August 3, 2020

What employers need to know about the Hair and Beauty Industry's Bargaining Council

On 12 June 2020, the Minister of Employment and Labour extended the Collective Agreement reached in the National Bargaining Council for the Hairdressing, Cosmetology, Beauty and Skincare Industry (hereinafter referred to as the Council) to non-parties by means of a Notice in the Government Gazette and in terms of section 32(2) of the Labour Relations Act, 1995.

Such an extension can be seen as one of epic proportions for non-party employers and "legal owners" in the beauty and haircare sector who were not privy to the initial negotiations pre-Covid-19.

It is for this reason that employers need to take cognisance of the fundamental provisions contained in the Collective Agreement. For ease of reference and in order to reduce the complexity of the Collective Agreement's content, we have outlined the salient points below:

What is the definition on a Non-party? (Clause 4)

A non-party is defined as *"An employer, employee or legal owner who is not a member of the registered Employers' Organisation or Trade Union, which is a party to the Council"*.

What is the Period of Operation in the Collective Agreement?

The Collective Agreement shall be binding with effect from the second Monday after the date of publication of the *Government Gazette* Notice. This is applicable from 22 June 2020 and for the period ending 31 December 2020.

Dealing with the appointment of Part-time, Casual or Temporary Employees (Clause 7)

- An employer who employs Part-time, Casual or Temporary employees shall–

  1. *Notify the Council in writing of the employment of a Part-time, Casual or Temporary employee, within 7 (seven) days of employing such a person;, and*
  2. *Notify the Council in writing within 7 (seven) days of the termination of the services of the Part-time, Casual or Temporary employee.*

- Should an employer fail to notify the Council of the appointment of the Part-time, Casual or Temporary employee, such employee shall be **regarded as a permanent employee and accordingly be entitled to all benefits** in terms of this Agreement.

How does the Payment and Calculation of Wages work? (Clause 19)

- An employer shall pay to an employee a Basic salary or wages not less than the applicable **prescribed Basic Salary** or Wages set forth in annexure "H", as amended from time to time.
- This applies to hairdressers, barbers, nail technicians, massage therapist, skincare experts and support staff and shall be region and or division specific.
- Unless the contrary is expressly authorised in this Main Collective Agreement, **nothing in Clause 19 shall cause to permit a reduction in the Remuneration or Basic Salary or Wages** of an employee who was receiving, at the date on which this Agreement came into effect, a Remuneration of Basic Salary or Wage whilst such employee remains in the employ of the same employer.
- The provisions of **Clause 19.2** above shall apply to any **employee whose services are terminated by his or her employer after the date on which this Agreement came into effect and who is re-employed by the same employer within a period of 12 (twelve) months after such employee's services were terminated**.

This means that employers are not permitted to reduce an employee’s remuneration. Moreover, if an employee's services are terminated but that individual is re-employed within 12 months, the employee must, on his/her return, receive the same salary.

How does Commission in terms of the Commission Agreement work? (Clause 31)

- The Commission paid **shall include the National Minimum Wage** as contemplated in schedule 1 to the National Minimum Wage Act (NMWA); and
- Should the **Commission payable to the employee be less than the National Minimum Wage**, as contemplated in schedule 1 of the NMWA, **the employer shall pay to the employee a Commission of at least the National Minimum Wage**, irrespective of whether Commission equal to the National Minimum Wage is due and payable to the employee by virtue of the provisions of the Commission Agreement or this Main Collective Agreement.

How does the once-off Ex Gratia Payment work? (Clause 40)

- **All employers shall pay to their employees an ex gratia once-off amount equal to 5,5% of the Basic Salary or Wage** for each employee's job category, as prescribed by this Agreement during the 2018 calendar year, as follows:
- Insofar as the employer is a **Non-Party**, **on the last day of the month in which this Agreement is extended to non-parties** in terms of section 32 of the Act.
- This payment would be due and payable on 30 June 2020.

In conclusion, *we at* ***SERR Synergy*** *wish to assist non-parties and parties to the Main Agreement, including employers within the Beauty and Haircare sector, by providing a detailed overview of and legal advice on the legal obligations imposed on them so as to ensure their compliance at all material times.* We also seek to assist in the procedure and process of applying for an exemption from any provisions entrenched in the Collective Agreement.

About the Author: Hilisha Sewnarain joined SERR Synergy in February 2018 as a Labour Legal Assistant. She was promoted and has held the position of Labour Legal Advisor as of June 2019. Hilisha studied at the University of KwaZulu-Natal and completed her LLB degree in 2014. She has four years’ experience in the legal and labour relations field, respectively.