



**THE WIETA ETHICAL CODE
OF
BEST PRACTICE**

18 FEBRUARY 2014



THE WIETA CODE

This document outlines the employment standards that members of the association commit themselves to.

The standards set out comply with the provisions of prevailing labour legislation and international labour and health and safety standards, UN and ILO Conventions. However, where labour legislation is amended from time to time, and the conditions of the legislation provide more favourable terms and conditions of employment in the sector, or, where the members of the association agree to more favourable terms and conditions of employment than those stipulated in labour legislation, this code will be amended accordingly.

1. PROHIBITION ON CHILD LABOUR

- 1.1. Members shall not employ children under the age of 15.
- 1.2. Should young persons between the ages of 15 and 18 seek employment, members shall ensure that this does not interfere with their school going activities.
- 1.3. Members shall ensure that the work provided to young workers is appropriate to the age of the young person concerned, and shall take care to ensure that the work performed does not risk the young person's well being, education, physical or mental health, or spiritual, moral or social development.

THE SOUTH AFRICAN LEGISLATION

Constitution of the RSA, 1996:

Section 28 (1)(e) provides that every child has the right to be protected from exploitive labour practices.

Section 28(1)(f) provides that every child has the right not to be required or permitted to perform worker services that are age inappropriate or places at



risk that child's well-being, education, physical or mental health, spiritual, moral or social development.

Child means a person under the age of 18 years (section 28(3)).

Basic Conditions of Employment Act (75 of 1997), as amended:

Section 43(1) provides that no person may employ a child under the age of 15 years or who is under the minimum school-leaving age, if this is 15 or older.

Section 43(2) repeats section 28(1)(f) of the Constitution.

Section 44(2) provides that regulations may be made by the Minister prohibiting or placing conditions on the employment of a child who is at least 15 years of age and no longer required to attend school. Section 47 places the onus on the employer, if the employer alleges that it has complied with the age requirement.

BCEA and the Sectoral Determination 13: Farm Worker Sector:

Sub-clauses 1 and 2 of clause 25 of Part F: repeats the legislation and Paragraph 15 of the Guidelines provides that the employer must verify the age of the employee from the identity document or birth certificate.

South African Schools Acts (84 of 1996):

Section 31(1) provides that a learner must attend school until the last school day of the year in which he/she reaches the age of 15 or grade nine, whichever is first.

Children's Act 38 of 2005

INTERNATIONAL REFERENCE

ILO Convention 182, 1999

ILO Convention C138 – Minimum Age Convention 1973 (No138)



2. PROHIBITION ON FORCED LABOUR

- 2.1 Employers shall not engage in or support the use of forced labour, nor shall employees be required to lodge 'deposits' or original identity documents with their employer upon commencing employment.
- 2.2 Family members of employees living on the premises of, as per the provisions of the Extended Security of Tenure Act, and working for an employer, shall not be prevented from taking work off farm.
- 2.3 Spouses or cohabiting partners, parents or children of employees living on the premises of and working for any employer shall have their own individual contracts of employment.
- 2.4 Spouses and dependants of employees are not occupiers in their own right. Their right derives through the employee and thus they are not required to work in return for the right to reside with the employee. Their right to reside with the employee terminates upon termination of the employee's right as an occupier, unless they have an independent agreement deriving from their own employment contract with the owner of the land.

THE SOUTH AFRICAN LEGISLATION

Constitution:

Section 13 Provides that no one may be subjected to forced labour.

Section 9 provides that everyone is equal before the law and has the right to equal protection and benefit of the law. Section 21 provides that everyone has the right to freedom of movement.

Section 22 provides that every citizen has the right to choose their trade, occupation or profession freely (and as regulated by law). Section 28 provides that children have the right to family care and that the child's best interests are of paramount importance.

Basic Conditions of Employment Act :

Section 48 prohibits forced labour and no one may for his or her own benefit or benefit someone else, cause, demand or impose forced labour.

BCEA SD 13: Sub-clauses 1 and 2 of clause 25 of Part F repeat the legislation.

Extended Security of Tenure Act 62 of 1997

INTERNATIONAL REFERENCE

ILO Convention C029 – Forced Labour Convention, 1930

ILO Convention – Abolition of Forced Labour, 1957



3. A SAFE AND HEALTHY WORK ENVIRONMENT

- 3.1. Employers shall provide a safe and healthy working environment for employees, and shall take adequate steps to prevent accidents and injury to health arising out of, associated with or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment.
- 3.2. The CEO shall appoint a senior management representative responsible for the health and safety of all personnel, and accountable for the implementation of a healthy and safe working environment. As required by the Occupational Health and Safety Act, the CEOs shall ensure the election of employee health and safety representatives.
- 3.3. Employers shall strive towards the implementation of a practical integrated health and safety framework that allows for the analysis of risks, the implementation of measures to reduce or eliminate those risks, mechanisms for decision making on and monitoring of the implementation of health and safety measures, and record keeping in this regard.
- 3.4. Notwithstanding the above, members shall ensure:
 - 3.4.1. the safe storage, application and disposal of pesticides and agrochemicals;
 - 3.4.2. that workers are provided with necessary safety equipment and clothing, and that steps are taken to prevent injury of persons by farm equipment and heavy machinery;
 - 3.4.3. that workers receive adequate health and safety training, including in the handling of chemicals and other hazardous substances, and in the handling of heavy machinery;
 - 3.4.4. that measures are in place to provide first aid and other emergency treatment in the event of accidents occurring at the workplace, and that workers compensation documentation and other accident and illness documentation required by law are available and utilised in the event of work related accidents and illnesses;
 - 3.4.5. that readily visible safety signs are supplied in all relevant languages;
 - 3.4.6. that adequate fire prevention, fire fighting and fire safety measures are in place;
 - 3.4.7. that measures are in place to prevent exposure to fumes in wineries and cellars;
 - 3.4.8. that measures are in place to ensure that employees working or their families residing in close proximity to the site where spraying occurs, are not placed at risk through exposure to the chemicals and pesticides being applied.
 - 3.4.9. access to clean toilet facilities for all employees;



- 3.4.10. access to clean drinking water is provided to all employees;
 - 3.4.11. that on-farm accommodation provided is structurally sound and weatherproof, is provided with adequate floor screeding; toilet facilities and waste disposal, as well as electricity or other appropriate energy resources for heating, cooking and lighting; is adequate to the number of residents and that there is no overcrowding and that measures are taken to ensure the maintenance and upkeep of the accommodation provided.
 - 3.4.12. Appropriate working conditions for pregnant women, in line with the code of good practice on the protection of employees during pregnancy and after the birth of their child.
- 3.5. Employers will not promote or implement any practices that perpetuate a culture of alcohol dependence. Where alcohol dependence or abuse is identified as a problem, members shall take reasonable steps to address this at the work place.

THE SOUTH AFRICAN LEGISLATION

Occupational Health and Safety Act (85 of 1993), as amended:

GNR929 General administrative regulations

GNR1031 General safety regulations

GNR924 Facilities regulations

GNR1179 Hazardous chemical substances regulations

GNR1521 General machinery regulations

GNR250 Electrical machinery regulations.

Compensation for Occupational Injuries and Diseases act (130 of 1993)

INTERNATIONAL REFERENCE

ILO Convention 155, Occupational Health and Safety, 1981 and Protocol 2002
ILO Convention 161, Occupational Health and Safety Services, 1985
ILO Convention 187, Promotional Framework for Occupational Health and Safety, 2006
ILO Convention 184, Safety and Health in Agriculture, 2001
ILO Convention 162, Abestos, 1986
ILO Convention 170, Chemicals, 1990



4. FREEDOM OF ASSOCIATION & THE RIGHT TO BARGAIN COLLECTIVELY

- 4.1. Employees without distinction shall have the right to join or form trade unions or organisations of their own choosing and to bargain collectively.
- 4.2. Employers shall ensure that wage increases and benefits of employment are determined through a process of fair negotiation in which workers get a genuine opportunity to represent their interests.
- 4.3. Employers shall adopt an open attitude towards the activities of trade unions and their organisational activities, and shall not discriminate against any person because of his or her trade union membership or political affiliation.
- 4.4. Representative trade unions organising workers shall be accorded organisational rights in terms of the provisions of the Labour Relations Act 66 of 1995.
- 4.5. Management shall furnish employees and their representatives who engage in collective bargaining with all relevant information to enable them to engage meaningfully in negotiations.

THE SOUTH AFRICAN LEGISLATION

Constitution:

Section 18 provides that everyone has the right to freedom of association. Section 23(1) provides that everyone has the right to fair labour practices.

Section 23(2) makes provision for employees' right to form and join a union, to participate in the activities and programmes of a trade union and to strike (as regulated by national legislation). Section 23(5) provides for trade unions to engage in collective bargaining read with relevant national legislation such as the Labour Relations Act.

These rights may be limited if reasonable and justifiable in terms of section 36 of the Constitution.

Labour Relations Act, Act 66 of 1995, as amended:

Section 4(1) provides that every employee has a right to form and to join a trade union, subject to that trade union's constitution. A Employer of a



trade union may participate in that trade union's lawful activities, participate in election of office bearers, officials and representatives, to hold office if elected and if appointed as a trade union representative, to carry out such function in terms of the Act or collective agreement (Section 4(2)).

LRA: Section 5 Protection of employees and persons seeking employment.

LRA section 13 Deduction of trade union subscriptions.

LRA Section 12 Trade union access to workplace.

INTERNATIONAL REFERENCE

ILO 087, Freedom of Association and the Right to Organise, 1948

ILO 098, The right to organise and Collective bargaining, 1949

ILO 151, Labour Relations, 1978

ILO 154, Collective Bargaining, 1981



5. WORKERS SHALL NOT BE UNFAIRLY DISCRIMINATED AGAINST

- 5.1. No Employer shall engage in or support unfair discrimination on arbitrary grounds, including (but not limited to) race, sex, marital status, sexual orientation, or gender, in respect of their employment practices and policies. Employment practices and policies include, but are not limited to recruitment, remuneration, access to training, promotion, benefits of employment (including housing) and discipline.
- 5.2. Employers shall not tolerate incidences of sexual or racial harassment at the workplace; including gestures or language and physical contact that is racially or sexually coercive, threatening, abusive or exploitative.
- 5.3. Employers shall implement measures to promote and advance those disadvantaged by historical discriminatory practices, in line with the provisions of the Employment Equity Act 55 of 1998 and the Skills Development Act

THE SOUTH AFRICAN LEGISLATION

Constitution:

Section 9 Everyone is equal before the law. Legislative measures may be taken to achieve equality.

Employment Equity Act (Act 55 of 1998):

The employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice (section 5). Unfair discrimination includes direct or indirect discrimination based on race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth (section 6).

Note that it is not unfair to take affirmative action measures and exclude or prefer a person based on an inherent requirement of a job (section 6).

Skills Development Levies Act (9 of 1999)

INTERNATIONAL REFERENCE

ILO 111, Discrimination (Employment and Occupation, 1958



6. FAIR DISCIPLINARY MEASURES SHALL BE ADOPTED

- 6.1. Physical abuse or corporal punishment, the threat of physical abuse, or other forms of intimidation shall be prohibited.
- 6.2. Employers shall adopt disciplinary rules and procedures that comply with the provisions of the Labour Relations Act 66 of 1995, in particular, schedule 8 to this act, and shall keep records of all disciplinary proceedings in the personal file of the employee involved.

THE SOUTH AFRICAN LEGISLATION

Labour Relations Act :

Section 185 provides that every employee has the right not to be unfairly dismissed and a right not to be subjected to an unfair labour practice.

Schedule 8 of the LRA – Code of Good Practice – Dismissals contains guidelines for disciplinary procedures prior to dismissal for reasons relating to conduct (misconduct, poor work performance) or capacity (ill health, injury).

The National Economic Development and Labour Council (NEDLAC) has in terms of section 203(1) of the LRA issued a code of good practice for dismissals based on operational requirements (Government Gazette 20254).

Disputes may be referred to the CCMA.

INTERNATIONAL REFERENCE

ILO 158, Termination of Employment, 1982 and other relevant conventions



WORKING HOURS SHALL NOT BE EXCESSIVE

- 6.3. Employers shall ensure that they comply with national law in respect of working hours, and shall in particular ensure that:
 - 6.3.1. normal working hours do not exceed 45 hours per week;
 - 6.3.2. overtime work and work on public holidays is voluntary,
 - 6.3.3. work on Sundays and Public Holidays is remunerated at double the employee's hourly wage;
 - 6.3.4. overtime hours do not exceed 10 hours a week for cellars and 15 hours for farms, and overtime work is remunerated at a premium of one and a half times the person's hourly rate,
 - 6.3.5. workers do not work for more than a week without a break of at least 36 hours;
 - 6.3.6. workers receive at least three week's paid leave per year
 - 6.3.7. workers are paid in respect of their sick leave, in accordance with the provisions of the Basic Conditions of Employment Act
 - 6.3.8. workers are provided with maternity/family responsibility leave in terms of the Basic Conditions of Employment Act
- 6.4. Management shall keep written records of all hours worked and leave taken by employees, in terms of the Basic Conditions of Employment Act.
- 6.5. Prior to commencement of employment, all employees shall be provided with a contract of employment, which will set out their terms and conditions of employment in relation to working hours and leave.

THE SOUTH AFRICAN LEGISLATION

BCEA:

Chapter 2 Regulation of working time (sections 6 to 18)

Chapter 3 Leave (sections 19 to 27)

Code of Good Practice on the arrangement of working time.

BCEA SD13: Part D: Hours of Work

BCEA SD13: Part E: Leave

INTERNATIONAL REFERENCE

ILO 001, Hours of Work Industry, 1919

ILO 156, Workers with Family Responsibilities, 1981

ILO 183, Maternity Protection, 2000

ILO 122, Employment Policy, 1964



7. STRIVING TOWARDS THE PAYMENT OF A LIVING WAGE

- 7.1. Notwithstanding the provisions of the Sectoral Determination for Farmworkers, employers shall strive towards paying employees a living wage – enough to allow employees and their households to secure an adequate livelihood. This should be sufficient to meet basic needs such as food, clothing, shelter and education, and to have money left over for discretionary spending.

Wages and benefits paid for a standard working week, meet, at a minimum, national legal standards set by the Sectoral Determination for Farmworkers, or industry benchmark standards, whichever is highest.

- 7.2. Employers shall remunerate employees in accordance with the principle of equal pay for equal work and work of equal value.
- 7.3. Piece rates, where paid, shall not be less than the minimum legislated daily rate.
- 7.4. Employees shall be provided with written and understandable pay slips, which include clear documentation of gross wages, all deductions made and net wages.
- 7.5. Provision shall be made for the payment of UIF and other statutory deductions.
- 7.6. Deductions shall not be made in respect of protective clothing, farm equipment, or other items essential to the performance of workers' tasks.
- 7.7. Deductions for payment in kind shall not exceed 25% of the employee's gross wage and shall be made with the written consent of the employee concerned.
- 7.8. Where farm shops exist, members shall ensure that they are run in an open and transparent fashion and shall ensure that employees are not excessively indebted to and therefore reliant upon this shop or any other system whereby deductions are made for groceries or household provisions acquired on behalf of the worker.
- 7.9. Employers shall not provide alcohol as payment or part payment, or as a voluntary consideration that can be taken in lieu of an equivalent portion of the wages.



THE SOUTH AFRICAN LEGISLATION

BCEA SD13: *Clauses 2 of Part B: Minimum wage levels
Clause 3 Minimum wages for farm workers under 18 years of age
Clause 8 Permissible deductions*

Unemployment Insurance Contributions Act (4 of 2002): *Section 6*

*Sectoral Determination 13 Part B (1) March 2014 to February 2015
Adjustment Minimum Wage Levels.*

INTERNATIONAL REFERENCE

*ILO 95, Protection of Wages, 1949
ILO 131, Minimum Wage Fixing Conventions, 1970
ILO 100, Equal Remuneration Convention, 1951*



8. REGULAR EMPLOYMENT SHALL BE PROVIDED

- 8.1. To every extent possible work performed must be on the basis of a recognised employment relationship, established through national law and practice.
- 8.2. Obligations to employees under labour or social security laws and regulations arising from the regular employment relationship shall not be avoided through the use of sub-contracting arrangements, or through apprenticeship schemes where there is no real intent to impart skills or provide regular employment, nor shall any such obligations be avoided through the excessive use of fixed-term contracts of employment.
- 8.3. Should employers make use of labour contractors, they shall take measures to ascertain the conditions of employment of workers provided by the contractor, and shall endeavour to ensure that the contractor is complying with the standards set out in this code of conduct in respect of those employees working on their premises.

THE SOUTH AFRICAN LEGISLATION

BCEA SD13: *Clause 33 of Part G: Termination of employment – Temporary Employment Services*

INTERNATIONAL REFERENCE

ILO 97, Migration of employment, 1949

ILO 143, Migrant workers, 1975

ILO 110, Plantations, 1958



9. HOUSING AND TENURE SECURITY

- 9.1. Employers and farm owners shall comply with the provisions of the Extension of Security of Tenure Act in respect of those living on their land. In particular, members shall respect the occupational rights of farm dwellers, and shall comply with the provisions of the legislation insofar as these regulate the eviction of those living on the farm.
- 10.2 In terms of the housing standards, employers are referred to point 3.4.11 of the Code and the *WIETA Housing Standards Guidelines 2014*.

THE SOUTH AFRICAN LEGISLATION

Extension of Security of Tenure Act (Act 62 of 1997):

Section 6(2)(a) provides the occupier with a right to security of tenure and section 6(2)(d) to family life in accordance with the culture of that family. Spouses and dependents are not occupiers in their own right; their right derives through the occupier and thus terminates upon termination of the occupier's right, unless they have an independent right deriving from their own employment with the owner.

Section 8 provides that the occupier's right of residence may be terminated on lawful grounds provided it is just and equitable.

An occupier is defined as a person who resides on agricultural farm land with permission by the owner and who does not earn an income in excess of R5 000.00 per month. Long-terms occupiers have a right to live on the land permanently if they have lived on the land for ten years and are sixty years or older or rendered disabled during the period of employment with the owner.

Legal Framework for Housing Standards

- National Building Regulations and Building Standards Act (1977)
- Occupational Health and Safety Act
- Environmental Regulations for Workplaces, 1987:(2281);
- General Safety Regulations (1993),
- National Environmental Management: Waste Act (2008), Art. 21-23
- The Extension of Security Tenure Act and the Provision of Accommodation in the Agricultural Sector (ESTA) (2007);



- Sectoral Determination: Agriculture sector 13 (2009);
- South Africa mining accommodation standards;
- South African National Standards (SANS)
- International Finance Corporation (IFC) and European Bank for Reconstruction and Development (EBRD). (2008). Workers' accommodation: processes and standards A guidance note by IFC and the EBRD;
- International Labour Organization, Workers Housing Recommendation (1961);
- SA 8000 accommodation guidelines;
- International Covenant on Economic, Social and Cultural Rights



10. STRIVING TOWARDS SOCIAL RESPONSIBILITY AND COMMUNITY DEVELOPMENT AS BEST PRACTICE

- 11.1 Employers are encouraged to contribute positively to the sustainable development of communities in which they operate. Employers are encouraged to demonstrate best practices by making positive social and developmental contributions above and beyond legal compliance.
- 11.2 Employers are encouraged to demonstrate a commitment to and management of social responsibility policies and programmes in support of fair working and living conditions within the community in which they operate.
- 11.3 Employers are encouraged to promote the responsible use of substances such as alcohol amongst their employees and their families within the context of the broader farming community.

SOUTH AFRICAN LEGISLATION

The South African Constitution
The South African Bill of Rights

INTERNATIONAL REFERENCE

ILO 117, Social Policy, 1962
ILO 200, HIV and Aids Recommendations. 2010