

2014

DOMESTIC WORKER

manual

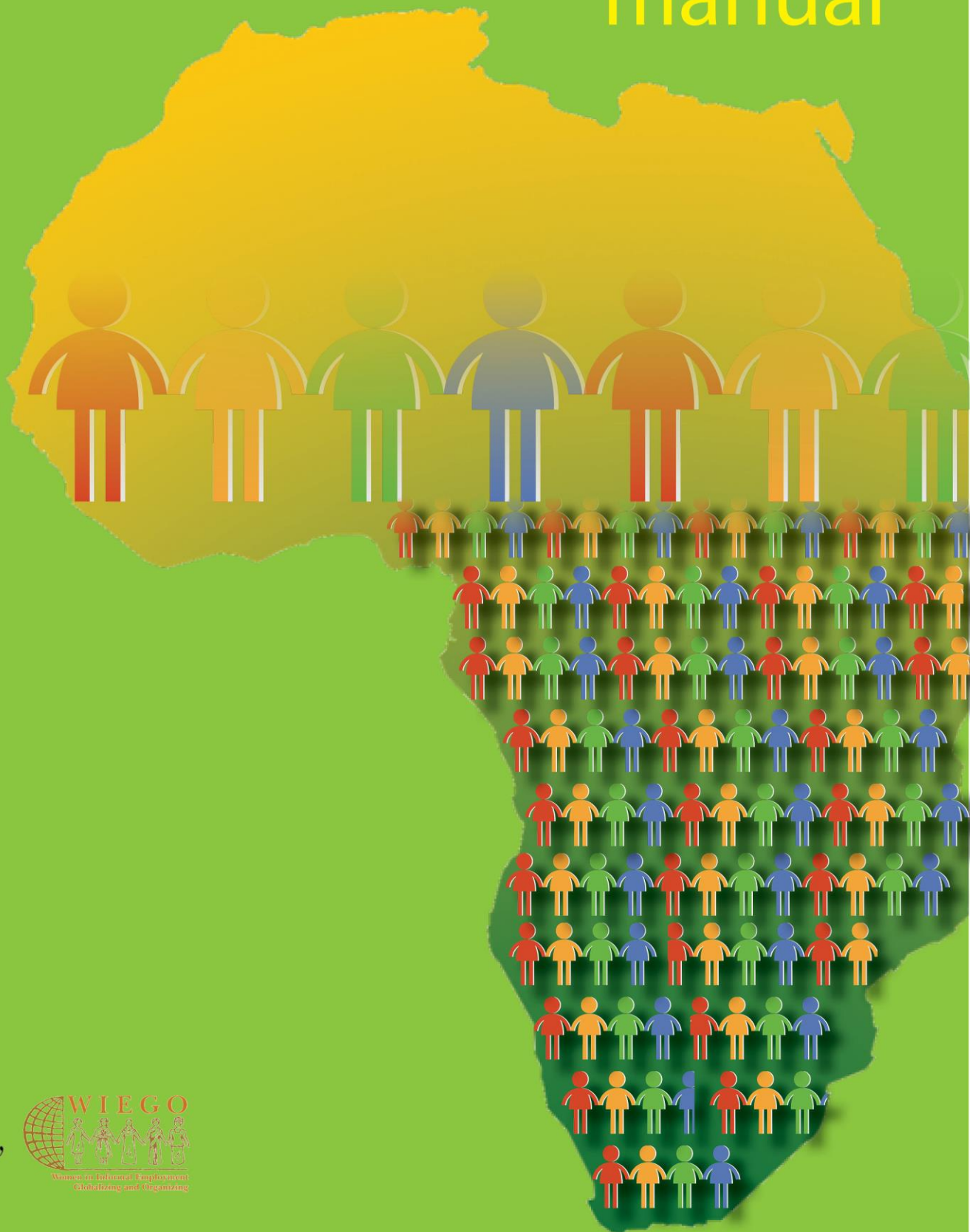


TABLE OF CONTENTS

	PAGE
1. WHAT IS THIS MANUAL ABOUT?	3
2. NOTE TO THE FACILITATOR	4
3. WHO IS THIS MANUAL AIMED AT?	6
4. CHALLENGES FACING DOMESTIC WORKERS	7
<i>ACTIVITY 1 : The Challenges you face</i>	7
5. UNDERSTANDING YOUR RIGHTS : WHAT THE LAW SAYS	10
<i>ACTIVITY 2 : Knowing the Legislation</i>	10
<i>ACTIVITY 3 : Our experience of the law and its implementation in your workplace</i>	21
<i>ACTIVITY 4 : Overcoming the challenges</i>	22
6. STRENGTHENING YOUR RIGHTS	23
<i>ACTIVITY 5 : What changes should be made to the law</i>	23
7. COLLECTIVE BARGAINING FOR DOMESTIC WORKERS	28
<i>ACTIVITY 6 : Strengthening your bargaining positioning</i>	29
8. ORGANIZING DOMESTIC WORKERS	30
<i>ACTIVITY 7 : Organizing as Domestic Workers</i>	31
9. RESOURCES	32

1. WHAT IS THIS MANUAL ABOUT?

In 2007, the Women in Informal Employment: Globalising and Organising (WIEGO) network launched a project on Law & Informality as a pioneering way to meet an increasing demand from informal workers for support to engage with the law. The project began as a pilot in India and was then expanded, to Ghana, Peru, Thailand, South Africa and Columbia. The project was supported by grant funding from the Dutch Government under the FLOW Project.

OVERALL PROJECT OBJECTIVES

- a. Women leaders of membership-based organizations (MBO) in the informal economy in three occupational groups, domestic workers, home-based workers, street vendors will be empowered to:
 - know and share information about their legal rights,
 - defend themselves against punitive laws and legal practices, and
 - demand fair laws and their effective implementation.

- b. In each sector the relevant local legal community and other mainstream observers will better understand:
 - the reality of informal work for these sectors,
 - the gap or mismatch between existing legal frameworks and this reality,
 - the need to reform existing laws and legal practices to protect and support the working poor, and
 - the need to involve the working poor in the legal reform process

2. NOTE TO FACILITATOR

This manual has been written so that it can be used in a flexible way. Domestic workers or those who are interested in the issues can read it for the information it contains. But it can also be used by educators to run workshops, or run education sessions in meetings.

Here are some ideas about how the material can be used:

1. If you have a half or a whole day, you can put together a workshop using the activity sheets in this manual. These activity sheets are aimed at getting the participants to think about the issues and how they would deal with them. You will also need to make sure that participants understand the information contained in this booklet. You can share the information in many different ways. For instance:
 - you can make an input
 - you and the participants can take turns reading sections out loud and then discussing them
 - you can use a poster to discuss important information with the participants
2. If you only have a half hour or so in another meeting to raise the issues, you can choose one or two worksheets to use. Or you can identify important information that you want to share and use one the ideas outlined above to get it across.



Most of the activities suggest breaking participants up into groups of four or five each. This is a good size group that allows everyone to feel comfortable and able to participate. But it might not be practical if you have a large number of participants in your workshop and limited space for breakaway groups. Then your groups might need to be larger. Or if you have a very small number of participants in the workshop, it might not make sense to break into groups. You will need to make a decision based on the particular circumstances facing you.

Before the participants break into groups:

- Make sure that they understand the activity and what they are meant to do;
- Ask them to elect a facilitator for the group who can guide discussion, as well as a scribe who can report back.
- Make clear how much time the groups will have for the activity.



3. WHO IS THIS MANUAL AIMED AT?

Gladys has been employed by the same employer for the last 10 years. She travels in and out every day. When she is late, her employer shouts at her, even if it is not Gladys fault, but because the trains were running late. Gladys must look after two children, a boy of 4 and a girl of 2, and she is also expected to keep the house clean. Even though her employer says that the children must be her priority, when the employer sees that the ironing is not finished or the corners have dust in them she gets very angry and says that Gladys is being lazy. Gladys has a contract with the employer and the employer abides by the conditions set in the Sectoral determination. She even pays Gladys above the minimum wage. But for Gladys, the attitude of her employer is a problem and she would like to leave. But she is too scared too, in case she can't find another job.

Gladys works four different people that she works for on different days of the week. For one of them she works for two days of the week, so she has work every day of the week. She is HIV positive and so needs to go the clinic every month for a check-up. She doesn't want to tell any of her employers that she is HIV positive in case they fire her. So she has to make up all sorts of stories about why she has to have one day a month off.

Thembi is a live-in domestic worker. She looks after the children and cleans the house. One day her employer says she should stay over during the week to avoid all the transport problems that cause her to be late. Thembi agrees. It was only after a year of this arrangement that she realized that the employer was deducting money from her wage for accommodation. She had never discussed this with Thembi, and they had never agreed on an amount. They had a big fight about it, and Thembi decided to leave. But now she is struggling to find a job.

Do these stories sound familiar? Have you, or someone you know had a similar experience?

As domestic workers, you are among the most vulnerable and exploited layer of workers. This manual is meant to help you to understand your rights, and to develop strategies for protecting and advancing those rights.

4. CHALLENGES FACING DOMESTIC WORKERS



ACTIVITY 1 The challenges you face

AIM

- to share your experiences of the challenges facing you as domestic workers
- to begin to identify collectively ways of overcoming these challenges

TASK

Work together in groups of four or five.



FIRST STEP

On your own, make a list of the five biggest challenges you face every day as a domestic worker.



SECOND STEP

Share your list with others in your group. Now, as a group, make one list of the five biggest challenges that are common to all of you.



THIRD STEP

Discuss the following questions:

1. Which of these challenges are faced by all women workers and which of them are challenges specific to domestic workers?
2. What do you think are the causes of these challenges?
3. What do you think can be done to overcome these challenges?

The stories in the previous section show that as domestic workers you face many challenges. Some of these are challenges that all workers, particularly women workers, face. But some of the challenges are very specific to your work as domestic workers. In this section we highlight many of these challenges. In the next section we then go on to look at the labour law that affects domestic workers. We ask the question of how the legislation can help you to deal with these challenges.

WORK IN ISOLATED CIRCUMSTANCES

You work in conditions where it is mostly just you, or maybe two of you, employed by someone in the privacy of their home. This makes it difficult to build solidarity, to organise, or to use the collective strength of many workers to improve your conditions.

This is perhaps the biggest challenge facing domestic workers because it weakens your collective strength to fight for better conditions.

VULNERABLE TO ABUSIVE CONDITIONS

With domestic workers working in such isolated conditions it is difficult for you to fight against abuse in the workplace. This abuse could include sexual harassment, racist abuse, and verbal abuse, making you work very long hours and so on.

THE EMPLOYER DOESN'T FOLLOW THE BASIC CONDITIONS SET OUT IN THE LAW THAT APPLIES TO DOMESTIC WORKERS - SECTORAL DETERMINATION 7:

Sometimes the employer doesn't know what all the conditions in the Sectoral Determination are and so they don't follow them. Or sometimes they don't implement the conditions because they think it will cost too much money.

It is often difficult for you as domestic workers to challenge your employers because you feel isolated. You might have a very real fear that if you challenge your conditions, you will be dismissed.

ENFORCEMENT OF SECTORAL DETERMINATION 7 BY THE DEPARTMENT OF LABOUR IS DIFFICULT

There are not enough inspectors to go around checking up on the conditions of all the domestic workers in the country. Inspectors are meant to have the power to enter a workplace in order to carry out their duties. In the case of domestic workers they do have the power to enter a private home without permission of the home owner.

EMPLOYERS EXPECT YOU TO FOLLOW MANY RULES AND IT IS DIFFICULT TO CHALLENGE THEM ON THIS

Employers make a whole lot of rules about how you must behave and work in their house. They might say that you can't take or make any personal calls at all, even if it is on your own cell phone. They might be very strict about what food you eat and not share their own food with you.

None of these rules appear in the Sectoral Determination or any other legislation, but they become part of your conditions of work. Even if the rule seems unreasonable to you, it is very difficult to challenge because you are working in the employer's private home

5. UNDERSTANDING YOUR RIGHTS: WHAT THE LAW SAYS



ACTIVITY 2 Knowing the Legislation!

AIM

- To begin to familiarise participants with the different pieces of legislation that impact on domestic workers

TASK

You will work together in groups of two or three.

In column 1 of the table below there is a list of statements about the provisions of different laws. Column two is a list of the different laws. But the two columns are all muddled up!

You need to draw a line between the statement in column one and the law that you think is being referred to in that statement.

After 20 minutes the facilitator will take report backs and clarify what each of the laws covers.

What the law provides for	Which law is it referring to?
Pays benefits to workers who are on maternity leave or are unemployed	Employment Equity Act
Referral of an unfair labour practice to the CCMA	Sectoral Determination
Employer cannot discriminate because of employees' HIV status	Sectoral Determination
Sets out the minimum wages that must be paid to domestic workers	Unemployment Insurance Fund Act
Normal time worked is 45 hours. Any time over this must be paid at overtime rates.	Labour Relations Act

You need to have a good understanding of the laws and regulations that affect your employment. This is one important way of trying to overcome the challenges facing you. In this section we are going to focus on South Africa laws. But before we look at these it is important to look at an international agreement for domestic workers, called **Convention 189 for Domestic Workers**.

5.1. Convention 189 for Domestic Workers

This agreement was negotiated at the International Labour Organisation (ILO) and adopted by them on 16 June 2011. The South African government ratified it on 7 June 2013. This means that the government agreed to abide by all the provisions of the Convention.

The adoption of this Convention by the ILO and its ratification by South Africa is a great victory for domestic workers worldwide. For the first time it puts into place a minimum set of standards for domestic workers around the world. It emphasises that domestic work must be 'decent work'.

Most of the standards set in this Convention are already part of the law in South Africa, but there are still some gaps.

5.2. South African Labour Legislation

In South Africa, domestic workers are covered by almost all the labour laws. These include:

- The Labour Relations Act 66 of 1995
- The Basic Conditions of Employment Act of 75 of 1997
- The Employment Equity Act 55 of 1998
- The Unemployment Insurance Act 63 of 2000

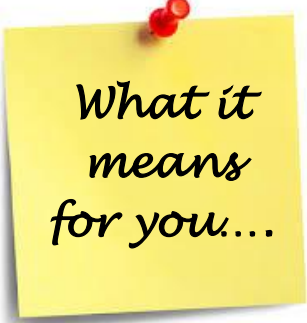
The only law that you are not covered by is the **Compensation for Occupational Injuries and Diseases Act (COIDA)**. This Act deals with compensation to be paid to workers if they injure themselves, get sick, or die, while at work, or as a result of work. Because you are not covered by COIDA, the only way that you can force your employer to pay compensation if you are injured or get sick as a result of work is to sue them. But the reality is that this is

very unlikely to happen because of the huge costs involved. There is some hope that this situation will change soon. The Minister of Labour has said that domestic workers will be included under COIDA when amendments are made to the Act. It is not clear, however, when this will happen.

Here is a brief summary of the most important provisions of the Acts that do cover domestic worker, and what they mean for you.

- **The Basic Conditions of Employment Act of 1997 (BCEA)**

This Act sets out the basic conditions of work such as working hours, leave, and dismissal. But it does not deal with wages. Instead, it says that the Minister of Labour can make a Sectoral determination for sectors where vulnerable workers are employed, like domestic workers.

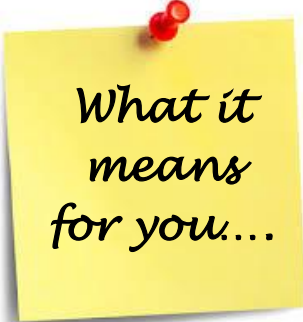


What it means for you...

*There is a Sectoral determination for domestic workers called **Sectoral Determination 7: Domestic Workers Sector (SD7)**. This covers wages as well as the other conditions of work covered by the BCEA. We look at the details of this on the next page.*

- **The Unemployment Insurance Act of 2000 (UIF)**

The Unemployment Insurance Act deals with the contributions that employers and employees must pay to the Unemployment Insurance Fund, and the benefits that can be paid out to workers from this fund. The benefits include unemployment, illness, maternity, adoption and dependant's benefits. The Act covers all employees that work for more than 24 hours in a month.



What it
means
for you...

Domestic workers have been covered by this Act since 2003. If you are employed for more than 24 hours a month, then you are covered by the provisions of this Act and can **claim UIF**. Employers must register with the UIF, and also register you when you start working for them. The employer must contribute 1% of the wage she pays to the UIF. You must also contribute 1% of what your wage. The employer will deduct your 1% from the wage she pays, and then pay both her contribution and your contribution over to the Fund.

One of the important provisions in this Act allows domestic workers who are employed by different employers on different days to be **registered for each of the jobs that you do**. If you lose one of your jobs, with the result that your income falls below the benefit level you would have received if you had lost all your jobs, then the UIF will pay you out a certain amount to compensate for that lost job.

- **The Labour Relations Act of 1995 (LRA)**

The LRA regulates relationships between the employer and employees. It makes provision for organisational rights for trade unions, sets out a collective bargaining framework, regulates strikes and lockouts, sets out a dispute resolution process and deals with unfair dismissals.



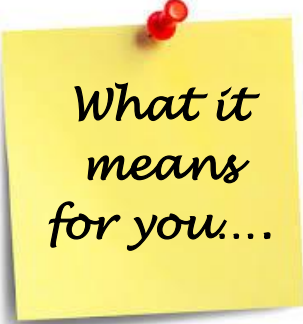
What it
means
for you....

One of the problems of the LRA for domestic workers is that it was largely written for workers in large formal workplaces, rather than workers in isolated, individual private homes. Despite this, there are some provisions in the Act which are important for domestic workers.

For example, the LRA sets out the **dispute resolving mechanisms** that can be followed if you and the employer are in dispute. The Act provides for the **Commission for Conciliation, Mediation and Arbitration (CCMA)**. This is an independent body that can resolve disputes between employers and employees through conciliation, mediation and arbitration. If you have a complaint against your employer, that they are not following the law, then you can refer that complaint to the CCMA.

- **The Employment Equity Act**

This Act deals with equality and discrimination in the workplace. It aims to eliminate unfair discrimination, and at the same time, put in place affirmative action measures to ensure greater equity in the workplace.



*What it
means
for you...*

*The section dealing with **affirmative action** does not apply to most domestic workers as it only applies to workplaces where 50 or more workers are employed.*

*The section dealing with **discrimination** is relevant for you. The Act says that you cannot be discriminated against on a number of grounds, including race, gender, age, pregnancy, marital status, family responsibility, and HIV status. This means that the employer cannot refuse to employ you because you are planning a family, or because you are HIV positive. It also means that if the employer employs more than one domestic worker then both of you must be paid equal wages for work of equal value.*

5.3 SECTORAL DETERMINATION 7: DOMESTIC WORKERS SECTOR

Domestic workers are covered by a specific Sectoral determination – Sectoral Determination 7: Domestic Workers Sector (SD7). This sets out the minimum standards that must apply to domestic workers. It is very hard for domestic workers to negotiate over wages and conditions. At a local level it would generally be one worker negotiating against one employer and in that situation the worker can't draw easily on collective strength and support for the negotiation process. National level negotiations is even less likely to happen because of the huge number of employers and employees – all split up into individual households. The Sectoral Determination is one way to try and strengthen the position of domestic workers so that your working conditions can be improved. The problem with the Sectoral Determination is that it is finalised by the Minister of Labour and although there is a process of consultation leading up the final determination, at the end of the day the Minister decides what goes into it.

It is important to note that the Sectoral Determination covers all domestic workers, including those who are employed by an agency, and those who are employed as independent contractors.

What the Sectoral Determination sets out is meant to be minimum standards only. For example, the employer cannot pay you below the wage level set in the Sectoral Determination, but they can pay you higher than the minimum. How much higher they pay you is for you and the employer to negotiate.

WHAT DOES THE SECTORAL DETERMINATION (SD) SAY?

Wages

The employer must pay you *at least* the minimum wage set out in the SD. This means that they can pay you more, but they cannot pay you less.

There is not just one minimum wage. There is a difference if you are employed for more than 27 ordinary hours in a week, or if you are employed for less than 27 hours in a week. The SD also says that there is a different minimum wage if you are employed in Area A or in Area B. The larger municipalities and the metros (like Cape Town or Johannesburg) are in Area A. You need to check which rate is the right one for you depending on where you work, whether you work for more or less than 27 hours in the week, and whether you are paid an hourly, weekly or monthly rate.

Annual wage increase

The employer must increase the wages every year, with the increase linked to the inflation rate.

Payment of wages

Wages must be paid on the normal pay day that has been agreed to, and must either be paid with cash or a cheque in a sealed envelope, or by direct deposit into your bank account.

Pay slip

On every pay day you must get a payslip which shows information relevant to the wages.

This includes:

- employer's name and address
- your name and address
- the period for which you are being paid
- your wage rate and overtime rate
- the number of ordinary hours worked
- the number of overtime hours worked
- the number of hours worked on a public holiday or Sunday
- the wage rate
- details of any deductions made
- the actual amount paid

Lawful and unlawful deductions

Your employer cannot make you pay for

- any training you receive
- any work equipment or tools that you are supplied with
- any work clothing that you are supplied with
- any food provided for you while at the workplace

The employer cannot force you to buy any goods from them or from any particular person or shop.

Your employer cannot fine you.

The employer can only make deductions from your wage under the following circumstances:

- You have been absent from work on unpaid leave. In this case, the employer can deduct an amount proportionate to the amount of time you were off.
- The employer provides accommodation. The employer cannot deduct more than 10% of your wage for this and the accommodation must be in good condition and

weatherproof. It must have at least one window and one door, and a toilet and shower or bath, or you must have access to a bathroom.

- You have agreed that your contribution to a medical aid, savings, pension fund, trade union subscription, loans or rental can be deducted and the employer will pay it over to the relevant institution.

Contract of employment

You should have a contract of employment which sets out your conditions of work. It should include the following:

- full name and address of your employer
- name of domestic worker
- occupation or brief description of the work to be carried out
- place of work
- date when employment started
- ordinary hours of work
- wage rate and method of payment
- rate of pay for overtime work
- any other cash payments or payment in kind
- how frequently wages paid
- any deductions to be made
- leave
- period of notice that is needed to end employment

Hours of work

Ordinary hours: The maximum number of ordinary hours that can be worked in a week are 45 hours. Any hours worked over and above that must be paid at overtime rates.

Overtime: Overtime can only be worked if there is an agreement between you and the employer. You cannot work more than 15 hours overtime in a week. In any one working day you cannot work for more than 12 hours, which includes ordinary time and overtime worked.

Overtime must be paid at one and a half times your normal wage. On a Sunday you must be paid double your normal rate. But if you normally work on a Sunday then you must be paid at one and a half times your normal wage. You can agree with the employer that you will get time-off instead of being paid overtime.

Night work: If you do night work you must be paid an allowance, and you must either sleepover at the workplace, or transport home must be provided.

Meal intervals: If you work for more than five hours continuously, you must then be given a meal break of at least 1 hour.

Rest period: You must get at least 12 consecutive hours of rest between ending work and starting work the next day. You must also get a weekly rest period of at least 36 hours.

Public holidays: You cannot be forced to work on a public holiday. If you do agree to work, then you must be paid double your normal wage for that day.

Leave

Annual leave: You are entitled to three weeks annual leave on full pay for each year of employment. You must be paid your leave pay before the beginning of your leave.

Sick leave: During a 36 month sick leave cycle, you are entitled to the number of sick days that you would normally work in six weeks. In other words, if you work a five day week, then over the 3 year cycle, you are entitled to 30 days sick leave. If you have been off sick for more than 2 days or on more than 2 occasions within 8 weeks, then your employer can ask for a medical certificate.

Family responsibility leave: This only applies if you work for at least four days in the week for the employer. You are entitled to take five days leave when your child is sick or someone in your immediate family dies.

Maternity leave: You are entitled to four consecutive months' maternity leave. This is unpaid leave. You can take this anytime from four weeks before the child is due. You should inform the employer of when you want to start the maternity leave and when you intend to return to work, at least four weeks beforehand or as soon as is practical.

No child labour and forced labour

It is illegal to employ children under the age of 15, or to use forced labour.

Termination of service

If you have been employed for six months or less, you must get at least **1 weeks' notice**. If you have been employed for more than six months, you must get at least **4 weeks' notice**.

If you think that you have been unfairly dismissed, you can refer your case to the CCMA.

You have the **right to stay in accommodation** that your employer is providing for at least one month after receiving your notice or until your contract would have finished (whichever is longer).

If the employer says that they no longer need you to work for them for **operational reasons** (in other words, you are being retrenched), then they must pay you **severance pay**.

Operational reasons could include:

- your employer moves to another city
- your employer can no longer afford to employ you
- a child you were looking after no longer requires a child-minder
- your employer moves to a smaller house.

Severance pay is an amount equal to at least one week's full pay for every year of completed continuous service with your employer.

It must be paid on top of any other money that the employer owes you, such as leave pay and outstanding wages.

When you leave the service of the employer she must provide you with a **certificate of service**.

The Sectoral Determination is amended every year to take account of changed conditions and to increase the minimum wage. It is important that the voice of domestic workers, as an organized force, is heard in the consultation process leading up to the changes.

There are two key challenges facing domestic workers in relation to the Sectoral Determination:

- The first is how much involvement and influence domestic workers have over what is written in the Determination.
- The second is the actual implementation of the Determination. To what extent are employers implementing the provisions of the Determination?



ACTIVITY 3

Our experience of the law and its implementation in our workplace

AIM

- To learn from each other's experiences
- To deepen our understanding of the Sectoral Determination

TASK

Break into groups of 4 or 5 participants.

In your groups, discuss the following questions:

1. Compare your experiences as domestic workers. Have your employers implemented the provisions of the Sectoral Determination?
2. What conditions in the Sectoral Determination are employers most likely to ignore?
3. Compare your experiences of how you have engaged with the employer – either to improve your conditions, or to make sure the employer gives you the minimum set out in the Sectoral Determination.



ACTIVITY 4

Overcoming the challenges

AIM

- To deepen the understanding of legislation affecting domestic workers
- To explore ways in which you can protect your rights as domestic workers

TASK

Work in groups of 4 – 5 people.

- Use the educational poster which comes with the booklet.
- Read one of the scenarios outlined.
- Don't look at the solutions suggested.
- Discuss with each other how you would approach this situation.
- At the end of your discussion, you can look at the solutions suggested and see if you had similar ideas.
- Now work your way through the other scenarios in the same way.

6. STRENGTHENING YOUR RIGHTS



ACTIVITY 5

What changes should be made to the law?

AIM

- To give you an opportunity to explore what changes to the legislation would most meet your needs and interests and domestic workers

TASK

In groups of four or five, discuss the following questions.

1. Read either the pamphlet you have been given, or the section above which outlines what is in the Sectoral Determination. What changes do you think should be made to the Sectoral Determination so that it better protects and strengthens your rights?
2. Do you think there should be one minimum wage for all domestic workers, or should it be differentiated in terms of factors such as skills, experience and functions?
3. What other changes to the law need to be made in order to protect and take forward the rights of domestic workers?
4. What could be done to strengthen the position of domestic workers in fighting for changes to be made to labour legislation?

South African legislation already complies with much of ILO Convention 189. But there are some areas where the rights and interests of domestic workers needs to be better protected and strengthened. The biggest problem facing domestic workers is that the labour law has not been written In a way that takes into account your particularly vulnerable circumstances.

The sections below point to some of the areas where the provisions for domestic workers could be strengthened.

6.1. Minimum wages

Unlike workers in factories or other workplaces where there are many employees, it is hard for you as domestic workers to easily negotiate better wages and working conditions. You work in isolated conditions, and cannot negotiate as a group, but must do so with each individual employer.

The government has recognized the extremely vulnerable position of domestic workers by setting a minimum wage in the Sectoral Determination for Domestic Workers. The problem is, the minimum wage that is given the weight of law is set at the lowest level to ensure that all employers are covered.

Once a year there is a limited opportunity for the collective voice of domestic workers to be heard when the Department of Labour consults over the new minimum wage to be established. But this opportunity is very limited, and at the end of the day it is the Minister that decides on the wage rate. He may, or may not, take into account anything that the organized voice of domestic workers has said.

How can the voice of domestic workers in setting the minimum wage, and in negotiating higher wages, be strengthened?

Should different minimum wages be set for different parts of the country as is currently the case?

Should the minimum wage take into account other factors like job description, experience and skills level?

6.2. Skills development

Generally, the work that you do as domestic workers is regarded as having low skills levels. It is important that the skills that domestic workers do have are recognized. But it is also important that systematic training programmes to develop skills are put in place. Very little has happened in this regard.

What are the different skills that domestic workers have?

What training programmes would be helpful to domestic workers?

6.3. Health and safety at the workplace

You face many health and safety problems in your day to day work. For instance many of the cleaning products you use have chemicals in them which harm your skin. Sometimes you must climb ladders in unsafe circumstances to wash windows. The law does little to protect you in these cases.

For instance, at the moment, domestic workers are excluded from the Compensation for Occupational Injuries and Diseases Act (COIDA) because they work in private homes. COIDA allows for you or your dependents to be paid out of the Compensation Fund if you get sick from work, or are injured or killed at work. Because domestic workers are excluded from this, it means that if your illness is caused by your work, or you are injured at work the only thing you can do is to sue your employer. But who can afford to do that?

Many domestic workers work at workplaces where you are the only employee. There is no provision in the law for dealing with health and safety concerns through a health and safety committee or a health and safety representative in these circumstances.

How can health and safety conditions in individual households and on private property be protected?

6.4. The Employment Equity Act

While you are covered by the provisions of the Employment Equity Act that outlaw unfair discrimination, it is very difficult for you to take up cases. You might face this situation when you apply for a job and are turned down because you are HIV positive, or you lose your job because you are pregnant.

How can domestic workers be better protected against the discrimination practiced by employers in their own homes?

6.5. Better protection for workers employed by agency or labour broker

Amendments to the LRA do give some greater protection to domestic workers employed by Temporary Employment Services – like an agency or a labour broker.

Sometimes a domestic worker is employed by an agency or labour broker who then sends you to work in the house of a client. The client has made an agreement with the agency that they will pay the agency and in return will get someone to come and work in their house. Although the agency is your employer, the client or house owner directs your work. The LRA says that the labour broker is the employer, but that the labour broker and the client are jointly responsible if specific labour laws are broken. The amendments to the LRA make it clear that this means that if the worker has a case against the employer, she can make that case against either the agency or the client. It also means that any order made against an agency can be enforced against either the agency or the client.

Amendments to the LRA also protect domestic workers employed on a temporary basis. The labour broker is only meant to place a worker with a client in order to provide a temporary service to the client. Temporary service is not meant to be for more than three months, or as a substitute for an employee of the client who is temporarily absent. But we know from experience that workers often end up being as a 'temporary' worker for very long periods. The proposed LRA amendments try to prevent this. So for instance, the amendments say:

- If the worker works for longer than three months at one place, then the client will now be regarded as their employer, not the labour broker or agency.
- If the labour broker ends their services for a particular client simply in order to avoid the three month limit, then it will be treated as a dismissal.

6.6. Part-time workers

The amendments to the LRS also cover domestic workers who work part-time and who:

- Work for an employer who has more than 10 workers
- Works for more than 24 hours a month for the employer
- Has been working for the employer for more than three months.

The amendments say that employers must treat these part-time workers as well as they would full-time employers who are doing the same or similar work.

These amendments give some increased protection to domestic workers. But a big problem with the amendments is that they actually cover very few domestic workers because they only cover workers whose employers employs more than 10 workers.

6.7. Migrant workers

Some domestic workers are migrant workers from other countries. Convention 189 does not distinguish between domestic workers on the basis of their nationality or immigration status. The implication is that all domestic workers must be treated equally and fairly.

So there is a problem with the Unemployment Insurance Act, which excludes migrant workers.

And even more seriously, neither the Convention nor legislation in South Africa addresses the issue of undocumented migrant workers. This is a major problem. The only protection that undocumented migrant domestic workers have is that they can make claims against their employers if their employers are in breach of a contract of employment or basic laws such as the Basic Conditions of Employment Act. But most migrant workers would be too scared to follow up on these claims in case it makes their immigration problems worse.

7. COLLECTIVE BARGAINING FOR DOMESTIC WORKERS

Collective bargaining for domestic workers is very difficult. It is impossible to negotiate a collective agreement with thousands of individual employers, and employers have not formed themselves in an employer's organisation. So negotiations for better wages and working conditions mostly happens between individual workers and individual employers in the privacy of the employer's home.



ACTIVITY 6

Strengthening your bargaining position!

AIM

- To share experiences of how to strengthen your bargaining position in negotiations with the employer
- To explore ways in which the law could be changed to make it easier for domestic workers to negotiate with their employer

TASK

Work in groups of 4 or 5.

Discuss the following questions:

1. Think about any experiences you have had of negotiating with your employer. Share these experiences with the others in your group.
2. How could your trade union support you in these negotiations?
3. Drawing on your answers to questions 1 and 2, draw up a list of guidelines for negotiating that you could share with other domestic workers.
4. How do you think the law should be changed to make it easier for domestic workers to negotiate for better wages and working conditions with employers?

8. ORGANIZING DOMESTIC WORKERS

As domestic workers you are among the most vulnerable workers in the country. The most important way of protecting and strengthening your position is by collectively organising into trade unions.

But organising in the domestic work sector is not easy and has hit many hurdles. Workers are spread among thousands of workplaces, most of which are private homes. This makes access for trade union organisers very difficult. It is also hard to organise a large number of workers across such a large area. So trade unions of domestic workers have struggled to grow.

At present trade unions for domestic workers exist

- The South African Domestic Service and Allied Workers Union (SADSAWU) – which operates nationally

Strong trade unions in the domestic worker sector are important because:

- They can protect the rights of workers
- They can represent the voice of workers in engagements with the government. For instance, in the process of consultation over the Sectoral Determination and look for ways of strengthening that voice
- They can fight for better laws and policies for domestic workers which can help to build the organisational strength of domestic workers.



ACTIVITY 7

Organizing as domestic workers

Work in groups of 4 or 5 and discuss the following questions:

1. Think about the area that you work in. What strategies do you think the unions could use to organise more workers in your area, and keep those workers active and involved in the union?
2. What kind of issues do you think the union should be taking up more broadly?
3. Draw a poster which you could use to organise workers into the union. Your poster needs to highlight why workers should join the union

9. RESOURCES

CCMA offices:

Add in all regional offices

Department of Labour offices:

Tel: 012 309 4000

Web: www.labour.gov.za

Trade unions:

South African Domestic and Allied Workers Union (SADSAWU)

Tel: 021 448 0045

Fax: 021 4480047

Web: www.sadsawu.org

Black Sash:

Web-based resource

“You and your rights: Domestic workers”

http://www.blacksash.org.za/index.php/your-rights/labour/item/you-and-your-rights-domestic-worker?category_id=5

Can be contacted at:

National Office:

021 686 6952

info@blacksash.org.za

Black Sash National Office, Elta House, 3 Caledonian Road, Mowbray

Domestic Workers Research Project based at Social Law Project, UWC

<http://www.dwrp.org.za>

021 959 3562