

## DEPARTMENT OF LABOUR

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### LEGAL OPINION

**TO : DIRECTOR: EMPLOYMENT STANDARDS**

**FROM : PRINCIPAL LEGAL ADMINISTRATION OFFICER**

**SUBJECT : LEGAL OPINION ON DEDUCTIONS FOR ELECTRICITY  
WHERE HOUSING IS PROVIDED FREE OF CHARGE**

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#### 1. PURPOSE

A legal opinion is requested on whether an employer (farmer) may make deductions from a farm employee's wages in respect of electricity when housing is provided free of charge and where there is no prepaid meter in the house.

#### 2. BACKGROUND

Section 8(2)(d) of the Sectoral Determination 13: Farm Worker Sector, South Africa ("SD 13") is said to be interpreted as no deductions may be made for electricity where 10% is deducted for accommodation. It is further stated that where housing is provided free of charge, what normally happens in practice is that there is a meter in the farm house whereby the electricity usage is measured. The usage, it is said is measured once a month and the cost of the electricity is deducted from the wages by the employer at no additional cost and paid over to ESKOM together with the personal cost of the employer's usage. Clarity is required on whether this type

of deduction is permitted in terms of SD 13 as it is said that it is not specifically provided for or prohibited. The view however is expressed that the employer is not gaining anything from the deduction and it is convenient for the farm employee.

### 3. APPLICABLE LAW AND DISCUSSION

#### 3.1 SECTORAL DETERMINATION 13: FARM WORKER SECTOR, SOUTH AFRICA ("SD 13")

##### **Section 8 – Deductions**

*(1) An employer may not make any deduction from a farm worker's wage except-*

*(b) a deduction not exceeding 10 percent of the farm worker's wage...for accommodation in which the farm worker ordinarily resides.*

It is evident from clause 8(1)(b) that if a farm employee lives on the farm, an employer may deduct 10% from the farm employee's wages for the fact that housing is provided for the farm employee.

*(2) An employer may only make a deduction in respect of accommodation and/or food in terms of subclause 2(a) or 2(b) respectively if –*

*(a) The food or accommodation is provided for free of charge by the employer to the farm worker at the employer's cost;*

*(b) The food or accommodation is provided on a consistent and regular basis as a condition of employment;*

*(c) ...*

*(d) In the case of accommodation, no deduction is made by the employer for electricity, water or other services; and*

*(e) ...*

It is evident from clause 8(2)(a) of SD 13 that an employer may only make a deduction (10%) in respect of accommodation if the accommodation is provided free of charge. In other words where the accommodation is provided

free of charge to the farm employee by the employer, the employer may make a deduction of 10% from the farm employee's wage for the fact that housing is provided to the farm employee.

Clause 8(2)(d) of SD 13 states that where the 10% accommodation is deducted from the farm employee's wages, no deductions can be made by the employer for electricity. Clause 8(2)(d) of SD 13 makes it very clear that no deductions can be made for electricity. The farm employee may purchase electricity via the prepaid system if such a system is in place. However, where there is no prepaid system and there is a meter in the farm house, in terms of clause 8(2)(d) of SD 13 no deductions may be made for electricity by the employer from the farm employee's wages.

### **Section 1 - Scope of application**

*(5) The provisions of the Basic Conditions of Employment Act apply to all farm workers covered by this determination and their employers in respect of any matter that is not regulated by this sectoral determination.*

In terms of section 1(5) of SD 13, the Basic Conditions of Employment Act, 1997 (Act No. 13 of 1997) ("BCEA") is applicable to all farm employees and their employers in respect of any matter not regulated by SD 13.

In view of clause 1(5) of SD 13, section 34(1)(a) of the BCEA is applicable and which states that *"An employer may not make any deduction from an employee's remuneration unless ...the employee in writing agrees to the deduction in respect of a debt specified in the agreement;*

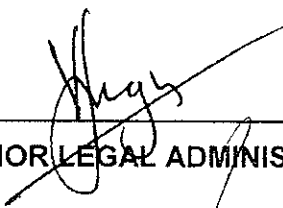
It is evident from section 34(1)(a) of the BCEA that an employer may make a deduction from an employee's remuneration if there is a written agreement in place agreeing to such a deduction. It may therefore be submitted that there may be a deduction for electricity from a farm employee's wages in terms of an agreement in writing wherein such a deduction is agreed to. In such a case there is an agreement in writing between the farm employee and the employer on the amount to be deducted for electricity as per the usage which is measured once a month.

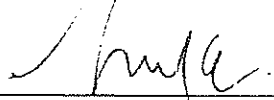
**5. FINDINGS**

- 5.1 Where the 10% accommodation is deducted from the farm employee's wages, no deductions can be made by the employer for electricity.
- 5.2 The farm employee may purchase electricity via the prepaid system.
- 5.3 Where there is no prepaid system in place and there is a meter in the farm house, an employer may make a deduction for electricity from a farm employee's wages in terms of an agreement in writing to such a deduction.

**6. RECOMMENDATION**

- 6.1 Where there is no prepaid meter in the house but a meter whereby the electricity usage is measured, an employer may only make a deduction for electricity usage by the farm employee from the wages, if there is an agreement between the employer and the farm employee wherein such a deduction is agreed to.

  
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