Government Gazette
Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 548 Pretoria, 18 February / Februarie 2011 No. 34032

N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes

34032
9771682584003

AIDS HELPLINE: 0800-0123-22 Prevention is the cure

IMPORTANT NOTICE

The Government Printing Works will not be held responsible for faxed documents not received due to errors on the fax machine or faxes received which are unclear or incomplete. Please be advised that an "OK" slip, received from a fax machine, will not be accepted as proof that documents were received by the GPW for printing. If documents are faxed to the GPW it will be the sender's responsibility to phone and confirm that the documents were received in good order.

Furthermore the Government Printing Works will also not be held responsible for cancellations and amendments which have not been done on original documents received from clients.

CONTENTS • INHOUD

No.		*Page No.*	*Gazette No.*
	GOVERNMENT NOTICE		
Labour, Department of			
Government Notice			
129	Basic Conditions of Employment Act, 1997: Code of Good Practice for employment and conditions of work for Expanded Public Works Programmes	3	34032

GOVERNMENT NOTICE

DEPARTMENT OF LABOUR

No. 129 **18 February 2011**

BASIC CONDITIONS OF EMPLOYMENT ACT, 1997

Code of Good Practice for employment and conditions of work for Expanded Public Works Programmes

Notice is hereby given in terms of section 87(2) of the Basic Conditions of Employment Act, 1997, that the Minister of Labour, after consulting NEDLAC, has issued under section 87(1)(a) of that Act, an amended Code of Good Practice for employment conditions for Expanded Public Works Programmes as set out in the Schedule.

The Code published under Government Notice R64 in Government Gazette 23045 of 25 January 2002 will be superseded by this Code from the date of publication.

SCHEDULE

Code of Good Practice for employment and conditions of work for Expanded Public Works Programmes

1. Preamble

1.1 Reducing unemployment is one of the greatest challenges facing South Africa. Government has undertaken a number of initiatives to address unemployment and poverty, including the promotion of labour-intensive Expanded Public Works Programmes (EPWP). An EPWP is a labour intensive programme initiated by government and funded, either fully or partially, from public resources to create a public benefit. A list of EPWP programmes is available from the Department of Public Works (DPW).

1.2 Recognising that the acquisition of skills either through accredited or experiential training forms an integral part of the EPWP.

1.3 The Code provides guidelines for the protection of workers engaged in EPWPs, taking into account the need for workers to have basic rights, the objectives of the programmes and the resource implications for government.

1.4 In addition, the Code encourages:

- Optimal use of locally-based labour in EPWP.
- A focus on targeted groups, namely women, female-headed households, youth, the disabled and households coping with HIV\AIDS.
- The empowerment of individuals and communities engaged in EPWP through the provision of training.

2. Purpose

The purpose of the Code is to:

- Provide good practice guidelines to all stakeholders involved in EPWP in respect of working conditions, payment and rates of pay, disciplinary and grievance procedures.
- Promote a common set of good practices and minimum standards in employment practices among the different EPWP sub-programmes within South Africa.

3. Application

3.1 The Code applies to all employers and to all workers hired to perform work in elementary occupations in EPWP.

3.2 Employers in EPWPs must comply with relevant legislation such as the –

- Basic Conditions of Employment Act 75 of 1997
- Labour Relations Act 66 of 1995
- Employment Equity Act 55 of 1998 (Chapters 1 & 2)
- Occupational Health and Safety Act 85 of 1993
- Compensation for Occupational Injuries and Diseases Act 130 of 1993
- Unemployment Insurance Act 63 of 2001
- Skills Development Act of 1998.

3.3 The Code does not impose any legal obligation in addition to those in the Basic Conditions of Employment Act or any other Act referred to in the Code. Its purpose is to give guidance to employers on key legal provisions in those Acts.

3.4 The Code must be read in conjunction with a Ministerial Determination for Expanded Works Programmes issued by the Minister of Labour in terms of Section 50(1) of the Basic Conditions of Employment Act and the standard terms and conditions of employment which are annexed to this Code.

3.5 The Code includes provisions for work to be task-based/service-based. In a task-based system the worker is paid a fixed rate in return for a fixed quantity of work. Tasks may be set for an individual or a group of people. Payment for work performed on a task-based system will be subject to 9.1.

4. Beneficiaries of expanded public works programmes

4.1 The beneficiaries of the programmes should be locally-based (as close to the project site as possible) individuals prepared to work on the specific EPWP.

4.2 In order to spread the benefits as broadly as possible in the community, a maximum of one person per household should be employed, taking local available labour into account.

4.3 Workers from other areas may be employed if they have skills that are required for a project and there are not enough persons in the local communities who have those skills or who could undergo appropriate skills training. However, workers from other communities should not exceed 20% of all persons working on a programme. A proper

skills audit should be conducted, where possible, in an area where an EPWP is in operation.

4.4 Programmes should set participation targets for employment with respect to women, youth, and people with disabilities.

4.6 The proposed targets are:

4.6.1 55% women;

4.6.2 40% youth from 16 to 35 years of age; and

4.6.3 2% people with disabilities.

4.7 EPWPs should seek to achieve these targets in all occupational categories.

5. Recommended exclusions

5.1 Persons under sixteen years of age may not be employed on EPWP.

6. Selection of Workers

6.1 The local community, through all structures available, must be informed of and consulted about the establishment of any EPWP.

6.2 Members of the community who are unemployed and who form part of the targeted groups will be given an opportunity to apply for work.

6.3 Preference must be given to the targeted groups in selecting workers.

6.4 In addition the following criteria are suggested to help target the poorest of the poor:

6.4.1 People who come from households where the head of the household has less than a primary school education;
6.4.2 People who come from households that have less than one full time person earning an income;
6.4.3 People who come from households where subsistence agriculture is the source of income.

7. Maximising Participation

7.1 Expanded Public Works Programmes seek to provide as many people as possible with the opportunity to participate in the programme.

7.2 Work should be distributed amongst the unemployed as practically and equitably as possible.

8. Forced labour is prohibited

8.1 No forced labour is permitted on an EPWP.

8.2 Forced labour includes forms of coercion such as patronage or demanding sexual or other kinds of favours for work.

8.3 Programmes should monitor whether or not there is forced labour, particularly when intermediaries such as labour contractors or management agencies are involved.

9. Payment

9.1 Employers must pay workers at least the minimum rate as stipulated in the Ministerial Determination: Expanded Public Works Programme

9.2 Workers can be paid on the basis of the number of tasks completed. These workers are referred to as "task-rated workers". Alternatively, workers can be paid on a daily rate.

9.3 There are jobs where it is not possible to pay workers on the basis of tasks performed. These workers must be paid on the basis of the amount of time they worked. They are referred to as "time-rated workers".

9.4 On the task-based system, a worker is paid for each task completed or part thereof.

9.5 If workers are informed a day before that work will not take place the next day, they should not be entitled to any payment.

9.6 Workers will be paid a training allowance in case they are required to attend agreed training programmes. This should be equal to 100% of the daily task rate for task-rate workers or 100% of the daily rate of pay for time-rated workers. All the costs of training will be covered, for example, travel, trainers, material, tuition fees.

9.7 Where a worker participates in a learnership the relevant learnership determination must be used to determine the training allowance whilst on training.

9.8 Each worker must be given written particulars of employment and verbal explanations in an appropriate language of their rate of pay and how this is to be calculated.

9.9 Where a project is completed earlier than anticipated the worker should receive the full agreed remuneration for the stipulated period of the contract if the pay for the task was to be calculated on the basis of time. Where such work was to be performed on a task-based system, the full agreed remuneration for the task should be paid for early completion.

10. Hours of Work

10.1 Normal hours of work, as is customary in the applicable sector, apply but limited to 40-hours a week.

10.2 For task-based workers tasks must be set based on a 40-hour week in which the workers work five 8-hour days, excluding time spent travelling to and from work. Once at work, time spent getting to the site that is to be worked on that day must be included in

the 8-hour period. A worker may not spend more than 55 hours in any week completing tasks.

10.3 Starting and finishing times may be determined in the light of factors such as the nature of the project, the distance workers have to travel and other local factors such as climate, season and terrain.

10.4 Depending on local conditions work may be spread over more than 8 hours. For example, in hot weather workers may work from 05h00 to 09h00 and then again from 15h00 to 19h00. The finishing time must not be more than 12 hours after the start and workers may not work more than 55 hours per week.

11. Attendance

11.1 A 'no work-no pay' rule must apply except in the following circumstances:

- A worker is absent due to illness or injury and proof of illness/injury as required by section 23 of the Basic Conditions of Employment Act is provided. A maximum of 1 day sick leave for every full month worked is payable for workers who work four or more days per week.
- Workers who report for work and are unable to work due to the sole fault of the employer, shall be entitled to be paid –
  (a) in the case of task-rated workers, the daily task rate;
  (b) in the case of time-rated workers, the daily rate.

  This shall not apply where the reason that workers are unable to work is that tasks have not been set.

12. Health and Safety

12.1 Every worker has the right to work in a working environment that is safe and without risk to his or her health.

12.2 The management and every employer (contractor) engaged in an EPWP are required to do everything that is reasonably practicable to ensure the health and safety of persons working on programme.

12.3 Workers are required to perform their duties in a manner that does not endanger their health or safety or that of other workers or persons.

12.4 Behaviour that endangers the health and safety of others is a serious disciplinary offence for which a worker can be dismissed.

12.5 The management of an EPWP and each employer must:

- ensure that all workers are informed of any risks and dangers associated with their tasks;
- inform and train workers about the precautions and steps that must be taken to avoid or minimise risks and dangers to them or others;
- ensure all possible precautions and safety measures are in place to avoid risk and minimise dangers;

- not permit workers to perform tasks for which they have not been trained;
- provide workers with the necessary protective clothing such as hard hats, goggles, ear-plugs, boots and outer clothing required, as applicable, to complete their tasks in safety. These must be supplied free of charge and must be maintained, by the worker, in a clean state and in working order for use;
- provide First Aid kits on site;
- ensure that at least one person per site is trained to act as a First Aid Officer and that they are capable of providing First Aid to injured or ill workers;
- provide sufficient clean drinking water to all workers for the duration of the project;
- ensure that adequate sanitation is available to workers; and
- ensure all safety standards set are adhered to.

12.6 Workers must –

- perform their duties in a safe manner;
- wear all protective clothing issued;
- obey all safety rules and instructions;
- report any accident or near-miss incident to their employer (supervisor); and
- report any dangerous conduct by another worker to their employer (supervisor).

12.7 Employers must take particular care to ensure workers with a disability, pregnant workers or workers who are breast-feeding are not required to perform work that may endanger their health and safety or that of their child.

13. Compensation for Occupational Accidents and Diseases

The Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA) applies to all EPWPs.

13.1 Administrative Obligations

Every employer must –

- register with the Compensation Commissioner and cover all workers in the EPWP (this is done by submitting a completed W AS 2 form);
- notify the Commissioner of any changes in particulars;
- keep a register of wages, time worked and payment (this is the same register described above);
- submit a return of wages paid each March; and
- pay assessments (contributions) as required by the Commissioner.

13.2 Obligations in respect of accidents and occupational diseases

Every employer must report to the Compensation Commissioner –

- accidents within 7 days (W CI 3 form); and
- occupational diseases within 14 days (W CI 14 form).

13.3 An employer must pay a worker who is injured in an accident at work and who is unable to work 75% of their wages for a period of up to three months or until the end of

the worker's contract, whichever comes first. The Compensation Fund will refund the employer this money.

13.4 The family of a worker who is killed in an accident at work (or who dies from an occupational disease) is entitled to receive compensation in terms of the provisions of COIDA. An employer should help them to lodge their claim and, wherever possible, provide employment for another member of the family.

13.5 A worker who is injured in an accident that is caused by the negligence of an employer is entitled to claim additional compensation in terms of section 56 of COIDA.

14. Training

Training is regarded as an important component of EPWP. EPWPs are encouraged to have a clear training programme in place that strives to:

14.1 ensure that workers obtain all the skills required to complete their work or tasks;

14.2 establish links to training institutions and opportunities to enable workers to access further training with a preference to SETA accredited training where available; and

14.3 identify possible career paths available to workers exiting the EPWP.

15. Discipline, dismissal and termination

15.1 Every EPWP must have a disciplinary code and a grievance procedure. The purpose of these procedures is to –

(a) ensure that employers exercise discipline in a fair and consistent manner;
(b) protect workers from arbitrary action; and
(c) provide a mechanism for managing grievances and complaints.

15.2 The disciplinary code and grievance procedures apply to all persons employed in the EPWP.

15.3 Employers should make use of the Code of Good Practice: Dismissal (Schedule 8 to the Labour Relations Act 66 of 1995) as a guideline when exercising their powers of discipline and dismissal.

15.4 An employer may only dismiss a worker if –

(a) there is a good reason for the dismissal; and
(b) the employer has followed a fair procedure.

15.5 The reason for a dismissal or termination may relate to –

(a) the worker's misconduct (e.g. late coming, drunkenness);
(b) the worker's capacity (i.e. the worker does not have the skills or ability to perform a job despite receiving training); and
(c) the worker's unexplained failure to attend required training programmes.

15.6 A fair procedure means that the employer should –

(a) investigate the charge;
(b) notify the worker of any allegations against the worker in a form and language that the worker can understand; and
(c) give the worker an opportunity to respond to the allegations. A fellow worker may assist the worker, if the worker chooses.

15.7 There is no requirement that the employer hold a formal inquiry. However, the employer may decide to give a worker, charged with a serious offence, a formal hearing at which the worker can test the evidence on which the charge is based.

15.8 An employer must exercise discipline in a consistent and clear manner.

15.9 A worker may only be disciplined for contravening a workplace rule or standard that the worker was aware of or should reasonably have been aware of. Therefore, it is important that an employer informs workers of workplace rules and standards. A worker will be assumed to know that conduct such as late-coming, leaving early, drunkenness, fighting or disobeying instructions are disciplinary offences.

15.10 An employer should keep a written record of any disciplinary action taken.

16. Disciplinary Sanctions

An employer may take the following steps when exercising discipline –

16.1 Verbal Warning

A verbal warning may be issued for minor disciplinary offences. The purpose of the warning is to explain to the worker what the rules are, encourage the worker to comply with them and advise that if the conduct is repeated the employer may take more serious action. Only one verbal warning is required before moving to written warnings.

Examples of minor offences:

- Late-coming.

16.2 Written warning

17.2.1 A written warning may be issued for repeated minor offences or for more serious offences. The employer should investigate the charge before issuing a warning. The worker should be asked to respond and explain his or her conduct. The warning should state the offence and the period for which the warning is valid. Generally, this should be for six months, although warnings for more serious offences could be issued for a year or for the remainder of the worker's employment on an EPWP. If the employer believes that the offence is serious, the warning should state that it is a final written warning and that a repeat of the offence could lead to the worker's dismissal). Otherwise, two written warnings are suggested prior to dismissal.

16.2.2 A written record of the charge, the explanation and the agreed change in behaviour or performance is dated, signed and handed to the worker as a written warning. A copy of the written warning is kept in the worker's file for the period of its validity.

Examples of offences in which a written warning may be appropriate:

- Repeated minor offences.
- Drunkenness (if it does not affect work performance).
- Fighting, swearing.
- Abusive behaviour.
- Non co-operation as a team member.
- Negligent use of programme equipment (if it does not affect health and safety).
- Failure to attend a training event.

16.3 Dismissal

16.3.1 Generally, an employer should not dismiss a worker for a first offence. However, a worker may be dismissed if it is a serious offence that would make continued employment intolerable even if the worker has previously had a clean record. Before dismissing a worker, the employer must consider whether dismissal is the appropriate sanction.

16.3.2 Examples of serious offences which may warrant dismissal:

- Wilful and/or negligent damage to equipment, machinery and vehicles.
- Actions which could lead to criminal charges being laid – e.g. serious assault; theft; fraud.
- Sexual harassment, including rape.
- Actions which create a danger to the health and safety of co-workers.
- Any offence for which the worker has received a final written warning.
- Drunkenness, if it affects the ability to work, for instance, a driver or a chain-saw operator being drunk.
- Repeated less serious offences – drunkenness, fighting, swearing, failure to properly perform tasks, etc.
- Misuse of programme equipment, for instance, a worker using it for their own benefit.

16.4 Poor work performance

16.4.1 An employer may take action against a worker for poor work performance. Workers must be informed of the standard of work performance expected of them. If they do not meet this standard, the employer should consider ways of helping them meet the standard. This could include counselling or guidance, training or giving clearer instructions. The worker must be given a reasonable opportunity to improve their work performance. If their performance does not improve, the employer can take corrective action, including dismissal if considered appropriate.

16.4.2 If a worker is not performing adequately in a job requiring special skills, the employer should consider transferring the worker to another job.

17. Grievance Procedures

17.1 A grievance is a serious dissatisfaction on the part of a worker with the actions or behaviour of the employer or another worker.

17.2 A worker with a grievance should bring the grievance to the attention of the employer, either in writing or verbally. If the grievance concerns another worker, the worker should raise the issue with that worker before raising it with the employer.

17.3 The employer must listen to the submissions made by the complaining worker and attempt to settle the matter by discussion within 5 days.

17.4 Where the matter cannot be resolved to the satisfaction of the complaining worker, the employer may conduct an investigation or, if the employer considers it appropriate, conduct an inquiry at which the affected parties can make submissions.

17.5 The employer must notify the grievant and any other person affected of the decisions within a reasonable time. If the employer decides to take disciplinary action, the employer must follow the disciplinary procedure described above.

18. Glossary

Contractors	A person or group of persons who is contracted to carry out the work on the Expanded Public Works Programme for the relevant department.
Daily rate	A worker is paid a fixed sum each day in return for working a fixed number of hours during that day.
Worker	A worker includes anyone working in an elementary occupation on an Expanded Public Works Programme whether they are employed directly by a government department, an implementing agent, a contractor or a sub-contractor.
Implementing agents	A business, institution or person who is contracted to implement the Expanded Public Works Programme on the relevant department's behalf. An implementing agent is bound by the same terms and conditions governing the implementation of Expanded Public Works Programmes as a department.
Task-based work	A worker is paid a fixed wage in return for a fixed quantity of work, or a task. The task set may be a task for one worker in 8 hours or for several workers over several workdays, based on an 8 hour working day per person.

EXPANDED PUBLIC WORKS PROGRAMMES
(Standard Contract for Task-rated workers)

CONTRACT OF EMPLOYMENT BETWEEN

CONTRACTOR
Name:
Address:
ID:

AND

WORKER
Name:
Details
ID:

1. I am pleased to confirm that you have been appointed to work on a task-based employment contract within an Expanded Public Works Programme (EPWP) project. Within this contract you will undertake numerous groups of tasks.

2. This contract must be read in conjunction with the standard terms and conditions of employment on EPWP attached.

3. The project where you will be employed is located at .....

4. The contract will start on .....

5. You must be aware that this contract is a limited-term contract and not a permanent job. The contract may be terminated for one of the following reasons:
   a) If the contractor does not get additional contracts from the EPWP.
   b) Funding for the programme in your area comes to an end.
   c) You repeatedly do not perform in terms of the tasks set out in your work programme.

6 You will be employed as a ..... within the team.

7 While you are working you will report to .....

8 Payment
   a) You will be paid a fixed amount of R ..... for completing a fixed amount of work.
   b) The amount of work required for the agreed rate of pay will vary from task to task. You will be informed at the beginning of each task or group of tasks how much work you are expected to complete per day.
   c) You will only be paid for work completed.
   d) You will be paid the amount for the number of days quoted in the contract even if you finish the work before the time or after the estimated date of completion.

e) A contractor must pay you the production bonus (the extra days if the work is finished early) if you have completed your share of tasks.
f) The contractor will be paid within 30 days after the work is completed. You will be paid within 5 days of the contractor being paid.

9 In addition to the conditions above all the terms and conditions of employment on EPWP apply to your employment. If you breach any of these terms your contract may be terminated.

10 Signatures:

Signed on this day ..... of ..... 20....

Contractor: ..... Date: .....

Worker: ..... Date. .....

Witness: ..... Date: .....

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Publications: Tel: (012) 334-4508, 334-4509, 334-4510
Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504
Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737
Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001
Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510
Advertensies: Tel: (012) 334-4673, 334-4674, 334-4504
Subskripsies: Tel: (012) 334-4735, 334-4736, 334-4737
Kaapstad-tak: Tel: (021) 465-7531