



Legal Sense

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CONTRACT OF EMPLOYMENT & RESTRAINT OF TRADE

Underwritten by



RESOLUTION
insurance

Contract of employment

entered into between:

(“the Employer”)

and

(full names of employee)

(“the Employee”)

Particulars of the parties

The particulars of the employer are as follows:

Name:

Address:

Postal address:

Telephone number:

Fax number:

E-mail address:

Name and designation of person concluding this agreement on behalf of the employer:

The particulars of the employee are as follows:

Name:

Identity number:

Home address:

Postal address:

Telephone number:

Fax number:

E-mail address:

Particulars of next of kin:

The employer and employee hereby agree to the following terms and conditions of employment:

1. Appointment

1.1 The employee is appointed in the capacity of *(insert)* and will commence duties on *(insert date on which employment will commence)*.

1.2 The employee will perform duties at _____ (salons address)

2. Job description

The employee is responsible for the following tasks: *(insert list of tasks for which employee will be responsible)* and all such tasks and duties as are reasonably and lawfully incidental to the above.

3. Remuneration

3.1 The employee's basic remuneration per day *(or week or month)* is R *(..... RAND)*, which constitutes the (nature of remuneration, eg salary, commission etc) he/she is entitled to.

3.2 Said remuneration will be paid on *(insert time of payment)*.

3.3 In addition to the basic remuneration referred to in paragraph 3.1, the employee is also entitled to the following payments which form part of the remuneration package: *(insert additional payments to which employee will be entitled)*.

4. Benefits

The employee is entitled to the following benefits: *(insert list of benefits to which employee will be entitled)*.

5. Probation

5.1 The employee's appointment is subject to a period of *(insert number)* months' probation.

5.2 Upon expiration of the probationary period, the employee's appointment may be confirmed as a permanent employee or the probation period may be extended or the services of the employee may be terminated.

5.3 In the event the probation period is extended, the following provisions will apply:

5.3.1 the employer will supply reasons for its decision to extend probation;

5.3.2 the employee will be granted a reasonable opportunity to state his/her case and to submit reasons why the probation period should not be extended; and

5.3.3 if, after the employee has stated his/her case, the employer nevertheless decides to extend the probation period, it will be extended for a further (*insert number*) months.

5.4 In the event that the employee's services are terminated, it will be done in accordance with the requirements of the Labour Relations Act of 1995.

6. Hours of work

6.1 The employee is obliged to work (*insert number*) days per week, (eg from Monday to Friday of every week).

6.2 The employee's normal working hours will not exceed (*insert number*) hours per week and (*insert number*) hours per day.

6.3 If the employee is responsible for serving members of the public, his/her normal working hours may be extended by 15 (fifteen) minutes on any day in order to continue such responsibilities, provided such extension or extensions may not exceed 60 minutes in any normal working week.

6.4 The provisions of this paragraph do not apply to work which is required to be done without delay owing to circumstances for which the employer could not reasonably have been expected to make provision and which cannot be performed by the employee during the normal working hours.

7. Meal intervals

7.1 The employee is entitled to a meal interval of (*insert number*) minutes after 5 (five) hours of continuous work and this time will not form part of the normal working hours.

7.2 For the purposes of paragraph 7.1 work is continuous unless it is interrupted by an interval of at least 1 (one) hour.

7.3 During the meal interval the employee may be required or permitted to perform duties that cannot be left unattended, that cannot be performed by another employee and that could not reasonably have been provided for by the employer.

7.4 The employee will under normal circumstances not be remunerated in respect of the meal interval, but if he/she is required to work during such interval, payment will be owed and made to the employee at a rate equal to a normal hour of work for every hour worked during meal intervals.

7.5 If the employee's meal interval exceeds 75 minutes on any day, he/she will be remunerated in respect of the time in excess of 75 minutes at the normally hourly rate, unless he/she lives on the work premises.

8. Overtime

8.1 The employee agrees to work overtime when the operational reasons of the business require additional hours to be worked.

8.2 Overtime hours will not **exceed (insert number)** hours per week.

8.3 Overtime will be remunerated at:

8.3.1 *(insert number, ie one and a half or, for a small business one and a third)* times the normal hourly rate; or

8.3.2 the normal hourly rate, in which case the employee will be given 30 minutes off on full pay in respect of every hour overtime worked; or

8.3.3 no remuneration, in which case the employee will be given 90 minutes off in respect of every hour overtime worked.

8.4 If an employee is entitled to time off in terms of paragraphs 8.3.2 or 8.3.3, such time will be granted within *(insert number)* months of he/she becoming entitled thereto.

8.5 The provisions of this paragraph will be revised annually.

9. Compressed working week

9.1 If expedient or necessary to do so, the employer and employee may agree that the employee work a compressed week, in which case the following conditions will be applicable:

9.1.1 the employee will work a maximum of *(insert number)* hours per day, including meal intervals;

9.1.2 the employee will not work more than 5 (five) days per week;

9.1.3 the employee will not receive overtime pay.

9.2 Where the employee works a compressed week, his/her normal working hours will not exceed 45 (forty five) hours per week and the overtime hours will not exceed 10 (ten) hours per week.

10. Rest periods

10.1 The employee will be entitled to a daily rest period of *(insert number)* consecutive hours between ending and recommencing work.

10.2 In addition, the employee will be entitled to a weekly rest period of:

10.2.1 *(insert number)* consecutive hours every week, which will include/exclude Sunday; OR

10.2.2 *(insert number)* consecutive hours every two weeks.

10.3 Despite the provisions of paragraph 10.2 the employee's weekly rest period may be reduced by up to 8 (eight) hours in any week, but the rest period in the following week will then be extended equivalently.

11. Work on Sundays

11.1 If the employee works on a Sunday, the hours so worked will be considered as overtime.

11.2 The employee will be entitled to payment at a rate of

11.2.1 *(insert number)* times the normal hourly rate for every hour worked or the normal daily rate, whichever is the greater; OR

11.2.2 the normal daily rate plus time off with full pay equivalent to the difference in value between the normal daily rate and the additional payment the employee would have received in terms of paragraph 11.2.1.

11.3 If the employee is entitled to time off in terms of paragraph 11.2.2, such time will be granted within *(insert number)* months after he/she has become entitled thereto.

11.4 If a shift worked by the employee falls on a Sunday and another day, the shift is deemed to have been worked on a Sunday unless the greater portion of the shift falls on the other day.

12. Work on public holidays

12.1 The employee agrees to work on public holidays if the operations of the employer require it.

12.2 If a public holiday falls on a day which would otherwise be an ordinary working day and the employee does not work on such a public holiday, he/she will nevertheless receive remuneration in respect of such a day.

12.3 If the employee works on a public holiday which falls on an ordinary working day, he/she will be remunerated at a rate of *(insert rate)*

12.4 If the employee works on a public holiday on which he/she would not ordinarily work, he/she will be remunerated at a rate of *(insert rate)*

12.5 Payment due to the employee for work on a public holiday will be made on the first usual pay day that follows the day on which the employee worked.

12.6 If a shift worked by the employee falls on a public holiday and another day, the shift is deemed to have been worked on the public holiday unless the greater portion of the shift falls on the other day.

12.7 A public holiday may be exchanged for any other day as the employer and employee may from time to time agree.

13. Night work

13.1 The employee agrees to perform night work.

13.2 Remuneration in respect of night work will be as follows:

13.2.1 an allowance of R (*..... RAND*) for every hour during which night work is performed; OR

13.2.2 a reduction of normal working hours by *(insert number)* hours per week.

13.3 The employer will arrange for transport to and from work in the event of the employee performing night work.

13.4 If the employee performs night work on a regular basis, the employer will be responsible for informing him/her of any health and safety hazards and allow him/her to undergo a medical examination *(state intervals of examination, eg annually)* at the employer's expense.

13.5 If the employee suffers from poor health he/she will be transferred to suitable day work if it is practicable for the employer to do so.

14. Annual leave

14.1 Annual leave will be leave on full pay.

14.2 The employee will be entitled to:

14.2.1 *(insert number)* consecutive/working days' annual leave per leave cycle; OR

14.2.2 *(insert number)* day(s) for every seventeen days worked or days on which he/she was entitled to payment.

14.3 The employee's entitlement to annual leave will be reduced by the number of days occasional leave on full pay granted to the employee at his/her request during a particular leave cycle.

14.4 One day's leave will be added to the employee's entitlement of annual leave for every public holiday which falls within the leave period.

14.5 The employee is obliged to request leave in writing and obtain permission to go on leave at least *(insert number)* weeks prior to taking annual leave.

14.6 Annual leave will be granted to the employee when the operations of the employer allow for the absence of the employee, provided that leave will be granted not later than six months after the end of the annual leave cycle.

14.7 Annual leave may not run concurrently with any other period of leave (excluding unpaid leave) or a period of notice to terminate services.

14.8 The employee will not be allowed to work for the employer during a period of annual leave.

14.9 The employer will pay to the employee his/her remuneration in respect of the annual leave period on *(date, eg normal pay day)*.

14.10 *(Insert number of days)* days' leave must be taken and may not be exchanged for payment, except upon termination of employment. Where the employee is entitled to more days' leave than those that have to be taken, the additional days may be accumulated and will be paid out upon termination of services.

15. Sick leave

15.1 The employee will be entitled to *(insert number)* working days sick leave per cycle on full pay.

15.2 Despite the provision of paragraph 15.1, the employee will be entitled to one working day's sick leave for every 26 days worked during the first six months of employment.

15.3 During the first cycle the employee's entitlement to sick leave will be reduced by the number of days taken in terms of paragraph 15.2.

15.4 Payment in respect of sick leave days taken by the employee will be made on the first usual pay day after such sick leave has expired.

15.5 The employee will be entitled to a normal day's wages/salary in respect of every day he/she is on sick leave, but such pay may be reduced by *(insert)%* provided that the number of days sick leave to which the employee is entitled, will be increased by *(insert number)* working days.

15.6 The employee is obliged to submit to the employer as soon as possible, but not later than the return day to work, a medical certificate as proof of illness for any period of absence which lasts longer than two working days, failing which the employee will not be entitled to any payment in respect of the days of absence.

15.7 If the employee is absent during a period of eight weeks on two or more occasions, the employer will be entitled to request a medical certificate as proof of illness for any number of days of absence and, if so requested, the employee will be obliged to submit such a certificate, failing which he/she will not be entitled to any payment in respect of the days of absence.

15.8 If the employee lives on the employer's premises the employer will provide reasonable assistance to the employee in order to obtain a medical certificate, failing which payment may not be withheld.

15.9 The provisions contained in paragraphs 15.1 to 15.8 will not be applicable in the case of an inability to work caused by an accident or occupational disease as defined in the *Compensation for Occupational Injuries and Diseases Act* of 1993 or the *Occupational Diseases in Mines and Works Act* of 1973, except in respect of any period during which no compensation is payable in terms of those Acts.

15.10 Days not taken during a sick leave cycle will not accumulate.

16. Additional sick leave

If the employee's inability to work due to poor health is of such a serious nature that more leave as prescribed in paragraph 15 is required in any sick leave cycle, the following conditions will apply:

16.1 a further (*insert number*) days will be granted to the employee on full pay;

16.2 thereafter (*insert number*) days will be granted on half pay; and

16.3 thereafter (*insert number*) days will be granted at no pay.

17. Maternity leave

17.1 The employee is entitled to (*insert number*) consecutive months maternity leave.

17.2 The employee will be entitled to commence her maternity leave (*insert number*) weeks prior to the expected date of confinement, unless a medical practitioner or midwife certifies that, for the employee's health or that of the baby, maternity leave should commence on a different date. In the latter case such certification must be submitted to the employer as soon as is reasonably practicable.

17.3 Maternity leave will be paid/unpaid.

17.4 Payment in respect of maternity leave will be as follows:

17.4.1 (*Insert number*) weeks on full pay;

17.4.2 (*Insert number*) weeks on half pay;

17.4.3 (*Insert number*) weeks at no pay.

17.5 The employee may not resume work for the first six weeks after the date of confinement, unless a medical practitioner or midwife certifies that she is fit to do so, in which case such certification must be submitted to the employer as soon as is reasonably practicable.

17.6 If the employee has a miscarriage during the third trimester of her pregnancy or bears a stillborn child, she is entitled to leave of six weeks after the miscarriage or stillbirth, whether or not the maternity leave has commenced.

17.7 The employee is obliged to notify the employer of the date on which maternity leave will commence and the date of return to work after maternity leave. Such notification must be given (*insert number*) weeks prior to the commencement of maternity leave, but if this is not reasonably practicable, as soon as it is reasonably practicable.

17.8 The employee will not be allowed to perform work which is hazardous to her health or the health of her child while she is pregnant or nursing her child.

17.9 If the employee performs night work or her work poses a danger to her health or that of her child, the employer will, where practicable to do so, transfer her to other suitable work on terms and conditions which are not less favourable than her ordinary employment conditions. This provision is applicable to the employee while she is pregnant and for a period of six months after the birth of her child.

18. Family responsibility leave

18.1 The employee will, during every annual leave cycle, be entitled to (*insert number*) days leave with full pay to attend to family responsibilities.

18.2 "Family responsibilities" refers to the birth or illness of the employee's child and the death of the employee's spouse, life partner, parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

18.3 The employee will have to request leave in writing and obtain permission to go on leave (*insert number*) weeks prior to going on leave or as soon as is reasonably practicable to do so.

18.4 The employee will submit to the employer reasonable proof of the event for which leave is required, failing which he/she will not be entitled to any payment in respect of the days of absence.

18.5 Family responsibility leave does not accrue and lapses at the end of each annual leave cycle.

18.6 Payment in respect of family responsibility leave will be made on the usual pay day following the day(s) on which the employee has taken such leave.

19. Deductions

19.1 The following deductions will be made from the employee's wages/salary before the remuneration due to him/her is paid:

19.1.1 income tax as prescribed by the laws and regulations governing income tax;

19.1.2 unemployment insurance in the amount of 1% (one per cent) of the employee's monthly earnings;

19.1.3 any agency fee which is payable by the employee where an agency shop agreement is applicable in the workplace;

19.1.4 any other deduction which is required or permitted by law, a collective agreement, a court order or an arbitration award.

19.2 Any deduction not covered in paragraph 19.1 will be made only if the employee agrees thereto in writing.

19.3 Where the employee has agreed that the employer deducts payments from his salary/wages in respect of goods purchased by him/her, the deduction will reflect the nature and quantity of such goods.

19.4 The employer will make deductions from the employee's salary/wages in respect of loss or damage caused by the employee only if:

19.4.1 the employee agrees thereto in writing;

19.4.2 the loss or damage occurred in the course of employment;

19.4.3 the employer has followed a fair procedure and has given the employee a reasonable opportunity to show why the deductions should not be made;

19.4.4 the total amount of the debt does not exceed the actual amount of the loss or damage; and

19.4.5 the total deductions do not exceed one quarter of the employee's remuneration in money.

19.5 The employer will not require or permit the employee to:

19.5.1 repay any remuneration, except for overpayments made as a result of the employer's error in calculating the employee's remuneration;

19.5.2 acknowledge receipt of an amount greater than the remuneration actually received.

19.6 The employer will be responsible to make contributions in respect of unemployment benefits and injuries or occupational diseases as required by the *Unemployment Insurance Act of 1966* and the *Compensation for Occupational Injuries and Diseases Act of 1993* respectively.

20. Termination of employment

20.1 Either party may give the other notice of termination of employment and such notice will be given in writing, unless the employee is illiterate.

20.2 The notice periods required, are as follows:

20.2.1 during the first six months of employment, one week's notice ;

20.2.2 if the employee has between six and 12 months employment, two weeks' notice;

20.2.3 after completion of the first year of employment, four weeks' notice.

20.3 Notice of termination of employment may not be given during any period of leave.

20.4 Notice of termination of employment may not run concurrently with any period of leave, except sick leave.

20.5 Instead of giving the employee notice, the employer may pay him/her the remuneration he/she would have earned during the notice period.

20.6 If the employee gives notice to terminate his/her services and the employer waives any part of the notice, the employer will pay the employee the remuneration he/she would have earned during the notice period or any part thereof so waived.

20.7 This agreement may be terminated by either party without notice for any cause recognised by law.

20.8 Whether the employee's services are terminated by the employer with or without notice, the employee retains the right to dispute such termination in accordance with Chapter VIII of the Labour Relations Act [66 of 1995](#).

20.9 Upon termination of employment, the employer will pay to the employee:

20.9.1 for time off due to the employee but not yet taken in respect of overtime or Sunday work;

20.9.2 for days of annual leave not yet taken; and

20.9.3 if the employee's annual leave cycle has not been completed but he/she has completed four months of work in that particular cycle, one day's remuneration in respect of every 17 days the employee worked or was entitled to be paid.

20.10 If the employee's services are terminated because of the employer's operational requirements, the following provisions will apply:

20.10.1 he/she will be entitled to severance pay equal to (*insert number*) weeks' pay for every completed year of continuous service with the employer;

20.10.2 if the employee unreasonably refuses an offer of alternative employment with the employer or another employer, he/she will not be entitled to severance pay in accordance with paragraph 20.10.1;

20.10.3 The employee's entitlement to severance pay will not affect his/her right to any other amount payable according to law;

20.10.4 A dispute about the entitlement to severance pay may be referred to a council with jurisdiction or, if no such council exists, to the CCMA for conciliation and arbitration;

20.10.5 A dispute about the fairness of the termination of services may be referred to a council with jurisdiction or, if no such council exists, to the CCMA for conciliation and, if conciliation is unsuccessful, to the Labour Court for adjudication.

21. Certificate of service

Upon termination of employment the employer will give to the employee a certificate of service stating the following: the employee's name, the name and address of the employer, the date of commencement and the date of termination of employment, the job title of the employee at termination, the remuneration earned by the employee at termination and, if the employee so requests, the reasons for termination. Any council agreement or sectoral determination applicable to the employer's business will also be mentioned.

22. Additions to this agreement

22.1 The definitions attached in Annexure A form part of this agreement.

22.2 In addition to the provisions of this agreement, the employee is also bound by and subject to the following company policies, codes, procedures and legal provisions and these are considered to form part of this agreement: *(list all policies, codes, procedures and legal provisions to which employee is subject)*.

22.3 The documents referred to in paragraph 22.1 are available at *(place, eg personnel office)* and the employee has free access to them. A copy of any of these documents will be made available to the employee free of charge at his/her request.

23. CONFIDENTIALITY

No other form of employment may be undertaken without written consent of the Company.

The disclosure of any information concerning the Company result, methods or

procedures, the names and structural arrangement with the Company's suppliers or customers, the ideas, research, software and hardware in use in the Company's computer operations and applications, and, without being limited by the foregoing, any relevant data which is either being used or will be used by the Company as well as any other matter or information which is known by an employee or employees, suppliers and customers of the Company and which is not readily available in the ordinary course of business to a competitor or potential competitor of the Company, will constitute a breach of contract, unless you are required by law to disclose such knowledge.

Inventions or improvement which you make in the course of your employment will be the property of the Company.

24. RESTRAINT OF TRADE

The employee agrees and undertakes in favour of the employer, _____, that during the restraint period and in the territory (as stipulated below) he / she will not become employed by nor will he / she directly or indirectly carry on or become associated with or guarantee the obligations of or be interested or engaged in any capacity as an _____, or employee, in any business or enterprise or association of persons, both corporate and unincorporated which carries on a competing business;

The employee agrees and undertakes in favour of the employer that during the restraint period and in the territory he will not directly or indirectly - employ any prescribed employee or encourage or incite or solicit or persuade or induce any prescribed employee of _____ to terminate her or his employment with the employer;

furnish information or advice to any party -

that any prescribed employee (whether as proprietor, partner, director, shareholder, member, employee, consultant, contractor, financier, agent, representative, independent contractor or otherwise) intends to or will be interested directly or indirectly in being or becoming engaged in or concerned with or employed by any company, close corporation, firm, business, undertaking, enterprise or concern which is or which it is intended may carry on a competing business;

which is directly or indirectly designed or, in the ordinary course of events, calculated or intended to or which may result in any prescribed employee terminating his or her employment with the employer;

The restraints set out in this clause shall be given the widest possible interpretation and no restraint or combination of restraints shall be limited by reference to or inference from any other restraint or combination of restraints, provided however that the invalidity or unenforceability of any one or combination of any of the restraints referred to in this clause shall not affect the validity or enforceability of any of the other restraints or combination of restraints referred to in this clause, it being agreed that each restraint is severable from every other restraint and that in the event of this clause being unenforceable the whole of this clause is severable from the rest of this agreement.

A breach by the employee of any of the provisions of this clause shall entitle the employer and any other entity in the employer Group acting individually or jointly to exercise any remedy which they may have as recorded herein against him.

The employee agrees and acknowledges that the undertakings furnished by him in this clause are made for the benefit of the employer and for the benefit of their respective successors in title and assigns. Accordingly, the provisions of this clause shall be construed as imposing separate stipulations in favour of each of them and in favour of their respective successors in title and assigns, each of which shall be capable of accepting the rights conferred by this clause.

The restraint territory shall be within the Magisterial Jurisdiction of _____, which is engaged in a business similar to that of _____.

SIGNED at *(place)* on this *(day, month, year)* in the presence of the undersigned witnesses

Witnesses:

- 1
- 2

(Signatures of witnesses)

(Signature of employer)

SIGNED at *(place)* on this *(day, month, year)* in the presence of the undersigned witnesses

Witnesses:

- 1
- 2

(Signatures of witnesses)

(Signature of employee)

ANNEXURE A

Definitions

In this agreement, unless the context otherwise indicates:

“Annual leave pay” means an amount equivalent to the remuneration the employee would have earned for working for a period equal to the period of his/her annual leave and is calculated at the rate of remuneration the employee earns immediately before the beginning of the annual leave period;

“Calculating annual leave pay, notice pay or severance pay” means that the employee’s remuneration, in money and/or in kind, is taken into account, but excluded are the following: payment in kind that is given to the employee, gratuities, allowances paid in order to enable the employee to work and any discretionary payments not related to the employee’s hours of work or work performance;

“CCMA” means the Commission for Conciliation, Mediation and Arbitration;

“Child” means a person who is under 18 years of age;

“Day” with reference to normal working hours, overtime and a compressed working week means a period of 24 hours calculated from the time when the employee normally commences work;

“Duration of employment” with reference to determining the employee’s length of service with the employer for any provision of this agreement means that previous employment with the employer will be taken into account, provided the break between the periods of employment is less than one year;

“Earnings” in respect of unemployment insurance contributions means any payment in cash and/or in kind made or owing to the employee which arises out of his/her employment, but excludes the monetary value of training, commission, a share in takings, a production bonus, remuneration for overtime and special bonuses or allowances;

“Family responsibility leave” means leave granted in terms of paragraph 16 of this agreement and is applicable only if the employee has completed four months of employment with the employer and he/she works for four days or more per week;

“Leave cycle” in respect of annual leave and family responsibility leave means a period of 12 months’ employment with the employer which immediately follows the employee’s commencement of employment or the completion of the employee’s previous leave cycle;

“Leave cycle” in respect of sick leave means a period of 36 months’ employment with the employer which immediately follows the employee’s commencement of employment or the completion of the employee’s previous sick leave cycle;

“Medical practitioner” means a person entitled to practise as a medical practitioner in terms of [section 17](#) of the Medical, Dental and Supplementary Health Service Professions Act [56 of 1974](#);

“Midwife” means a person registered or enrolled to practise as a midwife in terms of section 16 of the Nursing Act 50 of 1978;

“Month” means a calendar month;

“Night work” means work performed after 18:00 and before 06:00 the following day;

“Operational requirements of the employer” means requirements based on the economic, technological, structural or similar needs of the employer;

“Public holiday” means any recognised public holiday in terms of the Public Holidays Act [36 of 1994](#);

“Regular night work” means night work performed on a regular basis, that is where the employee works for a period of more than one hour after 23:00 and before 06:00 at least five times per month or 50 times per year;

“Remuneration” means any payment, in money and/or in kind, made or owing to the employee in return for his/her rendering of services to the employer;

“Wage” means the amount of money paid or payable to the employee in respect of ordinary hours of work or, if they are shorter, the hours the employee ordinarily works in a day or a week;

“Week” means the period of seven days within which the working week of the employee normally falls.