

RULES OF SICK PAY FUND

1. Introduction

- 1.1 The National Bargaining Council for Hairdressing, Cosmetology, Beauty and Skincare Industry ("*the Bargaining Council*") is a Bargaining Council duly established as such in accordance with the provisions of section 27 of the Labour Relations Act, Act 66 of 1995, as amended ("*the Act*").
- 1.2 In accordance with the provisions of section 28(1)(g) of the Act, the Bargaining Council has the power to establish and administer funds for the benefit of one or more of the parties to the Bargaining Council or their members.
- 1.3 The SPF is a fund that is being administered by the Bargaining Council.
- 1.4 Definitions as contained in the collective agreement of the Bargaining Council shall *mutatis mutandis* apply herein.

2. Name

- 2.1 The name of the Fund is the National Sick Pay Fund for Hairdressing, Cosmetology, Beauty and Skincare ("*the SPF*").

3. Management

- 3.1 The SPF will be managed by a Management Committee ("*the Management Committee*") established by the Board of the Bargaining Council ("*the Board*"), in accordance with the provisions of these rules.

4. **Membership**

4.1 Employees, in the Hairdressing, Cosmetology, Beauty and Skincare Industry (*“the Industry”*) shall be members of the SPF. Working employers and Legal owners (insofar as a Legal owner is a natural person) may be members of the SPF (*“the members”*).

4.2 Membership to the SPF shall be:-

4.2.1. voluntary for the Employees that resort under the Pretoria and Cape Peninsula regions of the Bargaining Council, up to and including the 31st of December 2016;

4.2.2. compulsory for all Employees that resort under the Semi-National and KwaZulu-Natal regions of the Bargaining Council as from the 1st of January 2016;

4.2.3. compulsory for all Employees as from the 1st of January 2017.

4.3 A member will register with the SPF by submitting a duly completed application for membership in the prescribed form to the SPF recording, amongst others, the member’s personal details.

5. **Claiming against the SPF**

5.1. For purposes of instituting a claim against the SPF and elsewhere in these rules “basic salary” or “wage” shall mean the basic salary or wage on which the member’s contribution to the SPF is calculated and paid in accordance with the provisions of paragraph 7 below.

5.2 A claim may be instituted by a member against the SPF for payment of the basic salary or wage in respect of such member for a period of time that a member is

absent from work due to any medical condition, examination or procedure, for which a member has proof of absence for a day or more (*"the payment period"*).

5.3 For purposes of this clause 5.3 a distinction is made between the minimum basic salary or wage as recorded in the collective agreement of the Bargaining Council (*"the minimum"*) and the basic salary or wage that is actually paid to the member (*"the actual basic salary or wage"*). Should a member's contribution be calculated and paid on the actual Basic salary or Wage, the member shall be entitled to claim the actual Basic salary or Wage for the payment period, subject to the member's contribution on the actual Basic salary or Wage having been paid to the SPF on at least 3 (three) consecutive occasions, immediately prior to the claim being instituted. Should a claim be instituted during the 3-month waiting period, the claim will be paid on either the minimum or the actual Basic salary or Wage on which the member contributed prior to the 3-month waiting period, as the case may be.

5.4. The payment period shall be limited to:

5.4.1. 33 (thirty three) days in a 3 (three) year cycle for being absent from the workplace for any period of time less than 6 (six) days (*"the six day period"*); and

5.4.2. 33 (thirty three) days in a 3 (three) year cycle for being absent from the workplace for a continued period of 7 (seven) days and more (*"the seven day period"*).

(*"the payment cycle"*).

5.5. The following shall apply to the payment cycle:

5.5.1. a member shall not be able to transfer any days from the six-day period to the seven day period or *vice versa*;

- 5.5.2.** a member may claim against the SPF during any part of the payment cycle, limited to the number of days set forth in clause 5.3 above.
- 5.6** A member will only be able to institute a claim against the SPF during the payment period, if:-
- 5.6.1.** except as provided in clause 5.6.2, the member is in possession of a medical certificate issued by a registered medical practitioner, a registered nurse or registered traditional healer ("*the practitioner*"), clearly stating: -
- 5.6.1.1.** the name, address and capacity of the practitioner issuing the medical certificate;
- 5.6.1.2.** the date upon which the member consulted with the practitioner;
- 5.6.1.3.** the period that the member will be absent from work due to the illness.
- 5.6.2** Notwithstanding the provisions of clause 5.6.1, an Employer may approve the first day (one day) of an Employee's absence on sick leave without the requirement for a medical certificate for that day. A medical certificate will still be required for two or more days of absence due to any medical condition, examination, or procedure.
- 5.7.** The SPF may, if necessary, communicate with and call on the practitioner to amplify or clarify any aspect mentioned on the medical certificate or, in its sole and absolute discretion, refer the member to a practitioner of its own choice and at its own costs, to verify the medical condition, examination or medical procedure, or duration thereof, mentioned on the medical certificate. No claim shall be paid until such time that the SPF has finalised its own investigation as envisaged in this clause, should it elect to do so.
- 5.8** A claim against the SPF shall be calculated on the basis of the lesser of:-

- 5.8.1.** the duration for which the member is absent from work due to any medical condition, examination or procedure; or
- 5.8.2.** the duration that the member may be absent from work due to any medical condition, examination or procedure, as indicated on the medical certificate.
- 5.9.** Notwithstanding anything contained in these rules to the contrary, the Bargaining Council, in its sole and absolute discretion may refuse or repudiate any claim made by a member against the SPF.
- 5.10** The provisions of this clause 5.10, shall apply to any virus or illness that has been declared either an epidemic or pandemic by the World Health Organisation or a similar authority, having the authority to do so ("*the virus*"). Notwithstanding anything to the contrary contained in these rules, the provisions of this clause 5.10 shall only apply in respect of a claim that is instituted as a result of the virus ("*a virus claim*"), being:
- 5.10.1** a virus claim shall be limited to the following payment period, being:
- 5.10.1.1** (ten) days in respect of the 6-day payment period, as contemplated in clause 5.4.1 above; and
- 5.10.1.2** 23 (twenty-three) days in respect of the 7-day payment period, as contemplated in clause 5.4.2 above.
- 5.10.2** the 10 (ten) days forming part of the 6-day period and the 23 (twenty-three) days forming part of the 7-day period, will be included in the number of days recorded in respectively clauses 5.4.1 and 5.4.2 above and shall not be additional thereto;
- 5.10.3** the provisions of clauses 5.6 and 5.7 will apply *mutatis mutandis* in respect of a virus claim;

5.10.4 the following calculation will be used in order to determine the payment period in respect of a virus claim, being:

5.10.4.1 in respect of the 6-day period: the remaining days available to the member within the payment cycle x 10 (ten) days, divided by 33 days; and

5.10.4.2 in respect of the 7-day period: the remaining days available to the member within the payment cycle x 23 (twenty-three) days, divided by 33 days.

5.10.5 a virus claim shall be limited to the number of days indicated on the medical certificate submitted and further subject to the provisions of clauses 5.10.1, 5.10.2 and 5.10.4 above; and

5.10.6 nothing contained in this clause 5.10 shall limit a member's right to claim any shortfall, not paid by the SPF relating to a virus claim, from the Unemployment Insurance Fund (if applicable).

6. Benefits

6.1. Any Medical Condition, Examination or Procedure

6.1.1. A member may claim the basic salary or wage from the SPF for the period absent from work due to any medical condition, examination or procedure, within the payment period.

6.2. Maternity benefit

6.2.1. Female members of the SPF may institute a claim against the SPF for a maternity benefit which will be limited to: -

6.2.1.1. 30% (thirty percent) of the monthly basic salary or wage of a female member;

6.2.1.2. a period of 4 (four) months;

6.2.1.3. no more than 4 (four) children.

6.2 2. the following provision shall apply to a claim in respect of a maternity benefit:

6.2.2.1 the female member shall only be entitled to claim the maternity benefit upon the child being born;

6.2.2.2 the full maternity benefit will be paid by means of a once-off payment, calculated in accordance with the provisions of clause 6.2.1;

6.2.2.3. should a child be stillborn, the 4 (four) month period as envisaged in clause 6.2.1.2 above will be limited to 2 (two) months, unless the Bargaining Council is favoured with a written motivation by a Psychologist or a Medical Practitioner justifying an increased period of absence, in which event the Bargaining Council may, in its sole and absolute discretion, increase the period, which period will not exceed the 4 (four) months. For purposes of this clause 6.2.2.3 “stillborn” is defined as a child that is delivered after 24 (twenty-four) weeks and weighs less than 500 (five hundred) grams.

6.2.2.4 nothing contained in these rules shall be construed as to limit any female member claiming a maternity benefit, from not being able to also claim a maternity or other benefit during the payment period, from any other source, whatsoever.

6.2.2.5 a female member may only claim against the SPF for a maternity benefit after being a contributing member thereto for a continuous period of 12 (twelve) months i.e. if the child is born after the 12 (twelve) month period.

7. Contributions to SPF

7.1. The following contributions shall be made to the SPF:

7.1.1. Employer: an Employer that employs a member of the SPF shall contribute an amount equal to what is agreed by the parties to the Bargaining Council, from time to time, of the Employee's monthly basic salary or wage, to the SPF (*"the Employer's contribution"*)

7.1.2. Employee: an Employee who is a member of the SPF shall contribute an amount equal to what is agreed by the parties to the Bargaining Council, from time to time, of the applicable Basic salary or wages, to the SPF (*"the Employee's contribution"*);

7.1.3. Working Employer: a Working Employer that is a member of the SPF shall contribute an amount equal to what is agreed by the parties to the Bargaining Council, from time to time, of the monthly Basic salary or wage of a qualified stylist, which shall be determined by the Basic salary or wage of the area in which the Working Employer operates an Establishment (*"the Working Employer's contribution"*);

7.1.4. a Legal Owner that is a member of the SPF shall contribute an amount equal to what is agreed by the parties to the Bargaining Council, from time to time, of the Basic salary or wage of a qualified stylist, which shall be determined by the Basic salary or wage of a Qualified Stylist in the area in which the Working Employer operates an Establishment (*"the Legal Owner contribution"*).

7.2. The Contribution recorded in clause 7.1 above, shall be due and payable to the SPF, on a monthly basis.

7.3. An Employer, Working Employer and Legal owner, as the case may be, shall by no later than the seventh day of the month following the month in respect of which the payment is due, pay to the Bargaining Council the Employer's contribution, Employee's contribution, Working Employer's contribution or Legal Owner's contribution.

8. Procedure to institute claim against SPF

8.1. Any claim against the SPF shall be submitted by no later than 90 (ninety) days after the date upon which any medical condition, examination or procedure occurs.

8.2. The Bargaining Council, in its sole and absolute discretion, may grant condonation for a claim being institute outside the period stated in clause 8.1 above.

8.3. A claim against the SPF shall be submitted in the following manner and form:-

8.3.1. on the claim form attached to these rules, duly completed;

8.3.2. be accompanied by:

8.3.2.1. the original or certified copy of the medical certificate and bank account statement;

8.3.2.2. a certified copy of the member's identity document, only if no copy of the identity document is available on the Council's system;

8.3.2.3. written confirmation of the Employer, Working Employer or Legal Owner, stating the period of absence;

8.3.2.4. salary advice slip / payslip indicating both the member's gross and nett salary and proof that the contributions to the SPF have been deducted;

8.3.2.5. a birth certificate of the child born in the event of a female member claiming a maternity benefit.

8.4. The claim form duly completed together with the supporting documents recorded in the clause 8.3 above, shall be submitted to the SPF by hand, e-mail, facsimile or registered mail.

8.5. In the event of a member claiming for the SPF on more than one occasion in any calendar year, the documents to be submitted by the member shall be limited to the duly completed claim form and the original or certified copy of the medical certificate.

8.6. Any claim instituted against the SPF which:-

8.6.1. is submitted on a claim form which is not duly completed or is illegible;

8.6.2. is not accompanied by any of the aforesaid supporting documentation;

8.6.3. the medical certificate or any part thereof is blank or illegible will not be processed.

8.7. The SPF will execute its best endeavours to make payment to the member in respect of a claim instituted, within 30 (thirty) days of the claim being submitted, or the date upon which the member has fully complied with the requirements set forth in clause 8.3 above, whichever is the latter.

9. Compliance with collective agreement

9.1. No claim against the SPF will be entertained if an Employer is in arrears in respect of any of the Employer's contribution or member's contribution to the SPF. Should an Employer be in arrears with contributions to the SPF, a member's remedy for payment shall lie in a referral of a dispute to the Bargaining Council, based on the Employer's non-compliance with the provisions of the collective agreement which incorporates these rules.

9.2. The SPF, in its sole and absolute discretion may, notwithstanding a member being in arrears elect to entertain a claim instituted against the SPF, in which event the SPF may apply set off against any amount due and owing by the member to the SPF against an approved claim paid by the SPF to the member.

9.3. Should application be made by any person to be exempt from the provisions of the collective agreement or these rules, the exemption will only apply as from the date upon which the Exemption Board hands down its decision to grant exemption.

10. Special provisions relating to membership

10.1. Should a Working Employer or a Legal Owner become a member of the SPF at any time prior to the 1st of January 2017, a 8 (eight) month waiting period will be applicable i.e. the SPF will not entertain any claim instituted by a Working Employer or a Legal Owner against the SPF within a period of 8 (eight) months after becoming a member and any claim instituted thereafter up and to including the 31st of December 2016, will be paid out pro-rata to the number of months that the Working Employer or Legal Owner has been a member of the SPF.

11. Administration

11.1. The Management Committee will be appointed by the Board at the Board's Annual General Meeting ("AGM").

11.2. The Management Committee shall consist of the Chairperson and Vice-chairperson of the Board, 2 (two) Representatives nominated by the Employer party to the Bargaining Council and 2 (two) Representatives, nominated by the Employee party to the Bargaining Council and the Chief Executive Officer of the Bargaining Council. The Chief Executive Officer (Ex-Officio member) of the Bargaining Council shall have no voting powers on the Management Committee.

- 11.3.** Each of the parties to the Council shall appoint, for the Chairperson, Vice-chairperson positions and Representatives alternates, from the pool of alternatives, nominated by the parties to the Council Board.
- 11.4.** The Management committee shall appoint from among them, a Chairperson and Vice-chairperson, which may differ from the Chairperson and Vice- chairperson of the Board. The term of office of the Chairperson, Vice-chairperson and Representatives (and their Alternates) serving on the Management Committee shall be the same term as the Chairperson and Vice-chairperson appointment to the Board and shall terminate upon such date that the Chairperson and Vice-chairperson`s appointment to the Board, terminates.
- 11.5.** The Chairperson, Vice-chairperson or a Representative of the Management Committee may resign as such by furnishing the Board with 30 (thirty) calendar days of his / her intention to do so.
- 11.6.** The Chairperson, Vice-chairperson or a Representative of the Management Committee`s appointment as such may be terminated by a decision of the Board. Should the Chairperson`s appointment be terminated in terms of this clause 11.6, the Vice-chairperson shall take over the responsibilities of the Chairperson for the remainder of the term set-forth in clause 11.4 above. In such event the representatives to the Management Committee shall appoint a new Vice-chairperson from amongst them for the remainder of such term.
- 11.7.** In the event of a Representative of the Management Committee resigning or his / her appointment as such being terminated, the Representative`s, Alternate will replace the person so resigning or appointment being terminated, to the Management Committee.
- 11.8.** All resolutions by the Management Committee shall be passed with a majority vote.
- 11.9.** The Bargaining Council will consider and authorise claims instituted by members against the SPF.

11.10. The Management Committee, mandated by the parties to the Bargaining Council, shall have the power to make and alter rules governing the SPF

11.11. Any disputes emanating from the Bargaining Council refusing, repudiating or partly refusing or partly repudiating any claim instituted against the SPF by a member or any dispute as to the interpretation, meaning, intention or provisions of these rules shall be resolved as follows:-

11.11.1. a person aggrieved by the decision of the Bargaining Council may lodge an appeal to the Management Committee; (as per the prescribed Appeal Form)

11.11.2. all appeals shall be lodged within 14 (fourteen) days as from the date upon which the Bargaining Council's decision has been made available and shall be heard by the Management Committee within 120 (hundred and twenty) days of being lodged.

11.11.3. any appeal shall be in writing and shall contain the following:-

11.11.3.1. grounds of appeal;

11.11.3.2. all supporting documentation which will be used in support of the appeal;

11.11.3.3. any other relevant information or documentation that may assist the Management Committee to arrive at a conclusion.

11.11.4. an appeal, in the sole and absolute discretion of the Management Committee, may be amplified by oral argument;

11.11.5. The Management Committee's finding on appeal shall be in writing and shall be made available to the person lodging such appeal within 14 (fourteen) days from such appeal being heard. The Management Committee's finding on appeal shall be final and binding.

11.12. All expenses incurred in connection with the administration of the SPF shall be a charge against the SPF. The Management Committee shall have the power to appoint committees or sub-committees to delegate to such sub-committees such powers as are not inconsistent with the collective agreement or these rules.

11.13. The Management Committee may cause to:-

11.13.1. open a bank account/s for retaining members contributions;

11.13.2. invest funds of the SPF not immediately required to meet any claims or charges from time to time which includes, but will not be limited to, investing in immovable property;

11.13.3. from time to time borrow and/or obtain an overdraft from any bank or financial institution for such sum of money required for purposes of meeting its obligations as envisaged in these rules.

11.14. The Management Committee`s powers as set forth in clause 11.13 above shall be limited to the extent that only the Board may elect:

11.14.1. at which financial institutions a bank account/s may be opened;

11.14.2. by which broker and where funds of the SPF may be invested.

11.15. The Council Board shall appoint the auditors to audit the books of account and financial statements of the SPF, annually. The audited financial records of the SPF shall be presented to, considered and approved by the Board at its AGM, where after it will be signed off by the Chairperson of the Management Committee. The Chairperson of the Management Committee shall in his / her Chairperson`s report address the AGM on the activities of the SPF. The audited financial records of the SPF shall be open for inspection to any member of the SPF during office hours at the Bargaining Council`s head office as indicated in the collective agreement.

- 11.16.** A member shall be entitled to copies of the financial records after the inspection thereof against first paying a photocopying charge levied by the Bargaining Council, in its sole and absolute discretion.
- 11.17.** The Management Committee may, from time to time as and when necessary instruct actuaries to attend to actuarial calculations for purposes of ensuring that the SPF has sufficient funds to meet its obligations and to ensure sustainability. The expense relating to the appointment of the actuaries shall be borne by the SPF.
- 11.18.** The SPF shall have the legal capacity to enter into any agreement and to sue or to be sued in its own name.
- 11.19.** Any profits or losses incurred in the day-to-day activities of the SPF or the realisation of any investment shall be borne by the SPF.
- 11.20.** The Management Committee shall meet at least on 3 (three) occasions per calendar year, which meetings shall take place at least 2 (two) months prior to Board meetings scheduled for that calendar year, so as to enable the Chairperson to report on the activities and financial status of the SPF, during Board meetings.
- 11.21.** The Management Committee shall ensure that the SPF, at all material times, has sufficient funds to settle any claims that may arise in the ensuing 4 (four) calendar months, predicated on the historical claims that arose in the same time period i.e the same 4 (four) calendar months, in the previous calendar year, plus 10% (ten percent).

12. Liquidation and dissolving of SPF

- 12.1.** The SPF will continue *ad infinitum* until liquidated or dissolved by virtue of a resolution of the Board.
- 12.2.** In the event of the Board resolving to liquidate or dissolve the SPF, the funds retained in the SPF after settlement of any administration and liquidation expenses, shall be

paid in equal shares to the Employer party/ies and Employee/s party/ies to the Bargaining Council.

12.3. In the event of the Bargaining Council being wound up or dissolved, the Board shall, on the date upon which the Bargaining Council is being wound up or dissolved, appoint 3 persons nominated by the Employer party/ies to the Bargaining Council and 3 persons appointed by the Employee party/ies to the Bargaining Council, as trustees of the SPF (*“the trustees”*).

12.4. The Trustees shall liquidate or dissolve the SPF in which event the funds of the SPF shall be paid in equal shares to the Employer party/s and Employee/s party/ies to the Bargaining Council.

13. Indemnity

13.1. The members of the Board, Management Committee or any person and/or entity employed by the Management Committee, shall not be liable for any actions taken by and/or debt and/or liability of the SPF and are hereby indemnified by the SPF against any losses and/or expenses incurred by it as a result of or arising from the bona fide execution of their duties as such.

THESE AMENDED RULES WILL BE IN FORCE AND EFFECT AS FROM 1 June 2023.