

MEMORANDUM

STRIVING TOWARD PAYMENT OF A LIVING WAGE – IMPLICATIONS FOR CELLARS FALLING UNDER THE PROVISIONS OF THE BASIC CONDITIONS OF EMPLOYMENT ACT

Dear WIETA members

Over the last year many cellars have come to dispute WIETA auditor findings in audits around the issue of a minimum wage paid to temporary and contract workers employed by the cellar or by temporary employment services providing temporary labour to a cellar.

Cellars have argued that they are justified in paying temporary cellar workers, in many cases, much lower than the minimum set by the SD 13 for farmworkers, because they are operating within the legal framework of the Basic Conditions of Employment Act.

Many have referred to correspondence from Ivan Polson from the Department of Labour confirming that some cellars operate under the Basic Conditions of Employment Act and not the Sectoral Determination 13 for Farmworkers:

In a letter dated 6 March 2013 Mr Polson stated:

Where a wine cellar or pack store processes the products of that farm only, SD 13 will apply because it is incidental to that work place's farming activities.

If the cellar or pack store processes the products of other farms together with their own, the Basic Conditions of Employment Act will apply.

To determine jurisdiction, the primary activity of a workplace is considered, as well as the reason for the relationship between the employer and employee.

When WIETA sought further clarification on the implications for payment of minimum wage at these sites, Mr Polson replied:

As the BCEA does not prescribe minimum wages I cannot comment except to say that in an ideal world employees would be unionised and by collective agreement would receive agreed wages.

All the minimum wages in different sectors are just that, minimums and not average, ideal or living wages. Even the minimums in SD 13 are meant for entry level basic farm labourers' wages, and one would expect higher wages based on skills required, service periods, affordability ect.
The WIETA Code is adopted by all its members. On the issue of wages it reads:

Notwithstanding the provisions of the Sectoral Determination for Farmworkers, employers shall strive towards paying employees a living wage – enough to allow employees and their households to secure an adequate livelihood. This should be sufficient to meet basic needs such as food, clothing, shelter and education, and to have money left over for discretionary spending.

Wages and benefits paid for a standard working week, meet, at a minimum, national legal standards set by the Sectoral Determination for Farmworkers, or industry benchmark standards, whichever is highest.

In the absence of a set living wage, WIETA has taken a standpoint since February 2014 and has communicated this numerously to its members, that it regards the minimum wage set down by the Sectoral Determination ('SD 13') as the ethical benchmark on which it measures all its members , both for farms and cellars. From 1 March 2015 to 28 February 2016 the minimum wage set down by the Sectoral Determination, is R13,37 per hour.

The Minister of Labour has powers to publish a sectoral determination that applies to employers and employees who are not covered by any other sectoral determination in terms of the Basic Conditions of Employment Act. This includes setting a national minimum wage, yet currently no national minimum wage is set.

In the absence of a minimum wage set under the Basic Conditions of Employment Act, and with the understanding that cellars operate within the wine supply chain, producing an agricultural product, members of the WIETA Board has taken the SD13 – setting the only minimum wage benchmark within the sector – as the base minimum that all its members, including cellars should adhere to in order to qualify to receive an ethical certification.

To receive WIETA ethical certification, WIETA has taken the position that it cannot be considered ethical to pay temporary workers at Cellar level less than temporary workers at farm level as cellars are further up the supply chain and produce an agricultural product.

Amounts paid above the minimum wage are considered a better practice in terms of striving towards a living wage. Payment to any worker, including permanent or temporary cellar workers, less than the minimum wage set down by SD 13 is therefore regarded as a Non Compliance with the WIETA standard.

WIETA

10 March 2015