

THE INTERPRETATION AND APPLICATION OF INCLEMENT WEATHER CLAUSE IN THE CONDITIONS OF EMPLOYMENT AGREEMENT.

1. Inclement weather

1.1 There seems to be some form of confusion on the interpretation and application on how to deal with the current reading of inclement weather clause in the Conditions of Employment Collective Agreement, especially where notice was given the day before to employees not to report for work the next day:-

- are the employees to be paid for the full shift if they report for work and have to stop before the completion of their normal shift due to inclement weather or
- where notice was given the day before, is the employer obligated to pay the employee.

2. Background

2.1 Sectoral Determination 2: Civil Engineering Sector, South Africa dated 12 November 1997 determines that whenever the ordinary hours of work are reduced on account of inclement weather the following arrangements will apply:-

- 2.1.1 where no work has begun at all on site and the employee has reported for work, the employee will be paid for 4 hours provided the employee has at the request of the employer remained at the work place during this period;
- 2.1.2 should work be stopped after the first 4 hours, the employee will be paid for the hours worked;
- 2.1.3 should work be stopped before 4 hours, the employee will be paid for 4 hours only;
- 2.1.4 where the employer has given his employees notice on the previous working day that no work will be done due to inclement weather then no payment will be made;
- 2.1.5 provided that such deductions shall not exceed one third of the employees weekly wage, irrespective of the number of hours by which the ordinary hours of work were reduced.

2.2 During 2009 the parties signed a collective agreement specifying that the 4 hours as per the sectoral determination shall be phased out over a period of 5 years to 9 hours and that the final date of the phase out would be on 31 August 2012.

- 2.2.1 from 1st September 2009, 6 hours;
- 2.2.2 from 1st September 2010, 7 hours;
- 2.2.3 from 1st September 2011, 8 hours;
- 2.2.4 from 1st September 2012, 9 hours

Upon completion of the phasing-in of hours as indicated above, this clause had no effect. The parties agreed that an employee's basic earnings per week will not be reduced as a result of inclement weather as from 1st September 2012

3. Conditions of Employment Collective Agreement for the Civil Engineering

3.1 The implication of the 2009 collective agreement is that as from 1st September 2012 the following will apply and the Conditions of Employment Collective Agreement for the Civil Engineering support this position.

- 3.1.1 where no work has begun at all on site and the employee has reported for work, the employee will be paid for 9 hours provided the employee has at the request of the employer remained at the work place during this period;
- 3.1.2 should work be stopped after the first 4 hours, the employee will be paid for 9 hours provided the employee has at the request of the employer remained at the work place during this period;
- 3.1.3 if the employer releases the employees and allows them to go home during any time before the completion of their normal shift, the employee will be paid for 9 hours;
- 3.1.4 where the employer has given his employees notice on the previous working day that no work will be done the following day due to inclement weather, the employee will be paid for 9 hours;
- 3.1.5 if an employee leaves his/her workplace/site on own account, without permission of management, he/she will only be paid for the hours he/she was at the workplace/site;
- 3.1.6 if an employee has not received notice the previous working day that no work will be done due to inclement weather the following day and decides to stay at home, no payment will be made;
- 3.1.7 this clause only applies to normal time and not to work on Saturdays' or Sundays', which are viewed as overtime. If an employee was required to work on a Saturday or Sunday and he/she was notified not to report for work due to inclement weather, he/she will not be paid.
- 3.1.8 Clause 13, Inclement weather of The Conditions of Employment Collective Agreement for the Civil Engineering Industry, reads as follows:

*“Whenever the **ordinary hours of work are reduced** on an account of inclement weather then **the employee will be paid the ordinary hours for the day.** However depending on circumstances, the employer may request the employees to remain on site for a particular duration of time until the employee is released by the employer.”*

27/05/2014