

SUMMARY OF PROPOSED AMENDMENTS AND CORRECTIONS TO THE DRAFT COLLECTIVE

BARGAINING AGREEMENT - S.I. 116 OF 2014:-

The table below provides a summary of the submissions received on the draft Collective Bargaining Agreement. Under the 'Provision' column are the provisions where there were proposed changes and under the 'Amendments' column are the proposed modifications on each provision. For your guidance, I have provided comments on whether some of the proposed modifications are permissible by law.

NB: Where proposed changes to a provision are highlighted in the same colour, there is an apparent contradiction between the two proposals.

Provision	Contribution/ Proposed Amendment	Comments
Whole CBA	<ul style="list-style-type: none"> Must be favourable to both employer and employees for a sustainable agricultural industry. Final copy must be distributed to all parties for comment before submission to the Ministry of Labour. 	
3	<ul style="list-style-type: none"> "Secretary" means the General Secretary of the National Employment Council. "Seasonal worker" means work that is owing to the nature of the industry performed only at a certain time of the year. "Emergency" means a situation that poses an immediate risk to health, life, property or environment. Most emergencies require urgent intervention to prevent a worsening of the situation, although in some situations, mitigation may not be possible and agencies may only be able to offer palliative care for the aftermath. 	<ul style="list-style-type: none"> While the proposed definition of seasonal work takes the definition given in the Labour Act, it fails to give specific guidelines on what seasonal work is in the agricultural sector.

7(1)	<ul style="list-style-type: none"> Workers in this section cannot work the same hours as those in s7(2). They must work 312 hours a month, with 12 hours shifts each working day. Workers in this section must work up to 280 hours Milkers and irrigation hands need to be included in this provision. 	
10(2)	<ul style="list-style-type: none"> Reference should have been made to s 7(2) and not s 17. 	<ul style="list-style-type: none"> The section does indeed make reference to s 17 (2) which does not exist. However, the proposed reference, s 7(2), does not speak on any payments. Contextually, reference was meant to be to s 10(1).
11(1)(f)	<ul style="list-style-type: none"> Clause must read “by mutual consent, in writing, in respect of any services provided mutually by an employer to an employee, or” 	
12(1)	<ul style="list-style-type: none"> “Every employer shall pay wages, in cash or transfer ...” “Every employer shall pay wages, in cash or any other acceptable alternative agreeable means of payment” 	
12(1)(b)	<ul style="list-style-type: none"> Allowance should be made for the delay in transfers being cleared so monthly wages must be paid within 8 days from the end of the month instead of 4. Moreover, if weekly wages can be paid within 2 days of the end of the week, then the same ratio would be 8 days at the end of the month. 	
12(2)	<ul style="list-style-type: none"> Payment of all due remuneration must be made within seventy-two hours of parties agreeing on the termination of employment in writing. 	
13(1)	<ul style="list-style-type: none"> An employee must be paid according to the percentage of the task completed. 	
15(2)	<ul style="list-style-type: none"> Nine consecutive months in a period of twelve (12) months is a 	

	<p>more reasonable time frame for an employee to become permanent.</p> <ul style="list-style-type: none"> • The definition of seasonal should be aligned to crop seasons. 	
16(1)	<ul style="list-style-type: none"> • Must be made clear that an employee can only accrue leave after 12 consecutive months of employment. 	
16(4)	<ul style="list-style-type: none"> • Applications for sick leave must be made in writing with an attached letter from a medical doctor. 	
17	<ul style="list-style-type: none"> • Section must explicitly state that special leave is granted at the discretion of employer. • Proof of listed circumstances must be provided by employer. 	<ul style="list-style-type: none"> • Special leave in terms of section 14B of the Labour Act is not granted at the discretion of an employer. As long as the circumstances there exist, it must be granted.
17(c)	<ul style="list-style-type: none"> • Must be removed completely. 	<ul style="list-style-type: none"> • This section cannot be removed because it is provided for in the Labour Act, s 14B(c)
18(1)	<ul style="list-style-type: none"> • 90 days on full pay to a female employee who has served for at least 12 months consecutive months. 	<ul style="list-style-type: none"> • Wording of this section was taken from s 18(1) of the Labour Act so the proposed amendment cannot be adopted.
19(1)	<ul style="list-style-type: none"> • Reference must be made to the effect that it is a public holiday regardless of which day of the week it lands on. • Provision must read “All public holidays declared in terms of the Public Holidays and Prohibition of Business Act [<i>Chapter 292</i>] as public holidays shall be industrial holidays”. • Easter Saturday and Easter Monday must be included on the listed industrial holidays. • Remove portion the clause that starts with ‘Public holidays declared by the state...’ and replace it with ‘All industrial holidays/public holidays declared 	<ul style="list-style-type: none"> • The idea of swapping <i>may</i> be inconsistent with s14C(3) of the Labour Act which states that where an employee has consented to working on a public holiday, he must be paid no less than twice his daily remuneration rates for working that day. Using swapping to avoid the effect of this provision <i>may</i> be

	<p>by the State in the general notice shall be industrial holidays.'</p> <ul style="list-style-type: none"> Employers may swop industrial holiday upon agreement with employers to a more suitable day as not to affect production. 	unlawful.
20(2)	<ul style="list-style-type: none"> Reduce to an entitlement of 30 days sick leave on full pay. 	<ul style="list-style-type: none"> The provision in the CBA cannot be changed because it is taken straight from the Labour Act, s 14(2).
20(3)	<ul style="list-style-type: none"> Reduce to period of 30 days sick leave at half pay and an allowance for a further 30 days leave with no pay. Employees are entitled to too many days off work (vacation leave, special leave, sick leave, maternity leave) and this can hinder production 	<ul style="list-style-type: none"> The provision in the CBA cannot be changed because the portions to be changed are taken straight from the Labour Act, s 14(3).
20(4)	<ul style="list-style-type: none"> Inclusion of a new subsection, s20(4)(c), "therefore no more than 90 days sick leave in a year" 	
21(1)(f)	<ul style="list-style-type: none"> Deletion of this provision. 	<ul style="list-style-type: none"> This section cannot be removed because it is provided for in the Labour Act, s 12(2)(j).
21(2)(ii)	<ul style="list-style-type: none"> It shall not be necessary for an employee to give notice where he or she is unable to do so because of some personal emergency or compelling necessity whose authenticity can be proved hence this should also only apply if the employee agrees to forfeit his or her leave days or offset against leave days. 	
21(4)(a)	<ul style="list-style-type: none"> Delete "within 72 hours of dismissal" 	<ul style="list-style-type: none"> The presence of the word 'immediately' and the expression 'within 72 hours of dismissal' in the CBA might be read as contradictory.
21(4)(c)	<ul style="list-style-type: none"> Deletion of this provision - employee must vacate premise 	<ul style="list-style-type: none"> Regard must be had to section 12(6)

	immediately as s/he would have received payment in lieu of notice.	which gives an employer up to month after the lapse of the notice period to vacate any accommodation directly or indirectly availed by the employer to the employee.
25(1)(a)	<ul style="list-style-type: none"> Gratuities must be limited from 1 January 1978 to 30 September 1994 because of the inception of NSSA at this date whose pensions took over the place of gratuities. 	
25(3)	<ul style="list-style-type: none"> Further views are pending on NSSA; To remove NSSA as a registered fund in terms of Pension and Provident Fund Act. 	
25(4)	<ul style="list-style-type: none"> No need for both NSSA and pension. No gratuities must be provided for employees who have not worked 5 or more years before 1st January 1978 and 30th September 1994. 	
25(5)	<ul style="list-style-type: none"> An employee who reaches the age of sixty years will be required to retire. 	
28	<ul style="list-style-type: none"> First paragraph should be 28(1) and second paragraph should be 28(2). 	
29	<ul style="list-style-type: none"> The heading 'Collection of union dues' appearing above s 29 must be deleted. There shall be a 10% administration fee to be deducted from the trade union dues where less than 100 employees are employed. Above 100 employees, the administration fee will be 5%. 	
31	<ul style="list-style-type: none"> The current chairman, vice chairman and Chief Executive officer of NEC: Agriculture must be cited. 	
Grading and wages	<ul style="list-style-type: none"> Each sector may include any classification it finds necessary. Some parties not receive page 26 of the CBA with grade C2. 	
Grade A1	<ul style="list-style-type: none"> Include cleaner/domestic worker and packer/tyer. 	

	<ul style="list-style-type: none"> • Teaman has been incorrectly spelt as 'teamman' • Meat handlers must be included under this grade. 	
Grade B4	<ul style="list-style-type: none"> • Security corporals/chargehand (timber), senior clerk (timber), senior lab assistant, skidder operator, storeman, welfare assistant and women advisor must be included under this grade. 	
Allowances	<ul style="list-style-type: none"> • Travel, subsistence and overtime should have a value put in at an actual cost to the employee. • Travel, subsistence and overtime become a duplication of effort. • Risk and danger should be deleted as worker compensation is covered by NSSA in the case of injury etc. • Rotational shift work is not allowance as workers are graded into different grades and hence compensated on their relevant wages. • Production is not an allowance and should be deleted because it is covered under employees' incentives. • Professional allowances are not clearly defined and must be deleted. • Delete the 'other allowances' and 'professional allowances' subheadings. • Bicycle allowance, dog handling and fire arm are unnecessary as the employee can be graded into A2 for instance. • Firearm comes under grade of worker. 	
Schedule 4	<ul style="list-style-type: none"> • Remove reference to Chief Executive Officer and use General Secretary instead. 	
Schedule 5	<ul style="list-style-type: none"> • The GAPWUZ stop order form must be removed as a specimen. 	
Code of Conduct – Category of Offences C(iii)	<ul style="list-style-type: none"> • 'Discharging' must be changed to 'disregarding' 	
Code of Conduct – Category of Offences C(iv)	<ul style="list-style-type: none"> • "Drunkness which interferes with the proper performance of duty of the person concerned or anyone else in circumstances 	

	<p>which do not warrant discharge, or has already received two severe warnings in terms of "B" with the past twelve months.</p>	
Code of Conduct – Category of Offences D(A)(ii)	<ul style="list-style-type: none"> • Change assaults to assault. 	
Code of Conduct – Category of Offences D(A)(v)	<ul style="list-style-type: none"> • Misconduct, whether in the course of his/her duties or not, inconsistent with the fulfilment of the express or implied conditions of his/her contract. 	
Code of Conduct – D (B)	<ul style="list-style-type: none"> • Delete the subheading 'Requiring notice' and the contents falling thereunder. 	
Code of Conduct – Unlawful Industrial action	<ul style="list-style-type: none"> • Insertion of subsection (6): <ul style="list-style-type: none"> 6. An employee or manager suspected of having committed an offense that may lead to demotion, transfer and/or his dismissal may be suspended from duty with or without pay and benefits pending lawful investigations. Such suspension shall always be in writing stating broadly the nature of the suspension offence being investigated and in terms of the suspension. 	
Code of Conduct – Notes (3)	<ul style="list-style-type: none"> • Unless the employee's contract has expired or ceased, the full amount owed can be deducted. 	
Code of Conduct – Notes	<ul style="list-style-type: none"> • Points 4, 5 & 6 from the previous CBA must be included with an additional 7 : <ul style="list-style-type: none"> 4. An employee summarily dismissed shall not be entitled to any notice pay or allowances but shall be entitled to his pay until the date of dismissal, leave pay, and a gratuity if said employee qualifies. 5. An employee who is dismissed but has to serve a notice period in terms of 	

	<p>this code shall be paid up until the last day of his notice period, but shall receive no further payments as notice pay. He shall however receive his leave pay and a gratuity if said employee qualifies.</p> <p>6. All or any of the provisions of this code shall be subject to discussion and possible amendment at any time at National Employment Council level, provided that the party seeking the amendment has notified the other party in writing of the exact provision(s) they wish to discuss, why they wish to discuss them and how they propose that they be amended at least 4 weeks before an employment council meeting.</p> <p>7. An employee is liable to pay notice time not served to an employer if he has failed to give notice before leaving employment.</p>	
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