SIZA

SUSTAINABLE AGRICULTURE IN SOUTH AFRICA

Working Hours & Wages in Agriculture

A Guideline for SIZA Members

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DISCLAIMER:

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1. INTRODUCTION

Many employers fall prey to grey areas within interpretational issues around overtime, payment of minimum wages and other problematic wage systems and methods of pay. Based on several years of third-party audit data, it is clear that businesses have the intention to correctly implement wage systems and working hours; however, due to several factors, their current practices are deemed non-compliant. This not only affects a business' audit risk-rating but creates a perception of intentional wrong-doing which needs to be addressed. Based on these facts, SIZA has developed this guide, in partnership with the relevant stakeholders, experts, and industry professionals to guide and drive continuous improvement within the agricultural industry at large in South Africa.

This best practice document aims to guide and serve as a supplementary guidance document to all agricultural businesses in South Africa to understand adherence to the SIZA Social Standard's requirements around wages and working hours. This guideline has been developed by a network of individuals with the collaboration of SIZA, relevant stakeholders, and recognised audit firms.

2. LEGAL FRAMEWORK

There are a number of laws and regulations that guide and regulate the payment of wages and working hours within South Africa, and specifically within agriculture. These are listed below and form the basis of this guide:

- Constitution of the Republic of South Africa, 1996 (The Constitution)
- The Basic Conditions of Employment Act 75 of 1997 (BCEA)
- The Basic Conditions of Employment Act 75 of 1997: Sectoral Determination 13: Farm Worker Sector, South Africa (SD13)
- The National Minimum Wage Act 9 of 2018 (NMWA)
- The Public Holidays Act 36 of 1994 (PHA)
- Relevant International Labour Organisation Conventions (ILO)

3. IMPLEMENTATION AND SCOPE

This guidance document will serve as guidance to producers, business owners, compliance staff, and auditors on how to correctly interpret and implement wage systems and methods of payment to ensure the correct wages were paid in accordance with the working hours allowed for by law. This guide makes recommendations on how wages and working hours should be managed, in accordance with current legislative interpretation and provides the scope for third-party audits. This document is specifically developed to consider local, South African labour legislation, along with global best practice and guidance for the agricultural sector. This guideline will predominantly consider the applicable Sectoral Determinations scoped for agriculture in South Africa.

4. WORKING HOURS

4.1. Ordinary (Normal) Working Hours:

Legal References: SD13, Section 11 (1)(a), (b) and (c).

- An employer may not require or permit an agri-worker to work more than 45 ordinary hours in any week and nine ordinary hours on any day if the farm worker works for five days or less in a week.
- An employer may not require or permit an agri-worker to work more than eight hours in any day if the agri-worker works for more than five days in any week.

Based on the above, employers should structure their working hours in line with what is allowed to best suit their business, whilst ensuring that the ordinary (normal) working hours are clearly communicated to all employees and agreed to within each employee's contract of employment.

Remember that these ordinary hours of work are conditional to the employee being 18 years or older. An agri-worker who is under 18-years of age (15 – 17) may not work more than 35-hours in any week.

4.2. Extension of Ordinary Working Hours (Averaging of Hours):

Legal References: SD13, Section 12 (1) – (5).

An employee and an employer may decide to extend or reduce their ordinary working hours in accordance with the averaging of hours-principle, which is allowed for by law. This decision can however only be concluded through a written agreement which must be agreed to by both parties:

- In terms of which the farm worker's ordinary hours of work can only be extended by 5 hours maximum per week, for no longer than 4 months (within the same 12-month cycle).
- The reduction of the hours must be the same as the extension (no more than 5 hours), and for the same duration in the same 12-month period.
- By such an agreement, the ordinary working hours for the employee may not be more than 10 hours on any day.
- During the period of extended or reduced ordinary hours of work, the employer must still pay the agri-worker the same wage which the agri-worker would have received for the normal ordinary hours of work.
- If an agri-worker's employment is terminated for any reason at a time when the employee has worked a greater number of extended ordinary hours than reduced ordinary hours (meaning it does not average out), the employer must pay the worker for the extended ordinary hours worked at the overtime rate.
- If the employee worked the shorter hours, the employee is still paid the ordinary hours of work for that period when the service comes to an end.
- This agreement must be encapsulated within the employment contract of which the employee must receive a copy.
- The employer must furthermore record any (and all) extended or reduced hours of work in terms of the contract on the payslip (additional record of pay) which must be supplied to the employee following each pay period. *Remember that overtime will become applicable once the hours are exceeded for the specific hours worked for that period, example, if they work shorter hours with 8 hours, overtime is the 9th hour, and if they work longer hours with 10 hours, then the 11th hour will be overtime.

Let's look at an example:

The employee maintains the same wage throughout the year, however during 4 months of the year (during summer for example), the employee works for 10 hours per day (extended hours) and for another 4 months in that same year (during winter for example), the employee works for 8 hours per day (reduced hours). The rest of the year the employee works for 9 hours per day (normal ordinary working hours). The hours "average" over the course of the full year and therefore the wage can remain the same. This is only allowed if the employee agrees to this.

Important things to remember:

- There must be an agreement in place between employee and employer.
- This is only applicable to workers that can benefit from both the extended and reduced hours of work.
- During the extended months, averaging of hours cannot be done for more than five hours per week, and must be reduced by the same number of hours for the same period of time later on.
- Averaging of hours cannot be for a period of more than four months in the one-year cycle.
- The wage must remain the same throughout the 12-month cycle.
- This is not the same as "flexi-hours".

4.3. Compressed Work Week:

Legal References: SD13, Section 15 (1) & (2).

A compressed work week gives an employer the opportunity to pro-actively work longer hours than the normal agreed-upon hours in a situation where this is warranted, i.e., when fruit ripens over a weekend and necessitate extra hours on a Monday, without paying overtime. **However, there are certain conditions, such as the following that must be taken into account when calculating a compressed working week:**

- Employees must give written consent, i.e., it should be part of their employment conditions in their employment contract.
- Employees may not work more than 45 hours in one week.
- Employees may not work more than 12 hours in one day (the 12 hours includes a meal interval meaning that the total hours that the employee actually works and gets paid for is less than the 12 hours depending on if the unpaid lunch break is 1 hour, or 30 minutes as agreed). Bear in mind that a meal interval is compulsory after 5 hours of work. If the employer thus wants and employee to actually work the full 12 hours, the employer will have to factor the meal break into the starting and knock off times to make provision for it on top of the hours required to work.
- Employees may not work longer than five days in one week.
- There cannot be more than ten hours of overtime in a week.
- You can only use this option if it is contracted before the employee starts with their employment and there is a valid reason for implementing the compressed work week.

Clause 15(1) of SD 13 permits employers to enter into agreements with farmworkers which organize the performance of their duties in terms of a compressed work week. In other words, the working hours in a contract of employment may be structured in terms of a compressed work week which subsists for the duration of the employee's employment.

The BCEA and SD 13 do not regulate what a compressed work week may be used for by an employer. Employers have the flexibility to decide on how to structure compressed weeks. For example, compressed work weeks may be used as standard working hours that subsist throughout the farmworkers employment or may be applied seasonally, bi-weekly, or bi-monthly based on the employer's operational needs. This flexibility in determining an employee's hours of work means that an employer and employee may agree on a compressed working week on an ongoing and indefinite basis, in advance.

For example:

The employees are contracted to work 9 hours a day for 45 hours a week. Due to a hotter weather pattern over a specific weekend, the plums ripened sooner than expected and now it needs to be picked as soon as possible. Due to these production needs, the farm may require the employees to work:

Monday 12 hours; Tuesday 9 hours; Wednesday 9 hours; Thursday 9 hours and Friday 6 hours.

This equals: 12 + 9 + 9 + 9 + 6 = 45 hours for the week. This option is only possible based on the additional clause within the employee's contract allowing for a compressed work week.

This is not just a SIZA requirement; it is also a legal requirement, and the law says:

Legal References: SD13, Section 15 (1) & (2).

An agreement in writing may require or permit a farm worker to work up to twelve hours in a day, inclusive of the meal intervals required, without receiving overtime pay.

An agreement may not require or permit an agri-worker to work:

- more than 45 ordinary hours of work in any week;
- more than ten hours' overtime in any week; or
- on more than five days in any week.

Based on legal expert opinions received, the law does not limit the implementation of a compressed work week for only one week a year or season, and therefore it can be implemented for several periods. However, the requirements that must be in place, as discussed above, is based on a particular week's calculations. In our example above, if the same producer has another need to implement a compressed work week due to another production requirement, they can do so the following week as well, as long as they inform the employees accordingly before the time and ensure that the employment contracts make provision for the implementation of a compressed work week.

4.4. Work Stoppage (rainy days, heatwaves, loadshedding etc.):

Legal References: BCEA, as Amended, Section 9(A).

A business, specifically within agriculture, should define the policy in the case of any work stoppage that may occur. This policy will form part of the standard operating procedure and can be contained in the employment contract as well, however, must be clearly documented. This policy on when work may be "stopped" or delayed, must be clearly communicated to all employees.

As certain weather occurrences may hinder agricultural production and is deemed quite a common occurrence, especially rain, this policy should outline the manner in which rain-days, heat waves or any other situation beyond the employee or employers' control, resulting in the inability for the work to be performed, must be 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.

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 and employer. 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. This policy must be aligned with section 9A of the BCEA, stating that an employee who works for 4 hours, or less than 4 hours on any day, must be paid for at least 4 hours' work on that day. For example, if the employee starts to work, and two hours into their shift, it starts to rain, and the employer sends the employee home, the employee must receive at least 4 hours payments for that day, even though they did not work their full shift. In any event where the employer declares within their work-stoppage policy that they will notify the employee ahead of the shift starting to not come in for work, then the minimum 4-hour payment will not be applicable (considering the general employment contract of course and depending on what was agreed). It will be best practice to notify the employee at least 24 hours in advance or at least the previous day, and find a suitable manner of communication, such as a WhatsApp message, written letter, email or minutes of a staff meeting. Verbal arrangements tend to get lost in translation and very often result in a "he said – she said" situation.

4.5. Overtime Hours:

Legal References: SD13, Section 13(1)(a) – (c); Section 14(1) – (4) and Section 35.

Some businesses only calculate overtime after filling up a week's agreed-upon hours instead of the hours that exceed the ordinary hours per day. Please note that SD13 defines overtime as: "the time that the farm worker works during a day or in a week in excess of ordinary hours of work".

The first and most important factor to consider is the contracted hours of the employee. What does the contract state in terms of working hours (for example, what days will there be expected to work, and for how long on each day)? If the employee is only contracted to work from Monday to Friday, and the employee sometimes works on Saturdays (on request of the employer), those hours need to be remunerated at an overtime rate of at least 1,5 times the employee's normal hourly wage. Overtime is calculated on the hours worked which exceed the agreed-upon daily or weekly limit. This means that if a worker works less than the agreed-upon weekly hours (for example, 45 hours) but works ten (10) hours instead of the agreed-upon nine (9) hours on a specific day within that week, overtime should be paid to that worker for that hour.

There must be an agreement in place to work overtime – if there is no agreement in place, the farm workers may refuse to work overtime. An employee's ordinary hours of work will be determined by the specific provisions of the employment contract. The maximum hours of work set out in the BCEA will apply where the contractual terms are more onerous (read unlawful) than those contained in the BCEA. This means that even if an employment contract does not provide for daily hours of work, and only provides for weekly working hours, i.e., "the employee will work a 45-hour week", the daily limitations of the BCEA automatically apply, i.e., capped at 9-hours per day for a 5-day work week, for example. It is recommended that a written agreement contains both the daily and the weekly working hours. Where a farmworker is contracted to work a 5 (five) day or less week, in the normal course of their employment, overtime is triggered where they work for more than 9 (nine) ordinary hours in a specific day of their work week. Ordinary hours are, essentially, permitted normal hours of work that do not include overtime work. The daily overtime hours permissible is capped at three (3) hours.

It is useful to think of the daily and weekly limits as staggered requirements. The daily limit is a point of departure. So, the first question that an employer must ask themselves is whether the daily limit for ordinary hours has been breached? If not, the next step is to determine whether the overall the hours worked in that week exceed 45 (forty-five) hours.

An employer cannot avoid paying overtime in respect of hours worked in any day by stipulating that required ordinary hours of work are a certain number of hours worked in a week. Section 9 (1) of the BCEA states that an employer cannot require or permit an employee to work more than the hours set out in Section 9, which is nine hours per day for a 5-day working week and 45 hours per week. Unless the employment contract explicitly makes provision for a compressed work week or the extension of ordinary working hours, which should be communicated clearly before implementation every time, (which should be in line with the accompanying legislative requirements), the employer must ensure that overtime is paid for any and every ordinary hour worked that exceeds the agreed-upon hours (daily and weekly).

For example: *Adam* is contracted to work nine hours per day, five days a week (45hs per week), and on Monday he worked 10 hours. He will need to be compensated for that one extra hour at 1,5 times his usual hourly rate, even if he does not work the rest of that week, for whatever the reason might be. Workers do not need to "fill-up" their weekly agreed-upon hours before overtime is paid.*

It is important to remember that in terms of agriculture and Sectoral Determination 13:

- Agri-workers may not work more than 15 hours overtime per week.
- Agri-workers may not work more than 12 hours on any day, including overtime.
- Agri-workers must agree to work overtime.
- Management must make sure that working hours are monitored effectively.

4.6. Work on Public Holidays:

Legal References: SD13, Section 20(1) – (5)

The PHA provides for selected days which are declared as official public holidays in South Africa (at a given time). As production requirements require full-time attention and sometimes cannot afford a break or delay, such as packing or harvesting of a particular commodity, it is a common occurrence in agriculture to exchange these public holidays with other days, to lessen the burden of a break in the middle of a week if and when the majority of the workforce agrees to such an exchange, for example. There are, however, several regulations which must be adhered to regarding public holidays in terms of the hours worked and the payment of these days/hours worked.

The following clauses are pertinent:

- An employer may not require an agri-worker to work on a public holiday, except when an agreement has been made to do so. If a public holiday falls on a day on which an agri-worker would ordinarily work, an employer must pay:
    - an agri-worker who does not work on the public holiday, at least the wage that the farm worker would ordinarily have received for work on that day;
    - an agri-worker who does work on the public holiday- (i) at least double the daily wage; or (ii) if it is greater, the amount referred to in subclause(2)(a) plus the amount earned by the employee for the time worked on that day.
    - If an agri-worker who works on a public holiday on which the farm worker would not normally work, the employer must pay that farm worker an amount equal to the farm worker's daily wage; plus the farm worker's hourly wage for each hour worked on the public holiday.
- An employer must pay an agri-worker for a public holiday on the agri-worker's normal payday.
- If a shift worked by an agri-worker falls on a public holiday and another day, the whole shift is deemed to have been worked on the public holiday. But if the greater portion of the shift was worked on the other day, the whole shift is deemed to have been worked on the other day.

Here are some examples of how to determine the payment for public holidays for the different situations:

1. If an employee is contracted to work on a Wednesday (which is a normal working day, in accordance with agreement), and that Wednesday during any particular time of the year, is subject to a public holiday, and the employee does not work on that day: the employee must still be paid their normal daily rate. E.g., if an employee is contracted for 9 hours a day (ordinary hours) @ R25,00 the employee will be paid R225,00 for that day, because it is a public holiday, and the employee does not have to work on such particular day. (SD13, Sec. 20(2)(a)).
2. If an employee works on a Wednesday (which is a normal working day, in accordance with agreement), and that Wednesday during any particular time of the year, is subject to a public holiday: the employee must firstly agree to work on this day and be paid double their daily wage for that day's work, regardless of the number of hours worked. I.e., if an employee is contracted for 9 hours a day (ordinary hours) @ R25,00 and the employee works for 5 hours on that day – the employee will be paid for 9 + 9 hours at R25,00 = R450,00 for this day. (SD13, Sec. 20(2)(b)(i)).
3. If an employee works on a Saturday (which is not a normal working day, in accordance with agreement), and that Saturday during any particular time of the year, is subject to a public holiday: the employee must firstly agree to work on this day and must then be paid their normal daily wage, plus hours worked. E.g., the employee normally works 9 hours a day (ordinary hours) and on this particular day, works 4 hours. The employee will be remunerated at 9 + 4 hours at R25,00 = R325,00. (SD13, Sec. 20(3)(a) & (b)).

4.7. Work on Sundays:

Legal References: SD13, Section 16(1) – (4)

An employer must pay an agri-worker who works on a Sunday in accordance with the following table:

Time worked on Sunday	Payment
Two hours or less	At least four hours' wages (ordinary hourly wage x 4)
More than two hours but not more than five hours	The ordinary daily wage (ordinary daily wage as in contract for ordinary day of work x 1)
More than five hours	The greater of double the wage payable in respect of time worked (excluding overtime) or double the ordinary daily wage (ordinary hourly wage x 2 x number of hours worked OR ordinary daily wage as in contract for ordinary day of work x 2)

An agri-worker who does not reside on the employer's farm but who works on a Sunday must be regarded as having worked at least four hours on that Sunday. Any time worked on a Sunday by an agri-worker is not taken into account in calculating an agri-worker's ordinary hours of work but is taken into account in calculating the overtime worked by the agri-worker.

If a shift worked by an agri-worker falls on a Sunday and another day, the whole shift is deemed to have been worked on the Sunday, unless the greater portion of the shift was worked on the other day, in which case the whole shift is deemed to have been worked on the other day.

4.8. Night Work:

Legal References: SD13, Section 17(1) – (4)

Sometimes work needs to be conducted at a later hour, or at night, such as spraying activities. "Night work" in the agricultural sector means work performed after 20:00 and before 04:00 the next day.

An employer may only require or permit an agri-worker to perform night work, if so agreed, and if:

- the employer pays the agri-worker an allowance of at least 10% of the agri-worker's ordinary daily wage; and
- transportation is available between the agri-worker's place of residence and the workplace at the commencement and conclusion of the agri-worker's shift.

An employer who requires agri-workers to perform night work on a regular basis after 20:00 and before 04:00 the next day must:

- inform the agri-workers in writing, or orally if the agri-workers are not able to understand written communication, in a language that the agri-workers understand:
  - of any health and safety hazards associated with the work that the agri-workers are required to perform; and
  - of the agri-worker's rights to undergo a medical examination;
- at the request of the agri-workers, enable the agri-workers to undergo a medical examination, for the account of the employer, concerning those hazards:
  - before the agri-workers starts, or within a reasonable period of the agri-workers starting, such work;
  - at appropriate intervals while the agri-workers continues to perform such work; and
- transfer the agri-workers to suitable day work within a reasonable time if:
  - the agri-workers suffer from a health condition associated with the performance of the night work; and
  - it is practicable for the employer to do so.

This applies to agri-workers who work after 20:00 and before 04:00 at least five times per month or 50 times per year.

4.9. Rest Periods and Meal Breaks:

Legal References: SD13, Section 18(1) – (6) and Section 19(1) – (3)

Meal Intervals

An employer must give an agri-worker who works continuously for more than five hours, a meal interval of at least one continuous hour.

During a meal interval, an agri-worker may be required or permitted to perform only duties that cannot be left unattended and cannot be performed by another agri-worker.

An agri-worker must be paid:

- for a meal interval in which the farm worker is required to be available for work; and
- for any portion of a meal interval that is in excess of 75 minutes, unless the farm worker lives on the farm or at the workplace.

Work is continuous unless it is interrupted by a meal interval. An agreement in writing may

- reduce the meal interval to not less than 30 minutes; and
- dispense with a meal interval for an agri-worker who works fewer than six hours on a day

Remember that this break must occur directly after 5 hours of work, unless the employee only works for a maximum of 6 hours for the day. The break can also occur before 5 hours of work if required.

Whenever an employer is required to give an agri-worker a second meal interval because of overtime worked, that interval may be reduced to not less than 15 minutes.

Rest Period

An employer must grant an agri-worker:

- a daily rest period of at least twelve consecutive hours between ending work and starting work the next day;
- a weekly rest period of at least thirty-six consecutive hours which, unless otherwise agreed, must include a Sunday.

A daily rest period may, by written agreement, be reduced to 10 hours for an agri-worker:

- who lives where the workplace is situated; and
- whose meal interval lasts for at least three hours.

An agreement in writing may provide for a rest period of at least sixty consecutive hours every second week.

Remember that additional breaks offered, such as tea breaks, smoke breaks or morning/afternoon breaks of 15 minutes for example, is not regulated by legislation and is paid time for the employee.

**Remember that smoke or tea breaks (normally awarded for 10 – 15 minutes) will be constituted as paid time.*

5. WAGES AND PAYMENT

5.1. National Minimum Wage:

Legal References: NMWA, Section 3(1) and Chapter 2, Sections 4(1) – (9) and 5(1) – (2)

The NMWA aims to advance economic development and social justice by protecting workers from being paid unreasonably low wages. The NMWA applies to all workers and their employers except members of the National Defence Force, the National Intelligence Agency, and the South African Secret Service. All employers may not pay wages that are below the national minimum wage and the national minimum wage cannot be reduced by contract, except if the contract provides for a more favourable wage.

The NMWA requires an annual review of the rates based on inflation, the cost of living, the need to retain the value of the minimum wage, wage levels and collective bargaining outcomes, productivity, and so on. The rate for the National Minimum Wage (NMW) for each ordinary hour worked will be adapted as per the legislation (usually on an annual basis). This increase/ change is published in the Government Gazette every year in March.

The NMW applies to all workers, that is, any person who works for another person and who receives or is entitled to receive any payment for that work, including permanent or seasonal workers, labour service providers, or workers contracted on the historical principle of piece rate.

If any employer is unable to pay the minimum wage as stipulated at any particular time, an application for exemption may be made. However if the employer does not meet the requirements of the NMWA, they will be liable to pay a fine.

The NMW is also applicable to labour service providers such as Temporary Employment Services and/or independent contractors. It remains the business' responsibility to ensure any labour service provider contracted also adheres to the minimum wage. Businesses should therefore have an adequate system in place to monitor payments made by labour service providers to the employees.

By law, no employee may receive less than the applicable wage for each hour worked, regardless of the type of work being conducted.

Employees cannot only be paid for bags packed or crates picked for example, as they will need to be remunerated for each hour worked, in accordance with the NMWA. Even if an employee requests to be paid on a piece-rate system, it still remains against the law to pay the employee less than the minimum wage per hour.

There is no reason to justify a wage below the minimum. Piece-rate calculations must be calculated on top of the minimum wage for each hour worked and cannot be the only determining factor for payment if it is less than the specified minimum wage. If the employee works for eight (8) hours, the employee must be paid for each hour at the minimum wage rate. If he/she exceeded a target, for example by picking more crates, they can earn more than the minimum wage rate for each crate picked or bag packed additionally, but the remuneration for each hour worked must still be equal to or above the minimum wage as determined by law. Furthermore, in line with Section 9A of the BCEA, if an employee works for four (4) hours or less on any day, they still need to be paid for at least four (4) hours work, regardless of the piece-rate system.

Employers need to have adequate systems in place to manage and record hours worked. There should then be a system in place to ensure every employee is paid according to the number of hours worked. If the business does not make use of an electronic clocking system, there must be an attendance register which adequately indicates the hours worked for each person.

In cases where employees do not perform in accordance with their duties/production targets, the employer can follow their disciplinary process. The non-payment due to unproductivity is not allowed, as no form of a fine is allowed as a form of disciplinary.

What are the penalties if the minimum wage is not paid?

The CCMA and/or Department of Employment and Labour may impose a hefty fine for underpayment of the minimum wage. Non-compliant employers may also be named and shamed in a quarterly publication of all employers that were instructed to comply with the NMW which will be posted on the Department of Employment and Labour's website. SIZA strongly advises all its members to remain compliant and under no circumstances attempt to undermine the law.

5.2. Overtime Payment:

Legal References: SD13, Section 18(1) – (6) and Section 19(1) – (3)

An employer must pay a farm worker at least one and one-half times (x1.5) the agri-worker's wage for overtime worked.

If, however, it is decided to exchange the overtime worked for time off, instead of payment, then it can be done, but only if agreed to beforehand between the employer and the employee. There should be clear evidence of this agreement between both parties, outlining exactly what was agreed to in terms of time off.

The options for this exchange are:

(i) pay a farm worker not less than the farm worker's ordinary wage for overtime worked and grant the farm worker at least 30 minutes' time off on full pay for every hour of overtime worked; or

(ii) grant a farm worker at least 90 minutes' paid time off for each hour of overtime worked.

If the above is decided, the employer must grant the paid time off within one month of the agri-worker becoming entitled to it. An agreement in writing may increase the period to twelve months. This agreement must have been reached when the agri-worker commences employment, or during the first three months of employment, and it is only valid for one year.

Any overtime worked on a Sunday or public holiday must be paid in accordance with the provisions for Sundays and public holidays (refer to sections 4.6. and 4.7. of this guide). Also refer to section 4.5. of this guideline for further explanation and examples.

5.3. Information Concerning Pay:

Legal References: SD13, Sections 6(1)(a) –(l), 6(2) and 9(2)

On every pay day, the employer must give the agri-worker a statement showing:

(a) the employer's name and address;

(b) the farm worker's name and occupation;

(c) the period in respect of which payment is made;

(d) the farm worker's wage rate and overtime rate;

(e) the number of ordinary hours worked by a farm worker during that period;

(f) the number of overtime hours worked by the farm worker during that period;

(g) the number of hours worked by the farm worker on a paid holiday or on a Sunday;

(h) the farm worker's wage;

(i) details of any other pay arising out of the farm worker's employment;

(j) details of any deductions made;

(k) the employer's registration number with the Unemployment Insurance Fund and the employee's contribution to the Fund; and

(l) the actual amount paid to the farm worker.

Remember that the employer must retain a copy or record of each statement for at least three years.

Management must take reasonable measures to ensure that all employees (including permanent and seasonal) understand their payslips. It is a good idea to explain payslips and the payment system to workers during induction trainings, however it may also be required to provide a further update to workers when required/needed. Pay systems and records differ from business to business and it is good practice to make sure that workers understand their current employer's 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.

5.4. Deductions:

Legal References: SD13, Section 8(1) – (12)

Deductions made from employees' wages can be a very confusing exercise if it is not clearly defined and documented within the business' policies and employment contracts. There are deductions that are allowed to be made, and deductions which are not allowed.

Deductions that are allowed to be made:

- **Food supplied to the agri-worker (**when the employer provides food consistently and on a regular basis as a condition of employment to all employees or maintain a cafeteria/food service on farm for employees). This deduction may not exceed 10% of the agri-workers wage for each pay period and should not cost more than the employer paid for it.
- **Accommodation** that is provided to the agri-worker, for example free standing housing, or housing units. The maximum deduction here is 10% of the agri-workers' (head of the house) wage for a pay-period. If the accommodation is offered as communal accommodation, for example a hostel, kampong or shared house for three (3) agri-workers or more, then the deduction can be a maximum of 25% split between the residents under the same roof for the pay-period concerned. This means that the deduction per agri-worker does not exceed the 10% of the minimum wage.

If deductions are made for accommodation, remember that this can only be done if agreed to in a written contract and if the accommodation meets the minimum requirements:

- the house has a roof that is durable and waterproof ;
- the house has glass windows that can be opened;
- electricity is available inside the house if the infrastructure exists on the farm;
- safe water is available inside the house or in close proximity, which is not more than 100m, from the house;
- a flush toilet or pit latrine is available in, or in close proximity, to the house; and
- the house is not less than 30 square meters in size.

Electricity:

- Where the 10% accommodation is deducted from the farm employee's wages, no deductions can be made by the employer for electricity (unless there is an adequate prepaid/electricity meter installed for the housing unit to allow an occupant's usage to be measured, for which the employer can deduct from the occupant, if agreed beforehand in writing between both parties).
- The farm employee may purchase electricity via the prepaid system which is adequate and measures the exact usage for the occupant's accommodation.
- Remember, if a deduction for electricity is made, the employer cannot charge more for the electricity than the actual cost (the employer cannot sell electricity at a profit).

- **Third-party deductions** can be deducted at the written request of the agri-worker for the amount that was undertaken to be paid to the third-party by the employer. These can include payments to a furniture store, or payments to a funeral director for example. This is a third-party who needs to be paid by the employee, and whom the employee has requested the employer to pay on their behalf by deducting the relevant amount every pay period.
- **Loans and advances** made by the employer to the employee may only be deducted if this was agreed to beforehand, and this deduction for the repayment may not exceed 10% of the agri-worker's wage. A loan is when an employee explicitly agrees to loan money from their employer which must be paid back to the employer through deductions per pay period.
- **Court ordered or arbitration awarded** deduction can be made in accordance with the order or arbitration award.
- **Legally required deductions** can be made as required from the employer by law, such as UIF for example.
- **Deductions for any holiday, sick, medical, insurance, savings, provident fund or pension fund** of which the agri-worker is a member, and if this has been agreed to between employer and employee.
- **Registered trade union subscriptions** can be deducted as agreed to between all parties.
- **Repayment of a loan from any bank, building society, insurance business, registered financing institution, local authority** granted to the agri-worker to acquire a dwelling.
- **Deduction for damage or loss** can be made under certain conditions:
    - the loss or damage occurred in the course of employment and was due to the fault of the agri-worker;
    - the employer has followed a fair procedure and has given the farm worker a reasonable opportunity to show why the deductions should not be made;
    - the total amount of the debt does not exceed the actual amount of the loss or damage; and
    - the total deductions from the farm worker's remuneration in terms of this subsection do not exceed one-quarter (25%) of the employee's remuneration for that pay period in money.

- **Deductions of any goods purchased** by the employee must specify the nature and quantity of the goods and the amount that correlates with a proof of purchase. Important: this must be voluntary and cannot be compulsory. Remember that this can include farm shops from which the employee may be purchasing, and therefore there must be evidence of the items purchased, with proof that the employee agreed to the deduction. For these deductions there are no limit, as the employee will agree to what they buy and what can be deducted from the farm shop.
- **Deduction for remaining outstanding balance** can be included in the employment contract upon service termination.
- **Deductions for transport** can be made, as agreed to between the employer and the employee. There is no limit to these deductions, and it should be agreed to between both parties in writing beforehand. It is advisable to seek legal advice on the matter, especially when different types of transport is provided, i.e., public, private or other third-party providers.

Deductions that are not allowed:

- **Personal Protection Equipment/Clothing (PPE)** that is required for the employee to conduct and do their job, must be provided to the employee at no cost to the employee.
- **General work clothing (not PPE)** which might be required to be worn by the company (usually containing the company branding/logo) may not be deducted and must be supplied at no cost to the employee.
- **Deductions for accommodation for agri-workers who are under the age of 18** cannot be made.
- **Deductions for the grazing of an agri-workers livestock** may not be made by the employer.
- **No fines can be used as a form of discipline and deductions cannot be made in the form of a fine.**
- **Remember: an employer may not require or permit an employee to:**
    - repay any remuneration except for overpayments previously made by the employer resulting from an error in calculating the employee's remuneration; or
    - acknowledge receipt of an amount greater than the remuneration actually received.

Leave Benefits:

5.4.1. Annual Leave:

Legal References: SD13, Section 21(1) – (10)

(1) An employer must grant an agri-worker:

- at least three weeks leave on full pay in respect of each twelve months of employment (the "annual leave cycle");
- by a mutual agreement, at least one day of annual leave on full pay for every 17 days on which the farm worker worked or was entitled to be paid; or
- by agreement, one hour of annual leave on full pay for every 17 hours on which the agri-worker worked or was entitled to be paid.

An employer must grant an agri-worker an additional day of paid leave if a public holiday falls on a day during an agri-worker's annual leave on which the agri-worker would otherwise have worked.

An employer may reduce an agri-worker's entitlement to annual leave by the number of days of occasional on full pay granted to the farm worker at the agri-worker's request in that annual leave cycle.

An employer must grant:

- at least three weeks annual leave on full pay in respect of each 12 months of employment (the 'annual leave cycle') not later than six months after the end of the annual leave cycle or the year in which leave was earned, and
- the leave earned in one year over a continuous period, if requested by the agri-worker.

Annual leave must be taken:

- in accordance with an agreement between the employer and the agri-worker; or
- if there is no agreement, at a time determined by the employer.

An employer may not require or permit an agri-worker to take annual leave during:

- any other period of leave to which the agri-worker is entitled; or
- any period of notice of termination of employment.

An employer may not require or permit an agri-worker to work for the employer during any period of annual leave. An employer may not pay an agri-worker instead of granting paid leave except on termination of employment.

An employer must pay an agri-worker leave pay at least equivalent to the remuneration the agri-worker would have received for working for a period equal to the period of leave, calculated at the agri-worker's rate of remuneration immediately before the beginning of the period of leave. An employer must pay an agri-worker leave pay before the beginning of the period of leave or on their normal pay day, if it was agreed beforehand.

When should leave be paid out?

One will have to refer to SD13, Section 29(1) (e) and the BCEA, Section 40 (c) which states that on termination of employment, an employer must pay a farm worker all monies due to the farm worker including if the farm worker has been in employment longer than four months, in respect of the farm worker's annual leave entitlement during an incomplete annual leave cycle.

Accrual of leave benefits – what happens if the seasonal employee returns to the same place of work in the same year – does the leave carry over from one contract to another?

In terms of Section 84 of the BCEA, the following is regulated:

- For the purposes of determining the length of an employee's employment with an employer for any provision of the BCEA, previous employment with the same employer must be taken into account if the break between the periods of employment is less than one year.
- Any payment made or any leave granted in terms of the BCEA to an employee contemplated in subsection (1) during a previous period of employment must be taken into account in determining the employee's entitlement to leave or to a payment in terms of the BCEA.

Whilst taking the above into account, for the purposes of SIZA audits, if leave will accrue between contract periods, this must be agreed to in the employment contract, and similarly, if the leave will not accrue, based on legal advice, then the employee and employer must agree to this beforehand in the employment contract. Due to the contradictory legal interpretations which was tested between SIZA, and other legal authorities in 2018 and 2019, the contradictory interpretations in the law pertaining to Section 84 of the BCEA, employment contracts should include the accrual of leave benefits or explicitly exclude it based on sound legal advice.

5.4.2. Sick Leave:

Legal References: SD13, Section 22(1) – (8)

"Sick leave cycle" means the period of 36 months of employment with the same employer immediately following:

- when the agri-worker commenced work; or
- the end of the agri-worker's prior sick leave cycle.

During every sick leave cycle, the agri-worker is entitled to an amount of paid sick leave equal to the number of days the agri-worker would normally work during a period of six weeks. During the first six months of work, the agri-worker is entitled to one day's sick leave for every 26 days worked.

Where an employer, at the request of the agri-worker, pays fees for an agri-worker's hospital or medical treatment, the fees paid may be set off against the worker's pay.

An employer is not required to pay the agri-worker if the agri-worker has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request of the employer, does not produce a medical certificate stating that the agri-worker was unable to work for the duration's absence on account of sickness or injury.

Sick leave is for the purpose of illness or injury and cannot be utilised for any preventative actions such as the event of fetching contraceptives at a clinic for example.

Within the scope of their professional expertise, a medical certificate may be provided by:

- a medical practitioner;
- a clinic nurse practitioner;
- a traditional healer (who is registered with the Traditional Health Practitioners Council as per the Traditional Health Practitioners Act);
- a community health worker;
- a psychologist;
- any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament; or
- any other health professional authorized to diagnose medical conditions.

If it is not reasonably practicable for an agri-worker who lives on the employer's premises to obtain a medical certificate, the employer may not withhold payment unless the employer provides reasonable assistance to the agri-worker to obtain the certificate.

What detail should a sick letter ideally contain?

An extract from the Ethical and Professional rules of the Medical and Dental Professions Council of the Health Professions Council of South Africa (HPCSA) gives clear guidelines on the requirements of a valid sick note:

Rule 15 (1) states that a medical practitioner may only issue a certificate if the following information appears on the sick note:

- the name, address and qualification of the medical practitioner;
- the name of the patient;
- the date and time of the investigation;
- whether the certificate is issued as a result of personal observations by the practitioner during a medical examination;
- a description of the disease in terminology that can be understood by a layman (with the consent of the patient.)
- whether the patient is completely unfit for work or a recommendation that the employee should instead perform less strenuous duties due to the illness;
- the exact period of recommended sick leave;
- the date of issue of the certificate;
- the details of the doctor who issued the certificate. (Initials and surname in block letters or printed and signed by the practitioner in his/her handwriting).

5.4.3. Maternity Leave:

Legal References: SD13, Section 24(1) – (8)

An agri-worker is entitled to at least four consecutive month's unpaid maternity leave. An agri-worker may commence maternity leave:

- at any time from four weeks before the expected date of birth, unless otherwise agreed; or
- on a date from which a medical practitioner or a midwife certifies that it is necessary for the farm worker's health or that of her unborn child.

An agri-worker may not work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.

An agri-worker who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the agri-worker had commenced maternity leave at the time of the miscarriage or stillbirth.

An agri-worker must notify an employer in writing, unless the agri-worker is unable to do so, of the date on which the farm worker intends to:

- commence maternity leave; and
- return to work after maternity leave.

Notification must be given:

- at least four weeks before the agri-worker intends to commence maternity leave;
- if it is not reasonably practicable to do so, as soon as is reasonably practicable.

No employer may require or permit a pregnant agri-worker or an agri-worker who is nursing her child to perform work that is hazardous to her health or the health of her child.

During an agri-worker's pregnancy, and for a period of six months after birth of her child, her employer must offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if:

- the agri-worker is required to perform night work, or her work poses a danger to her health or safety or that of her child; and
- it is practicable for the employer to do so.

In South Africa, in terms of the Code of Good Practice on the Protection of Employees during Pregnancy and after the Birth of a Child (which forms part of the Codes of the BCEA), arrangements should be made for employees who are breast-feeding to have breaks of 30 minutes at least twice per day for breast-feeding or expressing milk each working day for the first six months of the child's life. These breaks will be constituted as paid time.

5.4.4. Parental Leave:

In terms of the Labour Laws Amendment Act an employee is entitled to 10 days parental leave upon the birth of the employee's child. Parental leave may also be applicable in circumstances where an employee legally adopts a child or when a child is placed by a court in the care of a prospective adoptive parent. An employee who is a parent of a child will be entitled to 10 consecutive days' parental leave. Parental leave may commence on the day the child is born. The employee will have to give at least one month's written notice of the expected date of birth, as well as when the leave is due to commence and when the employee will return.

Parental leave entitles an employee to 10 consecutive days' unpaid leave (not 10 working days):

- after the employee's child has been born;
- an adoption order has been granted by a competent court; or
- a child has been placed in the care of the prospective adoptive parent.

Adoption leave relates to the adoption of a child below the age of two. A single adoptive parent is entitled to 10 consecutive weeks' leave. If there are two adoptive parents, the other would be entitled to 10 consecutive days' normal parental leave. It is up to the adoptive parents to decide who takes adoption leave and who takes normal parental leave. Leave can commence on the day that the adoption order is granted. The notice requirements are similar to that of parental leave.

A prospective adoptive parent therefore means:

- a person that is fit and proper to be entrusted with full parental responsibilities;
- that is willing and able to undertake, exercise and maintain those responsibilities;
- that is older than 18 years;
- and that has been properly assessed by an adoption social worker.

Based on the aforementioned it is evident that both male and female employees may qualify for parental leave depending on the circumstances. However, if the employee gave birth to the child, she would not qualify for parental leave on top of maternity leave. Such employee is entitled to 4 months unpaid maternity leave.

This leave will be unpaid by the employer (if so preferred), and employees therefore have to submit claims to the Unemployment Insurance Fund (UIF) to qualify for payment during the periods of absence from work.

In the case where an employee utilises the parental leave for the 10 consecutive days following the birth of a child, they cannot also claim the three days family responsibility leave for the birth of the child. They can choose to claim their parental leave and then utilise their family responsibility leave for other family-related needs such as funerals, child illness etc.

5.4.5. Family Responsibility Leave:

Legal References: SD13, Section 23(1) – (6)

(1) This leave benefit applies to an agri-worker who:

- has been employed by an employer for longer than four months; and
- works at least four days a week for that employer.

An employer must grant an agri-worker, during each 12 months of employment, at the request of the agri-worker, three days' paid leave, which the agri-worker is entitled to take:

- when the agri-worker's child is born (not in the case when parental leave has been taken);
- when the agri-worker's child is sick; or
- in the event of the death of:
  - the agri-worker's spouse or life partner; or
  - the agri-worker's parent, adoptive parent, grandparent, child, adopted child, grandchildren, or sibling.

An agri-worker may take family responsibility leave in respect of the whole or part of the day. An employer must pay an agri-worker for a day's family responsibility leave:

- the wage the farm worker would normally have received for work on that day; and
- on the farm worker's usual payday.

Before paying an agri-worker for leave, an employer may require reasonable proof of an event for which the leave was required.

An agri-worker's unused entitlement to family responsibility leave lapses at the end of the annual leave cycle in which it accrues.

6. TERMS OF EMPLOYMENT

6.1. Employment Contracts:

Legal References: SD13, Section 18(1) – (6) and Section 19(1) – (3)

The employment contract serves as a formal acknowledgement of the working relationship while also protecting both the employer and the employee regarding their duties and responsibilities. Contracts exist to protect both parties in a working relationship.

All workers (including permanent, seasonal, subcontracted, temporary, fixed-term, apprenticeships etc.) must receive written employment contracts on or before the day that they are employed, or during their induction process once the contract has been explained with each employee in full. Employees who remain on the farm and conduct work between seasons must have a contract in place to protect the employer and ensure the employee has agreed to the conditions of employment. The contract not only lowers the risk for the producer, but also allows for all the workplace rules to be in writing to avoid any uncertainties or misinterpretations amongst employees. Apart from being a legal requirement, the contract is the start of the relationship and will dictate the relationship and workplace rules for both parties.

It is vital that employers understand the different categories of employment, meaning whether the employee is permanently employed or only employed seasonally, and ensure that the working relationship must be correctly reflected in the contract.

Employers must also remember to provide employees with a written copy of their contract when they start working. They cannot wait days, weeks, or months before supplying an employee with a contract, as this puts both the employer and employee at risk. The employment contract must also be explained and understood by the employee when they start working - this should be repeated if necessary. The contract cannot be changed unilaterally by one party, without adequate consultation taking place.

If the employment contract also includes agreements regarding housing benefits, performance bonuses, or targets for production, these aspects must be clearly defined in the contract. A dual responsibility rests on both the employer and the employee in these cases, and this must be agreed upon. For example, if the employer provides housing, the resident must keep it neat and clean, or production bonuses are only payable after a specific target for work has been reached. These aspects must be clearly set out and agreed upon before the employee is appointed.

The following aspects must be included in the contract:

- the full name and address of the employer;
- the name and occupation of the agri-worker, or a brief description of the work for which the agri-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.

6.2. Group Contracts:

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 agriculture. In these cases, there needs to be documented proof that the contracts have been explained to all relevant workers, and a signed attendance register of acknowledgement must be kept on file. Each employee must, over and above the group contract, still receive a copy of their contract, even if it is a shorter version. This "shorter version" must still include all the minimum requirements as stipulated in SD13 Section 9:

- the full name and address of the employer;
- the name and occupation of the agri-worker, or a brief description of the work for which the agri-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.

A generic version of the full employment contract must still be displayed in a prominent area of the workplace where workers are able to refer to it.

In cases where employers make use of "online" contracts (i.e., digital version) or an online system of sharing the contract (e.g., WhatsApp, email etc.), the producer must still be able to prove that the employee has received this online copy, either by manner of signature, or receipt. Although this method proves to greatly benefit a sustainable approach and moving away from the use of thousands of pages of paper every year, it should still contain all the information required by law and international labour standards, be explained to the workers, and there should be a signed copy of each employee's contract (even if it is kept online) as proof that they understand and agree to the terms and conditions.

7. DEPARTMENT OF EMPLOYMENT AND LABOUR

7.1. Application for an Exemption:

With economic challenges and increased production demands, it could sometimes be required within a business to operate with more needs and may require extreme measures, such as working more than the 12 hours with overtime allowed, or more than the overtime limit per week. If any business operates outside these legal limits, they are operating outside of legislation and can be fined or even imprisoned. There is, however, room for a variation on the practice versus the legal limits, should it be applicable in a specific case to a specific business. The law affords an employer the right to apply to the Minister of Employment and Labour for an exemption from certain BCEA provisions/regulations.

If needed, an employer can apply annually to the Provincial Executive Manager through the completion of the application form BCEA form 6 (this and other forms are available for download on the website of the Department of Labour at www.labour.gov.za, or access the link here.

When this application is completed, the employer must clearly indicate which area (section/provision) it is that requires exemption, for example overtime, and indicate the reasoning why. It is also important to remember that if a trade union is actively involved in the business, then consent must first be sought.

Section 36 of the Constitution can be taken into account here. This section provides that the basic human rights contained in chapter 2 of the Constitution can only be limited if and when the "limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom...". It is therefore important to remember that this application cannot be abused, and an employer will not be afforded the requested exemption if the reasons provided by the employer for such exemption does not comply with the provisions of section 36 of the Constitution.

8. GENERAL FREQUENTLY ASKED QUESTIONS

1. **When can you deduct for electricity?**

   If the electricity is adequately measured by means of an electricity meter/prepaid box, the actual use of the electricity may be deducted from the employee. The installation costs of such meter/box remain with the employer. This deduction may only occur if and when agreed to between employer and employee.

2. **What is meant by a rainy-day?**

   This policy pertains to any form of "work-stoppage" that may occur. Within agriculture, rain days are fairly common, and it refers to any event that might occur that is deemed beyond the employer or employee's control. For example, the planned harvest cannot take place due to heavy unforeseen rain the morning. The policy needs to clearly stipulate the regulations around when employees need to be notified (and how) on whether work will continue or stop. If reasonable warning has not been given, the employee will have to be paid for at least 4 hours.

3. **Is the minimum 4 hours pay relevant to rainy days?**

   Yes, if the employee is not informed within a reasonable timeframe, the employee is entitled to at least 4 hours' wages. BCEA - Insertion of section 9A in Act 75 of 1997 3. The following section is hereby inserted in the principal Act after section 9: "Daily wage payment: 9A. (1) An employee or a worker as defined in section 1 of the National Minimum Wage Act, 2018, who works for less than four hours on any day must be paid for four hours work on that day."

4. **Can I work on a public holiday and exchange the "off" day to another day?**

   Yes, however, most of the employees need to agree to this, prior to execution. Legal reference: SD13 Part D. Clause 20.1.

5. **If an employer wants to exchange a public holiday for another day and the majority of employees agree to this, does this mean the rest must accept this? (Majority rule?)**

   If the agri-workers were sufficiently consulted, and the majority agrees, then it is the general view that the other workers will have to accept the exchange. The business can document this as part of the worker committee meeting minutes, or other form of record to prove that employees voted/agreed to the exchange.

6. **Do the rest periods include a Sunday?**

   Workers shall receive a weekly rest period of not less than 36 hours which shall include a Sunday (unless otherwise agreed). Legal reference: SD13 Part D: Clause 19.1.b read together with 19.3.

7. **What happens if one worker must come and switch on the pump on Saturdays, and return again 1 hour later to switch it off? Does this count as working hours?**

   The employee must be remunerated as per Section 9A of the BCEA: "Daily wage payment: 9A. (1) An employee or a worker as defined in section 1 of the National Minimum Wage Act, 2018, who works for less than four hours on any day must be paid for four hours work on that day."

8. **Can an employer issue a fine to an employee if he/she damages work equipment?**

   SD13 7(3) stipulates that an employer may not levy a fine against an agri-worker. The SIZA Social Standard is furthermore clear in its code requirement that no fines or mention thereof, shall be permitted as a form of discipline.

   It is important to remember that deductions for the replacement or repair of lost or damaged goods do 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. Employers should be sure to deduct only for the replacement cost of the goods replaced and retain the invoice of the purchase or a copy thereof on file to demonstrate that the deduction was not a fine. It is illegal to levy fines against agri-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.

9. **What happens with "piece-work"/ "stuk-werk" when the worker does not pick enough bins to meet minimum wage?**

   Employees cannot only be paid for bags packed or crates picked for example, as they will need to be remunerated for each hour worked, in accordance with the NMWA. Even if an employee requests to be paid on a piece-rate system, it still remains against the law to pay the employee less than the minimum wage per hour. There is no reason to justify a wage below the minimum. Piece-rate calculations cannot be the only determining factor for payment if it is less than the specified minimum wage. If the employee works for eight (8) hours, the employee must be paid for each hour at the minimum wage rate. If workers pick less than their target, one still needs to pay the ordinary hours worked and disciplinary measures can potentially be enforced, if this forms part of the business policy. If the employee exceeded a target, for example by picking more crates, they can earn more than the minimum wage rate for each crate picked or bag packed additionally, but the remuneration for each hour worked must still be equal to or above the minimum wage as determined by law.

10. **Are all foreigners covered under SA legislation? UIF?**

    Yes, even undocumented foreigners are covered. Since 1 March 2018 all foreigners and their employers must contribute to the Fund.

11. **Stand-by hours: Paid or not?**

    Stand-by hours are not covered under labour legislation and therefore this is to be consulted with employees. It is a general understanding that employees in agriculture does not need to paid for hours on standby, and only the actual working hours. For example, if the employee is required to drive the spray operators to the orchard when the wind clams down. The employee is paid for the time when he is actually working, and not the hours in between, if communicated adequately by the employer.

9. DEFINITIONS

The following definitions are based on content in the guide:

Averaging of Hours/ Extension of Ordinary Hours:	Refers to when an employer averages hours over the course of 12 months by shortening hours for a period of no longer than 4 months, and increasing the same amount of hours for the same period. Discussed in Section 4.2. of the guide.
Compressed Work Week:	Refers to a week period where hours are compressed due to production needs and allows for additional hours to be worked which do not constitute overtime. This is discussed under Section 4.3. in the guide.
Minimum Wage:	The minimum money which must be paid per hour based on the National Minimum Wage Act. This is discussed in more detail in Section 5.1. in this guide.
Night-work:	Refers to work being conducted between the hours of 20h00 and 04h00 on farms. This is discussed in more detail in Section 4.8. of this guide.
Ordinary Working Hours:	Refers to the hours of work which the employee is normally contracted to work. This is discussed in more detail in Section 4.1. of this guide.
Overtime:	Refers to hours worked above the normal agreed-upon hours on any day and within a week. This is discussed in more detail in Section 4.5. of this guide.
Public Holidays:	Refers to days declared by National Government as public holidays in accordance with legislation every year. This is discussed in more detail in Section 4.6. of this guide.
Terms of Employment:	Refers to contracts of employment and written agreements between an employer and employee. This is discussed in more detail in Section 6 of this guide.
Work-Stoppage:	Refers to when work is being stopped/delayed by an employer due to weather, or other uncontrollable or unforeseen circumstances. This is discussed in more detail in Section 4.4. of this guide.