

South Africa

Labour Relations Act, 1995

National Bargaining Council for the Clothing Manufacturing Industry: Extension to Non-parties of the COVID-19 Personal Protection Equipment & Other Essential Products Collective Agreement Government Notice R750 of 2020

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National Bargaining Council for the Clothing Manufacturing Industry: Extension to Non-parties of the COVID-19 Personal Protection Equipment & Other Essential Products Collective Agreement
Contents

1. Preamble 1

2. Scope and effective date 2

3. Manufacturing of Personal Protection Equipment & other essential products 3

4. Qualifying companies 3

5. PPE & other essential products manufacturing standards 4

6. Terms and conditions of employment 4

7. Mitigation of cost implications 5

8. Powers, functions and meetings of the PPE Rapid Response Task Team 5

9. Dispute resolution 5

10. Exemptions procedure 6

11. Other conditions 6

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National Bargaining Council for the Clothing Manufacturing Industry: Extension to Non-parties of the COVID-19 Personal Protection Equipment & Other Essential Products Collective Agreement

Government Notice R750 of 2020

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Assented to on 2 July 2020

Commenced on 6 July 2020

[This is the version of this document from 6 July 2020.]

I, Thembelani Waltermade Nxesi, Minister of Employment and Labour, hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the National Bargaining Council for the Clothing Manufacturing Industry, and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry with effect from the date of publication of this notice and for the period ending 31 May 2022.

Mr TW Nxesi, MP

Minister of Employment and Labour

Entered into between the

Apparel and Textile Association of South Africa (ATASA)

South African Apparel Association ('SAAA')

and the

Southern African Clothing and Textile Workers' Union ('SACTWU' or 'the union')

(hereinafter referred to as "the parties")

"let's build our industry, our country and our continent"

1. Preamble

The parties record that

- 1.1 the primary intention of this collective agreement is to ensure that the South African clothing manufacturing industry contributes constructively to combatting the spread of COVID-19, by assisting to provide anti-COVID-19 frontline combatants, South African- and our fellow citizens on the African continent specifically, and others globally, with quality Personal Protection Equipment ("PPE") and other essential products which are manufactured under decent employment conditions.

- 1.2 in addition to the provision of sub-clause 1.1 thereof, this collective agreement is intended to provide further concrete expanded expression to the "COVID-19 Lockdown II Collective Agreement: A South African Clothing Industry Love Story" as was adopted by the Bargaining Council for the Clothing Manufacturing Industry of South Africa ("the Council") and as was published by the South African Minister of Employment & Labour, Minister Thembalani Waltermade Nxesi, in government gazette number GG 43354 on 26 May 2020.
- 1.3 in addition to the provision of sub-clause 1.2 of this collective agreement, the parties intend to provide further concrete expanded implementation expression to any other COVID-19 Lockdown- and all other collective agreements of the Council, as deemed appropriate from time to time.
- 1.4 they are of the view that the parties cannot only rely on government to fight the COVID-19 battle alone, but that we have a patriotic duty to play a supportive role by first drawing on our own resources, meagre and difficult as it might be, as a constructive contributory effort to combat this threat to the well-being of employees in the fashion- and related industry pipeline in our country, on our continent and the world at large.
- 1.5 this document constitutes a single agreement and shall be referred to as "The COVID-19 Personal Protection Equipment & Other Essential Products Collective Agreement" and/or "this collective agreement".
- 1.6 the conclusion of this agreement is urgent and important, in the light of unethical PPE manufacturing practices which have emerged in our country, such as that which had resulted in the recent arrest of a Durban-based owner who had locked his employees up in the workplace in order to exploit mask manufacturing market opportunities which are arising due to COVID-19.
- 1.7 confirm their commitment and belief that the fight against COVID-19 must involve, in a united and focused manner, all political parties, trade unions, state institutions and non-governmental organisations. In this regard, we reject the politicisation of PPE manufactured products, such as the display of party political emblems on fabric face masks.
- 1.8 call for PPE manufactured products to advance the objective of nation building, by promoting national symbols, such as the South African national flag.
- 1.9 to provide expanded access for social economy formations and black industrialists to participate in manufacturing opportunities which arise from the production of Personal Protection Equipment and Other Essential Products.
- 1.10 to be bound by the provisions of this preamble to this collective agreement, and that the said preamble forms a substantive part of this collective agreement.

2. Scope and effective date

- 2.1 This collective agreement shall bind the parties and their members. It shall become effective as from the date adopted by Council (irrespective of date of signature).
- 2.2 The scope of this Agreement shall cover all employers and employees in the registered scope of the National Bargaining Council for the Clothing Manufacturing Industry of South Africa.
- 2.3 The provisions contained in this agreement, once adopted by the National Bargaining Council for the Clothing Manufacturing Industry, will be submitted to the Department of Employment and Labour for extension to cover all non-parties and non-signatory party employer associations within the geographic scope of the Council.
- 2.4 The effective date of implementation of this collective agreement is 1 June 2020 and the duration of this collective agreement will be for a 24 month period, until 31 May 2022, but further subject to sub-clause 2.5 below.

- 2.5 The Main Agreement of the Council as amended by this collective agreement shall, subject to Ministerial approval, remain gazetted and extended to non-parties for a further period of six years with effect from date of gazettal, and subject to the parties retaining the right to re-negotiate variations thereto, as and when they deem it necessary to do so.

3. Manufacturing of Personal Protection Equipment & other essential products

The parties agree -

- 3.1 to take such steps as may be necessary to ensure that the clothing manufacturing industry re-purposes as much as possible of our country's clothing manufacturing capacity towards the manufacturing of Personal Protection Equipment (PPE) and other essential products (such as baby- and winter wear), in addition to its traditional manufacturing focus.
- 3.2 that, as an immediate step, the parties set a target to galvanise our country's clothing manufacturing capacity to produce 100 million fabric face masks per month, commencing during the month of May 2020.
- 3.3 to simultaneously, with the provision of sub-clause 3.2 of this agreement, develop a program to encourage our industry to expand into the production and manufacture of other PPE's and other essential products (such as baby- and winter wear), including but not limited to increased production of N95 and equivalent masks and other PPE's (such as medical staff uniforms, medical safety gloves, etc.), in addition to its historical traditional manufacturing focus.
- 3.4 to immediately establish a "PPE Rapid Response Task Team", in order for it to help develop and implement a practical program to give effect to the provisions of this collective agreement.

4. Qualifying companies

The parties agree to establish a Register of PPE Manufacturing Qualifying Companies ("The Register"), containing a list of companies which have been accredited by the clothing industry bargaining council for participation in the manufacturing of PPE's and Other Essential Products.

An "Accredited Company" is a company which -

- 4.1 is registered with the Bargaining Council for the Clothing Manufacturing Industry of South Africa unless exempted therefrom or does not fall within the registered scope of the Council.
- 4.2 has been issued with a compliance certificate by the Council in terms of the provisions of the Council's Main Agreement.
- 4.3 has implemented the provisions of the Council's collective agreements, or has been exempted therefrom (partially or in whole), by the Council.
- 4.4 has submitted a "COVID-19 Customised Workplace Awareness, Protection & Prevention Plan" to the Council, including but not limited to appropriate social distancing production work organisation methods, COVID-19 screening, the provision of sanitisation facilities and appropriate structuring of working hours during a lockdown period.
- 4.5 has registered ALL its employees with the Unemployment Insurance Fund (UIF) and, for those companies which are registered with the Council, has provided its correct UIF registration number to the Council.
- 4.6 has made an application for membership of Proudly South African, with the proviso that there is no automatic compulsion of Proudly South African membership beyond a one year period from the effective date of such membership.
- 4.7 has made an application to be listed on the Proudly SA website as an accredited PPE manufacturer.

- 4.8 has been issued with an Accreditation Certificate as a PPE and other essential products manufacturing establishment, by the Council.
- 4.9 adheres to the PPE manufacturing standards as adopted by the Council's COVID-19 PPE Rapid Response Task Team as referred to in sub-clause 3.4 of this agreement.
- 4.10 is in compliance with its statutory contributions as provided for in the Council's Main Agreement, unless it has partially or in whole been exempted therefrom, by the Council.
- 4.11 has established a Workplace Health & Safety Committee.
- 4.12 has registered all its employees in the bargaining unit with one of the Bargaining Council's Health Care Funds, in areas where such Health Care Funds exist.
- 4.13 is a member company of a signatory to the Council's "COVID-19 Lockdown Collective Agreement" or has signed a written undertaking to abide by the terms of the COVID-19 Lockdown Collective Agreement and/or other Council collective agreements.
- 4.14 has provided written commitment to the Council not to outsource to non-compliant companies.
- 4.15 is located within the social economy formations and/or which is owned and managed by a black industrialist.
- 4.16 which is in business rescue.
- 4.17 complies with all of the provisions in sub-clauses 4.1 to 4.14 of this agreement, or any priority combination thereof, as decided by the PPE Rapid Response Task Team from time to time, and/or which has taken reasonable steps to comply therewith.

5. PPE & other essential products manufacturing standards

- 5.1 The manufacturing standards for fabric face mask manufacturing shall be as per the guidelines issued by the Department of Trade, Industry & Competition of South Africa, and further subject to sub-clause 5.2 and 5.3 of this collective agreement.
- 5.2 The parties agree that the use of locally manufactured fabric shall be the priority. However, the parties recognise that there is currently large quantities of unused non-locally manufactured fabric in many workplaces, and agree that it shall not be impermissible to use such fabric in the production of PPE's and other essential products.
- 5.3 The COVID-19 PPE Rapid Response Task Team, as envisaged in subclause 3.4 of this collective agreement, is authorised to adopt such new, additional or varied PPE manufacturing standards as it deems fit, if and when appropriate, provided that this is not in conflict with the provisions of this agreement and/or standards determined by a national government entity.

6. Terms and conditions of employment

- 6.1 The terms and conditions of the Council's Main Agreement as amended from time to time, shall be applicable, subject to sub-clauses 6.2, 6.3 and 6.4 below.
- 6.2 In addition to the applicable prescribed wage as provided for in the Bargaining Council's Main Agreement as amended from time to time, an encouragement incentive shall be applicable during a lockdown period, and the modalities of such an encouragement incentive is delegated for resolution at plant level.
- 6.3 During periods when there is no lockdown, the normal wage rates as prescribed in the Council's Main Agreement, as amended, shall be applicable.

- 6.4 Employees who are employed during a lockdown period shall not be entitled to receive worker UIF funds as envisaged in clause 4 of the Council's "COVID-19 Lockdown Collective Agreement" In addition to the wage payments as set out in sub-clause 6.2 of this collective agreement.

7. Mitigation of cost implications

- 7.1 The parties acknowledge that there might be cost implications emanating from the provisions of this collective agreement which are unforeseen and unprecedented and shall explore manners in which such costs could be mitigated.
- 7.2 The parties agree that the first priority shall be to help mitigate the cost implications of Proudly South African membership fees.

8. Powers, functions and meetings of the PPE Rapid Response Task Team

In addition to the powers and functions accorded to it in other parts of this collective agreement, the PPE Rapid Response Task Team shall have the following additional powers and functions:

- 8.1 It shall be constituted by an equal number of employer and employee representatives from the signatory parties to this collective agreement.
- 8.2 The PPE Rapid Response Task Team employee representatives shall have a number of votes which are equal to the number of combined votes of the employer representatives to the PPE Rapid Response Task Team.
- 8.3 To decide by consensus and failing which by majority vote, on any matter pertaining to the provisions of this collective agreement, provided such matter is not inconsistent with the provisions of this collective agreement.
- 8.4 To exercise any such other powers as may be accorded to it by a constitutionally constituted meeting of the Council or by the Executive Committee of the Council.
- 8.5 To be compelled to allow the National Chairperson of the Council a period of 2 business days within which to attempt to resolve any disagreements which are not resolved by a majority vote as envisaged in sub-clause 8.3 of this agreement.
- 8.6 To refer any disagreement which cannot be resolved in terms of the provisions of sub-clause 8.5 of this collective agreement to compulsory expedited and binding arbitration as envisaged in Clause 9 of this collective agreement, and within 4 hours after the occurrence of such unresolved disagreement.
- 8.7 The PPE Rapid Response Task Team shall be convened by decision of the National Chairperson of the Council and presided over by him/her, or on request of any of the signatory parties to this collective agreement.
- 8.8 Meetings of the PPE Rapid Response Task Team shall be held on such dates and times, at such venue and/or and in such communication format as agreed to between the signatory parties. In the absence of agreement about meeting dates, times and format as envisaged in sub-clause 8.9 of this collective agreement, the National Chairperson Council shall decide and his/her decision shall be final and binding.

9. Dispute resolution

- 9.1 Any disputes which may arise from the interpretation and/or application of this collective agreement shall be resolved through expedited arbitration, unless otherwise decided by the disputing parties.

- 9.2 The current panel of Conciliators and Arbitrators of the Council (unless otherwise decided by the disputing parties) shall be used to adjudicate disputes as envisaged in sub-clause 9.1 of this agreement, but subject to sub-clauses 9.3, 9.4, 9.5, 9.6, 9.7 and 9.8 of this collective agreement.
- 9.3 Any dispute as envisaged in sub-clause 9.1 of this collective agreement shall be referred to the Council, in writing, by the disputing party.
- 9.4
- (a) The disputing parties shall, within 12 hours of a dispute having been referred to the bargaining council as envisaged in sub-clause 9.1 of this collective agreement, agree on an arbitrator to adjudicate the dispute, failing which the PPE Rapid Response Task Team shall appoint an arbitrator, by majority decision.
- (b) Failing a majority decision as envisaged in sub-clause 9.4(a) of this collective agreement, the arbitrator shall be appointed by the National Chairperson of the Council, and his/her decision regarding this matter shall be final and binding.
- 9.5 The dispute declaration referred to in sub-clause 9.2 of this collective agreement shall set out in writing the grounds on which the dispute has arisen, the breach that is alleged, as well as the proposed resolution of the dispute.
- 9.6 Within 6 hours of an arbitrator having been appointed in terms of the provisions of sub-clause 9.3 of this collective agreement, the answering party shall submit a written reply to the arbitrator, in response to the declaration of dispute letter as envisaged in sub-clause 9.4 of this collective agreement, and cause a copy of such written reply to be transmitted to the declarer of the dispute.
- 9.7 Within 4 hours of the declarer of the dispute having received the answering party's written document as envisaged in sub-clause 9.5 of this collective agreement, the dispute declaring party shall deliver a written reply thereto, to the arbitrator and copied to the answering party.
- 9.8 The arbitrator appointed by the provisions of sub-clause 9.3 of this collective agreement shall take into account the written submissions made in terms of sub-clauses 9.4, 9.5 and 9.6 of this collective agreement and issue a binding written arbitration award within 12 hours after receipt of the written document as envisaged in sub-clause 9.6 of this collective agreement.

10. Exemptions procedure

- 10.1 The parties agree that exemption applications shall be dealt with by the PPE Rapid Response Task Team as a matter of priority.
- 10.2 Exemption appeals shall be processed through expedited arbitration as provided for in Clause 9 of this collective agreement
- 10.3 The criteria applicable to exemptions and appeals are those set out in the Council's Main Agreement, as amended.

11. Other conditions

- 11.1 The trade union undertakes to encourage its members to volunteer their services as a patriotic act for this PPE manufacturing project, in terms of the provisions of this collective agreement.
- 11.2 The parties agree that the provision of safe and reliable transport to and from work is a necessity, but that the specifics would differ from geographic area to geographic area, and accordingly resolve to refer the cost implications thereof for resolution at plant level.

- 11.3 The parties recognise that post a lockdown period, new forms of work organisation will be required and, therefore, agree to work co-operatively together to develop practical solutions to resolve this challenge.
- 11.4 This new collective agreement shall replace the "COVID-19 Personal Protection and Other Essential Products Collective Agreement" which was adopted by the Council on 17 April 2020.
- 11.5 All other previously agreed terms and conditions not specifically varied by the provisions of this collective agreement shall remain in force and effect, unless otherwise agreed between the signatory parties.
- 11.6 All terms shall have the same meaning as those set out in the Council's Main Agreement.
- 11.7 The parties accept that the terms agreed to are hereby formalised in this final written collective agreement concluded and signed under the auspices of the National Bargaining Council for the Clothing Manufacturing Industry of South Africa.