

SOUTH AFRICAN INTRUDER DETECTION SERVICES ASSOCIATION

P O Box 17103
Benoni West, 1503
146 Newlands Avenue, Western Ext
Benoni, 1501
Non Profit Reg No. 043-392-NPO
Reg No: LR2/6/3/166



Tel: (011) 845 4870
0861 101 568
Fax: (011) 845 4850
E-mail: saidsa@mweb.co.za

Registered as a security service provider by the Private Security Industry Regulatory Authority,
Registration Number 1347967

DEPARTMENT OF LABOUR
PIETERMARITZBURG

13 April 2012

Dear Sirs,

SAIDSA MEMBERS – SECTORAL DETERMINATION 6

This is a representation made by SAIDSA to the Department of Labour regarding the application of Sectoral Determination 6 applicable to the Private Security Industry in South Africa.

1. BACKGROUND

SAIDSA is an employer organization duly registered with the Department of Labour with registration number LR2/6/3/166.

We currently represent more than 80% of the armed reaction industry in South Africa.

We have been informed that our members, especially in Kwazulu-Natal are being issued compliance orders to Sectoral Determination 6, and especially with reference to working hours.

2. LEGALITY OF SECTORAL DETERMINATION

Section 50 of the BCEA determines that the Minister may, if it is consistent with the purpose of the BCEA, make a determination to replace or exclude any basic condition of employment provided for in

The BCEA

Section 51(1) The Minister may make a sectoral determination establishing basic conditions of employment for employees in a sector and area.

Section 51(2) A sectoral determination must be made in accordance with this Chapter and by notice in the *Gazette*.

Section 56(1) The provisions of a sectoral determination remain binding until they are amended or superseded by a new or amended sectoral determination, or they are cancelled or suspended by the Minister.

3. WHICH HAS PREFERENCE

Section 57 stipulates that if a matter regulated in the BCEA is also regulated in terms of a sectoral determination, the provision in the sectoral determination prevails.

4. WHAT MAY A SECTORAL DETERMINATION CHANGE

Section 55(4) determines that:

A sectoral determination may in respect to the sector and area concerned—

- (a) set minimum terms and conditions of employment, including minimum rates of remuneration;
- (b) provide for the adjustment of minimum rates of remuneration;
- (c) regulate the manner, timing and other conditions of payment of remuneration;

- (d) prohibit or regulate payment of remuneration in kind;
- (e) require employers to keep employment records;
- (f) require employers to provide records to their employees;
- (g) prohibit or regulate task-based work, piecework, home work and contract work;
- (h) set minimum standards for housing and sanitation for employees who reside on their employers' premises;
- (i) regulate payment of travelling and other work-related allowances;
- (j) specify minimum conditions of employment for trainees;
- (k) specify minimum conditions of employment for persons other than employees;
- (l) regulate training and education schemes;
- (m) regulate pension, provident, medical aid, sick pay, holiday and unemployment schemes or funds; and
- (n) regulate any other matter concerning remuneration or other terms or conditions of employment.

5. **SECTORAL DETERMINATION 6**

STAATSKOERANT, 25 AUGUSTUS 2009

No. 32524 3

GOVERNMENT NOTICE

DEPARTMENT OF LABOUR

No. R. 871

25 August 2009

BASIC CONDITIONS OF EMPLOYMENT ACT, NO 75 OF 1997

**AMENDMENT OF SECTORAL DETERMINATION 6: PRIVATE SECURITY
SECTOR, SOUTH AFRICA**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, in terms of section 56 (1) of the Basic Conditions of Employment Act, No 75 of 1997, hereby amend Sectoral Determination 6: Private Security Sector, South Africa, published under Government Gazette No. 29142 of 18 August 2006 in accordance with the schedule hereto and fix the 1st September 2009 as the date on which this amendment shall become binding.


M.M.S MDLADLANA, MP
MINISTER OF LABOUR

6. THE IMPLEMENTATION OF SECTORAL DETERMINATION 6

6.1 Hours of work

5. ORDINARY HOURS OF WORK, OVERTIME AND PAYMENT FOR OVERTIME

- (1) An employer shall not require or permit an employee to work more ordinary hours of work than provided for from the date of implementation of this determination –
- (a) a security officer, -
 - (i) 48 in any week; and
 - (ii) Subject to sub-paragraph (i) 12 on any day.
 - (b) a ship security officer or cargo security officer; 12 on any day.
 - (c) Any other category of employee; -
 - (i) 45 in any week; and
 - (ii) subject to sub-paragraph (i) , in the case of an employee who normally works on –
 - (aa) not more than five days in a week, 9 on any day; and
 - (ab) more than five days in a week, 8 on any day.

Cause 5(1) regulates the ordinary hours of work and overtime. It stipulates that a security officer may not work more than **48 ordinary working hours per week**.

- (61) "security officer"** means a Security officer, grade A, B, C, D or E, including those performing Armed Response, and National Key Point duties.

6.2 Averaging of hours

Clause 5(2) further stipulates that the ordinary hours of work and overtime may by agreement be averaged over 4 months. So what does this mean?

- (2) **Averaging of Working Hours:**
Despite sub clause (1), the ordinary hours of work and overtime of an employee may be averaged over a period of up to four months, in terms of a written agreement.
- (a) An employer may not require or permit an employee who is a security officer to work more than –
 - (i) an average of 48 ordinary hours of work in a week over the agreed period; and
 - (ii) an average of ten hours overtime in a week over the agreed period
 - (b) Any employee whose hours are averaged in terms hereof must be paid at the premium hourly rate in respect of all work performed on a Sunday or public holiday, as per clauses 7 and 8.
 - (c) Any employee whose hours are averaged in terms hereof will still take, and the employer shall grant, a weekly free period of at least 36 hours or a fortnightly free period of at least 60 hours in terms of sub clause (10).

It is our understanding that it is the Department of Labour's view that averaging may only take place once for a 4 month period in a 12 month cycle.

We are of the view and opinion that this view is incorrect based on the following:

- a) If it was the intent of the legislator to limit the application of Clause 5(2) to 4 months in every 12 month cycle, then the legislator would have stated so in the determination. The legislator has gone to great trouble in the determination to stipulate those circumstances where a specific cycle is indeed applicable.

Examples hereof are the following:

9. ANNUAL LEAVE

- (1) In this clause "annual leave cycle" means the period of 12 months employment with the same employer immediately following –
(a) an employee's commencement of employment; or
(b) the completion of that employee's prior leave cycle.

and

10. SICK LEAVE

- (1) In this clause "sick leave cycle means the period of 36 months uninterrupted employment with the same employer immediately following -
(a) an employee's commencement of employment; or
(b) the completion of that employee's prior sick leave cycle.

From the above it is clear that if the legislator intended a specific cycle to be applicable, same would have been defined in Clause 5(2).

- b) In light of the above it is our submission that Clause 5(2) should be interpreted as follows:

Clause 5(1) stipulates 48 normal working hours per week.

52 weeks in a year x 48 hours / 12 months = 208 hours per month.

Over every 4 months the average normal working hours must be 208 hours per month.

The same calculation can be used for overtime at 10 hours per week. By agreement this can be extended to 12 hours.

When dealing with Sunday time, the act does not limit the hours of work on a Sunday, and therefore same is not used for the purposes of the above calculations.

Clause 8 does however stipulate that if an employee normally works on a Sunday then payment must be at 1 ½ times the normal rate. If not then it must be at double the normal rate, and in the event of averaging it must also be doubled.

The only other stipulation to take into consideration is the fact that in terms of clause 5(10) there must be a 12 hour rest period between each shift, and at least 36 hours consecutive rest in a week.

Calculation of NORMAL & OVERTIME working hours over a month then as follows:

Normal working hours:	48 hours per week	=	208	hours
Overtime:	12 hours per week	=	52	hours
TOTAL HOURS PER MONTH		=	260	hours per month

The above does not take Sunday time into consideration.

7. CONCLUSION

In light of the above, we request that the interpretation of SAIDSA be accepted at this moment in time until the legislator has clarified the above, and that all order contrary to this interpretation be withdrawn.

We await your feedback herein.

Regards,

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a long, horizontal stroke that tapers to the right.

Johan Krogh

NATIONAL CHAIRPERSON
SAIDSA