

THE EAST LONDON BUILDING INDUSTRY SICK PAY FUND

RULES

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RULES OF THE EAST LONDON BUILDING INDUSTRY SICK PAY FUND

1. ESTABLISHMENT AND CONTINUATION

The Fund known as the “East London Building Industry Sick Pay Fund” (hereinafter referred to as the “Fund”), established per Government Notice R 1218 of 22 June 1984, is hereby continued.

2. REGISTERED SCOPE

The registered office of the Fund shall be situated at 32(a) Belgravia Crescent, Belgravia, East London.

3. OBJECTS

3.1 The objects of the Fund is to recompense members for loss of earnings arising out of unemployment caused by:

3.1.1 Sickness; or

3.1.2 Accident; and

3.1.3 Family responsibility leave

3.2 To consider gratitudes and / or annuities for members in the case of permanent disability; and

3.3 To do all such things as are necessary, incidental or conducive to the welfare of members and to the attainment of the aforesaid objects.

4. MEMBERSHIP

4.1 Admission to membership

Membership of the Fund shall be compulsory for all employees for whom wages are prescribed in the Council’s Collective Agreement.

4.2 Re-instatement of membership

In the case of a member leaving the Industry and on condition that he qualifies for benefits when he leaves the Industry, the following provisions shall apply:

4.2.1 If his absence does not exceed three months, he shall be entitled to full benefits immediately upon returning;

4.2.2 If his absence exceeds three months but not one year, he shall be entitled to full benefits after his employer(s) has / have made contributions to the Fund for a continuous period of at least 13 weeks. During this qualification period, a member will qualify for benefits as set out in clause 7.3;

4.3 Cessation of membership

Membership of the Fund shall terminate –

4.3.1 with effect from the date of death of a member;

4.3.2 with effect from the date on which a member ceases to be employed in the Building Industry for any reason whatsoever;

4.3.3 on a finding by the Management Committee, after inquiry that the member abused the rights, privileges and benefits afforded by the Fund; and

4.3.4 in the case of any member for whom weekly contributions are not made in accordance with the provisions of the Collective Agreement.

5. INCOME

The income of the Fund shall consist of:

- 5.1 Contributions paid by employers and members into the Fund in terms of the Council's Collective Agreement and annexures thereto.
- 5.2 Interest derived from the investment of any monies of the Fund; and
- 5.3 Any other monies to which the Fund may become entitled.

6. APPLICATION FOR BENEFITS

Application for benefits from this Fund must be made to the Council's offices (being the registered office of the Fund) on the form prescribed for this purpose by the Management Committee from time to time, and obtainable at the Council's offices, and accompanied by:-

- 6.1 In the case of sick benefits:
 - 6.1.1 a medical certificate in the form prescribed by the Management Committee for this purpose from time to time;
 - 6.1.2 a certificate (application) from the employer in the form prescribed by the Management Committee for this purpose from time to time in the case of all member;
 - 6.1.3 a police report if required in the form prescribed for this purpose by the Management Committee from time to time in cases where the incapacity in respect of which the member is applying for benefits resulting from an accident, assault, or wilful injury;
 - 6.1.4 applications for sick benefits shall be made to the Council's offices not later than thirty (30) days from the commencement of the period in respect of which the benefits are applied for. Applications received later than thirty (30) days shall only be considered for payment at the discretion of the Management Committee and on such terms as the Management Committee may determine.
- 6.2 In the case of permanent disability:
 - 6.2.1 a medical practitioners certificate in a similar form to that used for applications of this nature from both of the Council Retirement Funds;
 - 6.2.2 any further information or medical examination called for by the Management Committee.
- 6.3 In the case of family responsibility leave:
 - 6.3.1 a certificate signed by a medical practitioner stating the nature and duration of his wife's, child's or biological parent's illness;
 - 6.3.2 the original death certificate or a certified copy thereof;
 - 6.3.3 applications for family responsibility leave benefits shall be made to the Council's offices not later than thirty (30) days from the commencement of the family responsibility leave. Applications received later than thirty (30) days shall only be considered for payment at the discretion of the Management Committee and on such terms as the Management Committee may determine.

7. QUALIFICATIONS FOR BENEFITS

No payment shall be made to a member in terms of clause 8:

- 7.1 if the applicant fails to supply any relevant information which the Management Committee may require;
- 7.2 unless his employer(s) has / have made contributions to the Fund in terms of the relevant clauses and annexures to the collective agreement in respect of a waiting period of at least 13

weeks, to qualify for full benefits in terms of sub-clause 8.1, or has been reinstated in terms of clause 4.2.1;

7.3 during the 13 week qualifying period, set out in sub-clause 7.2, an employee will qualify for paid sick leave as follows:

7.3.1 One (1) day, after five (5) completed weeks service; a further one (1) day after ten (10) completed weeks service; and full benefits as set out in sub-clause 8.1 after thirteen (13) weeks service, provided contributions to the Fund have been made in accordance with the relevant clause and annexures to the collective agreement.

8. PAYMENT OF BENEFITS

Claims submitted by a member or an employer shall be accepted and paid by the Fund in the order in which they are received by the Fund.

8.1 Sick benefits

A member who by reason of sickness or accident is unable to follow his employment shall be entitled to sick benefits in accordance with the following provisions:

In a cycle of one year from the date on which a member is unable to work, the following benefits shall be payable:

75 % (per cent) of the wage prescribed for him per working day, for a period of fifteen (15) working days; thereafter 50% (per cent) of the wage prescribed for him per working day for fifty (50) working days and thereafter, with the Council's permission, 25% (per cent) of the wage prescribed for him per working day for a period of sixty-five (65) working days.

8.1.1 an employee who is eligible for benefits in terms of sub-clause 7.1 shall be entitled to receive from the Fund a stamp as prescribed in Agreement for his category, if during any week in which he is unable to work on account of sickness or injury he has not received a stamp. No stamp shall be issued in respect of the period of the official annual building recess;

8.1.2 sick benefits shall commence from the first day on which an employee is unable to follow his employment due to sickness or accident;

8.1.3 Notwithstanding the provisions in paragraph 8.1.1, when a member, after having received sick benefits for the full period in terms of sub-clause 8.1 and in respect of whom an employer again makes contributions to the Fund for a period of at least 13 weeks, or resumes work, a new cycle of one year shall start from that date on which such member is again unable to work, and thereafter the provisions of sub-clause 8.1 and 8.1.1 shall *mutatis mutandis* apply.

8.2 Permanent disability – Application for benefits under this heading shall be considered from –

8.2.1 employees who, in the opinion of the Management Committee, satisfactorily show that they are or were *bona fide* employees in any operations normally performed by employees in the Building Industry covered by the Main Agreement;

8.2.2 employees included in the category referred to above who are incapable of working at their trade due to an injury, loss of sight and physical incapacity other than cases adequately covered by the Occupational Health & Safety Act;

8.2.3 employees in receipt of benefits prescribed in sub-clause 8.1 who are permanently disabled and incapable of working at their trade and / or occupation;

8.2.4 The scale of benefits shall be based on the applicant's potential earning capacity, if any, outside the Building Industry and in relation to years of employment in the capacity referred to in paragraph 8.2.1, but shall not be in excess of 10 days wages for any one member per annum;

8.2.5 Payment made under this sub-clause are *ex gratia* and at the absolute discretion of the Management Committee whose decision shall be final, and the Management Committee shall not be obliged to give any reason for any decision.

8.3 Family Responsibility leave

An employee for whom membership of the Fund is compulsory in terms of the Council's Collective Agreement shall be entitled for five days in any one stamp cycle. Family responsibility leave will be paid in the case of death of immediate family, spouse, child or parent. A death certificate must be produced as proof of the claim. "Spouse" means legal spouse / common law spouse, or any spouse married as to the custom of their religion or race.

Serious illness of a member's family as defined above will also be considered by the Council. A doctor's certificate must accompany any such claim. The granting of family responsibility payment for illness will be at the sole discretion of the Management Committee and its decision will be final.

8.4 If an employee has received benefits to which he is not entitled under the provisions of sub-clause 8.1 and 8.2.4 hereof, he shall be liable to repay to the Fund the amount of the benefits so received: Provided that if the Management Committee deems it inequitable in any particular case to demand repayment of the whole amount, it may in its discretion demand repayment of any lesser amount, or relieve such employee of the repayment of the whole amount.

8.5 Benefits as provided for in clauses 8.1, 8.2 and 8.3 will be off-set cumulatively against the sick benefits set out in 8.1 and benefit payments made in the order in which applications are received.

9. CONDITIONS OF PAYMENT

9.1 Sick benefits shall continue only during such time as the medical practitioner's and / or dentist's certificate certifies the member unfit to resume work. During the course of any sickness or incapacitation, the member shall furnish the Secretary with the medical practitioner's and / or dentist's certificate as often as may be required by the Management Committee, failing which no sick benefits shall be paid for such period.

9.2 No member shall engage in employment, whether for remuneration or not, during the period he is in receipt of benefits.

9.3 Should a member follow any remunerative occupation during the period he is in receipt of benefits or draw Unemployment Insurance Fund benefits without the consent of the Management Committee, he shall refund the benefits received.

9.4 The Secretary of the Fund may on behalf of the Council or Management Committee call for further information or medical reports and may require the member to make an affidavit.

9.5 The Fund will be responsible for payment of the doctor's account where the Fund has referred the employee for medical examination. In the event of the employee failing to keep such appointment, he will be held responsible for payment of the fee charged by the doctor for the appointment not kept.

9.6 Notwithstanding anything to the contrary contained in this clause, payments of sick benefits shall be withheld from a member who, after being requested to do so in writing by the Secretary of the Fund, omits or refuses to undergo a medical examination by a dentist or medical practitioner appointed by the Council, or who fails to comply with any other reasonable requirement of the Fund.

9.7 In cases where members leave the Republic of South Africa, payment shall be made only by the discretion of the Council.

10. EXCLUSIONS

Notwithstanding anything to the contrary contained in this clause, a member shall not be entitled to the benefits referred to in sub-clause 8.1 of this clause –

10.1 If he is absent from work due to any illness, accident or disablement falling within the provisions of the Occupational Health & Safety Act;

10.2 If he is suffering from alcoholism, drug addiction or their *sequelae* or is incapacitated through sickness due to his own wilful negligence or misconduct;

- 10.3 If he suffers injury, whether wilful or accidental, for which a third party is liable to pay and does pay compensation;
- 10.4 Whilst undergoing special treatments recommended by persons other than registered medical practitioners;
- 10.5 For injury inflicted by any military or super power, whether or not there has been a declaration of war, or due to riots or civil commotion or engaging in fighting;
- 10.6 If he engages in hunting, mountaineering, racing on wheels, professional sport or motor cycling, other than motor cycling to and from the employee's normal work;
- 10.7 If he fails or declines to observe the instruction of a medical practitioner and / or dentist or if, in the opinion of a medical practitioner and / or dentist, he had by his own wilful actions aggravated his condition or retarded his recover;
- 10.8 If a member fails to submit his application on the Fund's official form, with a medical practitioner's and / or dentist's certificate, which must clearly state the period for which such member was sick or incapacitated, to the Secretary of the Fund: Provided that, in the case of serious sickness or injury, the medical practitioner's and / or dentist's certificate shall be deemed sufficient notification.

11. BENEFITS NON-TRANSFERABLE

The benefits provided by the Fund are not transferable and any member who attempts to assign, transfer, cede, pledge or hypothecate his rights, shall forthwith cease to be entitled to any benefits, whatsoever and his membership of the Fund shall be terminated.

12. EXEMPTIONS

The Management Committee may at its discretion grant exemption from any or all of the provisions of these Rules under such terms and conditions and for such period as it may determine.

13. APPLICATION AND DETERMINATION OF RULES

- 13.1 Any dispute concerning the application, meaning or intention of any of the provisions of these rules, or concerning the administration of the Fund which the Management Committee is unable to settle, shall be referred to the Council.
- 13.2 Any member shall have the right on reasonable grounds to appeal to the Council against a decision of the Management Committee in respect of the Management Committee's interpretation or application of these rules.
- 13.3 An appeal shall be made in writing to the Secretary within fourteen (14) days of the date of the decision appealed against provided that a member who is unable to express himself easily in writing may have his appeal recorded in writing by the Secretary.
- 13.4 The decision of the Council shall be final and binding on the member and the Council shall not be obliged to give reasons for any decisions.

14. DEFINITIONS

"Application" means an application on the form prescribed for that purpose by the Management Committee from time to time and duly undersigned by the applicant or a person authorized to sign on his behalf in cases where the applicant himself cannot sign such form;

"Bargaining Council" or **"Council"** means the Building Industry Bargaining Council (East London);

"Collective Agreement" means any current agreement for the Building Industry, East London, published in terms of Section 32 of the Act, in which wages are prescribed, or in the absence of such an agreement, the last wage agreement published for the industry in terms of the Act;

"Family responsibility leave" means leave entitlement in the event of the death or serious illness of a member's legal wife, child or biological parent: Provided that a legal wife shall include a party to a customary union under ethnic law and custom or to a union recognized as a marriage under the tenets of any Asiatic religion;

“Dentist” means a person registered as a dentist under the Medical, Dental and Pharmacy Act, 1928 (Act No. 13 of 1928);

“Employer” means a registered employer as determined in the Council’s Agreement;

“Incapacity” means inability to work owing to sickness or injury not excluded in rule 10 hereof;

“Medical Certificate” means a certificate issued and undersigned by a dentist or medical practitioner who is registered under the Medical, Dental and Pharmacy Act, 1928 (Act No. 12 of 1928): Provided that in the case of an application for sick benefits received from eligible member, means a certificate in the form prescribed by the Council from time to time for that purpose;

“Medical Practitioner” means a person who is registered as a medical practitioner under the Medical, Dental and Pharmacy Act, 1928 (Act No. 13 of 1928), and includes a general practitioner and a specialist;

“Member” means an employee who is eligible for membership of the Fund and in respect of whom contributions have been made to the Fund, or who in terms of the rules of the Fund is entitled to membership of the Fund;

“Prescribed Contributions” means the relevant contributions as may be determined by the Council and published in the Council’s Collective Agreement, be it by re-enactment, extension or amendment;

“Spouse” means legal spouse / common law spouse, or any spouse married as to the custom of their religion or race.

“Wage” means that portion of the remuneration payable in money to an employee in terms of Clause 4 of Chapter 1 in respect of the ordinary hours laid down in Clause 8 of Chapter 1, provided that if an employer regularly pays an employee in respect of such ordinary hours of work an amount higher than that prescribed in Clause 4 of Chapter 1, it means such higher amount (for the purpose of this definition, “regularly” means two subsequent payment);

“Working Day” means any day other than Sunday, Public Holidays as prescribed in the Public Holidays Act, No. 36 of 1994 and the annual leave prescribed in Clause 9 of Chapter 1 of the Agreement;

“Working Week” means from Monday to Friday.