Clause 11.8.2 of the Main Collective Agreement, which stipulates that the Local Labour Forum at a municipality is responsible for negotiating and concluding a Minimum Service Collective Agreement.

Address correspondence to the General Secretary

"11.8.2 Powers and Functions

11.8.2.1 The *Local Labour Forum* shall have the powers and functions of negotiating and/or consulting:

11.8.2.1.4 Concluding of *Minimum Service Agreements*."

This circular sets out the steps to be undertaken to conclude the Minimum Service Collective Agreements, which steps are as follows:

- Step 1 The employer (the municipality) must prepare a draft Minimum Service Agreement (proposal) by using the five (5) prescribed forms (annexures 4; 4.1; 4.2; 4.3; 4.5). The proposal must be accompanied by the approved Municipal organogram and any other supporting documentation.
- Step 2 The municipality must submit its draft Minimum Service Agreement to the Secretary of the Local Labour Forum and copied to the local IMATU and SAMWU shop stewards committee by 25 November 2015.
- Step 3 The Secretary and/or Chairperson of the Local Labour Forum must convene a Special Local Labour Forum meeting by 30 November 2015, to consider the draft minimum service collective agreement submitted by the employer (municipality). The Local Labour forum must negotiate and conclude the agreement.
- Step 4 The agreement, when concluded, must be submitted to the Regional Secretary of the SALGBC, who shall submit same to the Divisional Essential Services Working Group (ESWG). The ESWG will peruse the agreement and check whether it is a valid and proper agreement, in terms of the guidelines set by the Essential Services Committee (ESC). The Divisional ESWG may be assisted by an ESC panelist.

If the agreement is in order, the Regional Secretary of the SALGBC must, within two (2) days of the Divisional ESWG meeting, return the agreement to the LLF for signing.
- Step 5 The Secretary of the LLF must submit the signed Minimum Service Agreement to the Head Office of the SALGBC, as per the address below.
- Step 6 If the parties in the LLF are unable to reach consensus and /or conclude a Minimum Service Collective Agreement, a report must be submitted to the Regional Secretary of the SALGBC.

The Regional Secretary, in consultation with the Divisional ESWG, has the discretion to convene a facilitation meeting, which facilitation may be conducted by the SALGBC panelist who conducted the local labour forum training or conducted by an ESC panelist.

The facilitation must be conducted by 14 February 2016. Such facilitation could be organized in the similar manner of the LLF Training or by grouping municipalities per District.

Step 7 In the event that the parties cannot reach consensus and are unable to conclude a minimum service collective agreement, any party may lodge a dispute in terms of Section 72 (2) and Section 73 of the Labour Relations Act. The ESC has the authority to determine the Minimum Service Collective Agreement.

The parties (IMATU, SAMWU and the Municipality) to the Local Labour Forum:

- a) Are urged to self regulate, negotiate and conclude the Minimum Service Collective Agreement by 31 January 2016.
- b) **Must** use the attached prescribed forms, approved by the ESC and adopted by the Executive Committee.
- c) **Must** ensure that the Agreement is in English and it complies with all the requirements as listed in the LLF Training Manual.

The Essential Services Committee is responsible for the ratification of a Minimum Services Agreement and the Agreement becomes binding on the parties after the ESC ratifies such Minimum Services Agreement.

All queries or request for assistance could be directed to one of the following:

- **Relevant Regional Secretary:**

Gauteng Division	Mrs. C Manda	(011) 394-4240
Eastern Cape Division	Mr. M Bodlani	(041) 581-3222
KwaZulu-Natal Division	Mr. V Nzuzza	(031) 201-8210
Western Cape Division	Mrs. W Brink	(021) 917-1141
Northern Cape/Free State Division	Mr. T Mqobongo	(053) 832-1216
North West/Mpumalanga/Limpopo Division	Ms. M Nduli	(012) 342-3428
- **Head Office:** Ms. Z Khuzwayo (031-2018210) / email: zamanguni@salgbc.org.za; 461 King Dinuzulu Road, Berea, Durban
- **The ESC via email :** esc@ccma.org.za

Your co-operation in concluding the Minimum Service Agreement by 31 January 2016, would be appreciated.

Yours faithfully



Mr. S S Govender
GENERAL SECRETARY

Encl: Annexure 4 (The Framework Agreement)
Annexure 4.1, 4.2, 4.3 and 4.5 (LRA form 4.8)

ANNEXURE 4

Minimum Services Agreement made and entered into between:

_____ (Insert name of the Municipality)

(Hereby referred to as "the Employer")

ON THE ONE HAND

AND

South African Municipal Workers Union, and

Independent Municipal and Allied Trade Union

(Hereinafter referred to as the "trade unions")

ON THE OTHER HAND

IN TERMS OF SECTION 72 OF THE LABOUR RELATIONS ACT, 66 OF 1995

1. INTRODUCTION

- 1.1 The parties acknowledge and recognise that in terms of section 23 of the Constitution of the Republic of South Africa, Act 108 of 1996 (the Constitution), every employee has the right to strike, noting, however, that constitutional rights may be limited in terms of section 36 of the Constitution.
- 1.2 Section 65 of the Labour Relations Act, 66 of 1995 ("the Act") provides that no employee may take part in a strike or a lock-out (or in any conduct in contemplation or furtherance of a strike or a lock-out) if that employee is engaged in an essential or maintenance service.
- 1.3 The Act provides for the establishment of an Essential Services Committee to conduct investigations and make designations on whether the whole or part of a service is essential.
- 1.4 An Essential Services Committee has been established under the auspices of the Commission for Conciliation, Mediation and Arbitration, ("the CCMA").
- 1.5 The Essential Services Committee has designated the services set out in paragraph 3 below as essential services. These services, if interrupted, would endanger the life, personal safety and/or health of the whole or part of the population.
- 1.6 Section 72 of the Act requires parties to negotiate and conclude collective agreements that provide for the maintenance of minimum services in the designated essential services.
- 1.7 The parties to this agreement, as set out above, have negotiated on the issue and have reached agreement on the minimum services that have to be maintained in the designated essential service in the event of a strike or lock-out and wish to reduce the said agreement to writing.

Now therefore, the parties agree as follows:

2. ESSENTIAL SERVICES

- 2.1 For the purpose of this agreement and any future agreement pursuant hereto, an essential service is defined in the Act as *"a service, the interruption of which endangers the life, personal safety or health of the whole or any part of the population."*
- 2.2 Not all the services provided by the Employer are *per se* essential services.

- 2.3 Employees who work in those essential services that have been identified as minimum service employees, in terms of this agreement, may not strike or be subjected to a lock-out. They are, however, not required to perform the work of non-minimum service employees during such a strike or lock-out.
- 2.4 Similarly, employees who may participate in industrial action in terms of this agreement may not be subjected to disciplinary action for participating in protected strike action, except in the case of misconduct committed during the course of such protected strike action as aforesaid.

3. DESIGNATED ESSENTIAL SERVICES

- 3.1 The following services provided by the Employer have been designated as essential by the Essential Services Committee (as Gazetted on 12 September 1997 in Government Gazette 18276, Number 1216):
- 3.1.1 Municipal traffic services and policing;
 - 3.1.2 municipal health;
 - 3.1.3 municipal security;
 - 3.1.4 the supply and distribution of water;
 - 3.1.5 the generation, transmission and distribution of power;
 - 3.1.6 fire-fighting; and
 - 3.1.7 the following parts of sanitation services:
 - (a) The maintenance and operation of water-borne sewerage systems, including pumping stations and the control of discharge of industrial effluent into the system;
 - (b) the maintenance and operation of sewage purification works;
 - (c) the collection of refuse of an organic nature;
 - (d) the collection of infectious refuse from medical and veterinary hospitals or practices;
 - (e) the collection and disposal of refuse at a disposal site; and
 - (f) the collection of refuse left uncollected for 14 (fourteen) days or longer, including domestic refuse and refuse on public roads and open spaces
- 3.2 Notwithstanding the above designation, employees engaged in a designated essential service and who perform non-essential functions, the interruption of which do not directly endanger the life, personal safety or health of the whole or any part of the population, such as administrative functions, non-essential support functions and the like, shall not be deemed as essential in terms of this agreement.

- 3.3 In the event that during the course of a strike affecting the operations of the employer, a party asserts that a service or services not defined as *per se* essential in terms of paragraph 3.1 above, has become an essential service due to circumstances, the parties shall meet within 24 hours of written notice by any of them to the other(s) calling for such a meeting in an attempt to reach agreement on whether the service(s) in question is/are indeed essential and if so what minimum level of services is required.
- 3.4 In the event that no agreement is reached at the meeting so convened (whether due to the absence of any party, or otherwise) the matter may be dealt with in terms of Section 73 of the Act, read with regulation 9 of the ESC Regulations.
- 3.5 The question of essential services during the course of a disaster declared in terms of the Disaster Management Act 57 of 2002 shall be dealt with in accordance with that Act.

4. REPLACEMENT LABOUR

- 4.1 The employer hereby waives and abandons the right to take on replacement or additional labour in order to provide a service in addition to the minimum service levels agreed in respect of any service determined to be an essential service pursuant to paragraph 3 above.
- 4.2 The waiver above will not affect the right of the employer to take on replacement labour or additional labour in respect of those services not classified as essential services in the context of paragraph 3 above.
- 4.3 Notwithstanding the aforesaid, in the event of employees failing to abide by the terms of this agreement on minimum services, then the waiver and abandonment referred to in paragraph 4.1 above shall be of no force and effect, provided that the employer shall give the trade union parties in question 48 hours written notice to correct any such failure before the aforesaid is implemented.

5. INTEREST DISPUTES IN ESSENTIAL SERVICES

Section 74 of the Act shall apply to all employees who may not participate in strike action in terms of this agreement, subject to the provisions of section 72 (6) of the Act.

6. DURATION OF AGREEMENT

This agreement shall come into effect from the date of ratification by the Essential Services Committee and shall remain in force for the period of 3 (three) years.

7. REVIEW AND AMENDMENT OF AGREEMENT

- 7.1 This agreement may be reviewed on an annual basis to consider the following:

- (a) To ascertain whether or not there has been any change in the nature or extent of the designated essential service provided and whether or not such changes require a change to the staffing levels indicated;
- (b) To give effect to any revision of the current essential service designations by the Essential Services Committee; and
- (c) The effect of vacancies on the approved organogram in the designated essential services.

7.2 In the event of any amendments having been made to this agreement, the amended agreement shall be returned to the Essential Services Committee for ratification.

8. IMPLEMENTATION

The parties agree that after signature hereof, this agreement shall be forwarded, as soon as possible, to the Essential Services Committee for ratification.

9. COMMUNICATION AND AWARENESS

Parties to this agreement shall ensure that all affected employees are informed and made aware of the contents of this agreement in a manner that is accessible to all occupational levels of employees.

10. DISPUTE RESOLUTION

10.1 Any dispute regarding the interpretation and application of this agreement shall be dealt with in terms of section 24 of the Act. If there is a dispute about the interpretation or application of this agreement any party may refer the matter to the Council for resolution in terms of the dispute resolution procedure of the Council.

10.2 The parties shall not be precluded from agreeing on any amendments to this agreement prior to its date of termination. In the event that any party declines to negotiate on any proposed amendment, or if the parties cannot come to an agreement on any proposed amendment, the dispute resolution provisions set out in sections 72 (8) and 73 (1) (d) of the Act shall apply.

10.3 Parties that conclude a framework agreement on minimum services but cannot agree on the number of employees that will form the minimum services, may request the Essential Services Committee to determine the level of minimum services required to deliver the essential services in the event of a strike or lock-out notice being given. The Essential Services Committee undertakes to determine the minimum services on an urgent basis,

however, the strike or lock-out may not commence until such time as the minimum service has been determined by the Committee.

11. ESSENTIAL SERVICES WORKING GROUP

11.1 The parties agree to the establishment of an Essential Services Working Group.

11.2 The working group shall comprise of three persons representing the Employer and three persons representing the trade unions.

11.3 The terms of reference of the Working Group shall be:

- (a) The monitoring, evaluation and ongoing review of this agreement;
- (b) The evaluation of the effectiveness of this MSA's after a strike;
- (c) Ensure that this agreement and any amendment thereto is submitted to the Essential Services Committee for ratification.

12. WHOLE AGREEMENT

The parties agree that this agreement, and the annexures hereto, constitutes the whole agreement between them and no other agreement or amendments hereto or agreement concluded pursuant to the provisions hereof shall be of any force and effect unless reduced to writing and signed by or on behalf of the relevant parties.

13. GENERAL

The parties agree that no indulgence and/or relaxation of the terms of this agreement will constitute a waiver of that party's rights.

Thus done and signed at _____ on this the ____ day of
_____ 20____ (in the presence of the undersigned witnesses)

For the Employer

Insert name of duly authorised representative

Signature

Thus done and signed at _____ on this the ____ day of
_____ 20____ (in the presence of the undersigned witnesses)

For SAMWU

Insert name of duly authorised representative

Signature

Thus done and signed at _____ on this the ____ day of
_____ 20____ (in the presence of the undersigned witnesses)

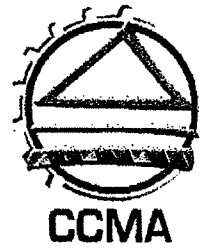
For IMATU

Insert name of duly authorised representative

Signature

LRA form 4.8
Section 72
Labour Relations Act, 1995

**REQUEST FOR RATIFICATION OF
COLLECTIVE AGREEMENT
PROVIDING FOR MAINTENANCE
OF MINIMUM SERVICES**



READ THIS FIRST



WHAT IS THE PURPOSE OF THIS FORM?

This form is a request to the Essential Services Committee to ratify any collective agreement that provides for the maintenance of minimum services in a service designated as an essential service.

WHO FILLS IN THIS FORM?

Representatives of the parties to the collective agreement.

WHERE DOES THIS FORM GO?

Essential Services Committee
c/o CCMA
28 Harrison Street
Johannesburg 2001
Private Bag X94
Marshalltown, 2107
Tel: (011) 377 6650
Fax: (011) 834 7351
E-mail: ho@CCMA.org.za

OTHER INSTRUCTIONS

A copy of the collective agreement must accompany this form.

1. DETAILS OF THE PARTIES TO THE AGREEMENT

(Use additional paper if necessary)

Employer Parties

Name:.....

Postal Address:.....

Tel:..... Fax:.....

Cell:..... E-mail:.....

Contact person:.....

Trade Union Parties

Name

Postal Address

Tel:..... Fax:.....

Cell:..... E-mail:.....

Contact person

Registration Number(s):.....

2. CLAUSE(S) OF THE AGREEMENT PROVIDING FOR MINIMUM SERVICES

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

Case Number.....

Please turn over



3. DETAILS OF THE DESIGNATED ESSENTIAL SERVICE

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.....

The description of the designated essential service in paragraph 3 must reflect the service as designated in the Government Gazette.

4. DETAILS OF THE EMPLOYEES WHO ARE BOUND BY THE COLLECTIVE AGREEMENT

- a How many employees fall within the designated essential service?.....
- b How many employees fall within the minimum service?.....
- c Describe the nature of the work performed by the employees who fall within the minimum service.

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.....

- d Describe the nature of the work performed by the employees who fall within the designated essential service, but who do not fall within the minimum service.

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5. MOTIVATION FOR RATIFICATION

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The motivation for ratification in paragraph 5 must demonstrate that the application of the agreement does not endanger the life, personal safety or health of people.

Case Number.....

Please turn over →

CHECK

Have you attached a copy of the collective agreement?

6. IS THIS REQUEST URGENT?

Yes

No

If yes, explain why it is urgent.

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

7. SIGNATORIES

(Use additional paper if necessary)

Employer Parties

Trade Union Parties

Name.....

Name.....

Signature:.....

Signature:.....

Position:.....

Position:.....

Date:.....

Date:.....

Tel:.....

Tel:.....

Fax:.....

Fax:.....

E-mail.....

E-mail.....