

**BUILDING INDUSTRY**

**BENEFIT FUND**

**RULES**

# BUILDING INDUSTRY BENEFIT FUND

## RULES

### 1. ESTABLISHMENT AND CONTINUATION

The operation of the Fund established under Government Notice R.1308 of 5 November 1999, formerly known as the Building Industry Sick Benefit Fund is hereby continued as the “Building Industry Benefit Fund”, and the following rules are hereby prescribed by the Council for the administration of the Fund in terms of Section 28(1)(g) of the Labour Relations Act No. 66 of 1995.

### 2. REGISTERED OFFICE

The registered office of the Fund shall be

situated at	:	F.G. Black Building 169 Haupt Street Sidwell PORT ELIZABETH 6001
Postal Address	:	Private Bag 4089 KORSTEN 6014
Telephone	:	041 453 2751
	:	041 405 1900
Fax	:	041 453 4054

### 3. DEFINITIONS

Any terms or expressions used in these rules which are defined in the Labour Relations Act (Act 66 of 1995), and any regulations framed under the said Act, shall have the same meaning as in those measures and any reference to an agreement or act shall include any amendments of such agreement or act, unless inconsistent with the context: words signifying the singular number shall include plural and vice versa, and the following expressions shall have the following meanings:-

- (i) **“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;
- (ii) **“Family responsibility leave”** means entitlement in the event of the death of a member’s spouse or life partner; or parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling; or when a member’s child is born; or when a member’s child is sick;
- (iii) **“Dentist”** means a person registered as a dentist under the Medical, Dental and Pharmacy Act, 1928 [Act No. 13 of 1928];
- (iv) **“Incapacity”** means inability to work owing to sickness or injury not excluded in rule 10 hereof;
- (v) **“Bargaining Council”** or **“Council”** means the Building Industry Bargaining Council [Southern- and Eastern Cape];
- (vi) **“Collective Agreement”** means any current agreement for the Building Industry, East Cape, 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;

- (vii) **“Committee”** means the Committee appointed as such by the Council in terms of clause 29 of the Collective Agreement;
- (viii) **“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 benefits received from workers in Areas A, B, C, D, & E, it means a certificate in the form prescribed by the Council from time to time for that purpose;
- (ix) **“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;
- (x) **“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;
- (xi) **“Military Service”** means any service or duty performed or training undergone in any division of the **South African Defence Force**;

#### 4. OBJECTS

The objects of the Fund shall be –

- (a) to recompense members for loss of earnings arising out of unemployment caused by sickness or accident and family responsibility leave;
- (b) to consider gratuities and/or annuities i.r.o. members in case of permanent disability; and
- (c) to do all such things as are necessary, incidental or conducive to the welfare of members and to the attainment of the aforesaid objects.

#### 5. MEMBERSHIP

1. Subject to the provisions of rule 7 hereof, all employees employed in the Building Industry, shall be eligible for membership of the Fund.
2. For a member to initially qualify for sick benefits and family responsibility leave benefits the employer must have made at least sixteen (16) weekly contributions immediately preceding the commencement of the period in respect of which benefits are applied for.
3. Notwithstanding the provisions of sub rule (1), a member shall not be entitled to any benefits unless he has submitted an application to the Secretary in such a manner and in such form as the Committee may from time to time determine.

#### 6. RE-STATEMENT OF MEMBERSHIP

In the event of a member leaving the industry and with the proviso that, he qualifies for benefits and family responsibility leave benefits when he left the industry, the following provisions shall apply –

- (i) if his absence does not exceed three (3) months, he shall be entitled to full benefits immediately upon returning;
- (ii) if his absence exceeds three (3) months but not one year, he shall be entitled to full benefits after his employer(s) has made weekly contributions for a period of not less than twelve (12) weeks;

- (iii) if his absence exceeds one year, he shall be entitled to benefits only after his employer(s) has made weekly contributions for a period of not less than sixteen (16) weeks;

## **7. CESSATION OF MEMBERSHIP**

Membership of the Fund shall terminate -

- (a) with effect from the date of death of a member;
- (b) with effect from the date on which a member ceases to be employed in the Building Industry for any reason whatsoever;
- (c) on a finding by the Management Committee, after inquiry that the member has abused the rights, privileges and benefits afforded by the Fund; and
- (d) in the case of any member who fails to receive weekly stamp contributions.

## **8. CONTRIBUTIONS TO THE FUND**

Contributions to the Fund shall be as follows:-

1. the member and employer Contributions to the Fund, is to be determined by the Management Committee from time to time and will be as it is reflected in the official Wage/Contribution Schedules of the Council;
2. all participating employers/employees are required to pay such Contributions to the Secretary of the Council on a monthly basis;
3. should an employer fail to pay in the required contribution amounts as indicated, the Fund can issue the necessary compliance orders and enforce such contributions i.t.o. Section 33a of the Act.

## **9. APPLICATION FOR BENEFITS**

Applications:

Applications for benefits and family responsibility leave benefits must be made to the Council's office (i.e. 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:

1. In the case of sick benefits -
  - (i) medical certificate in the form prescribed by the Management Committee for this purpose from time to time;
  - (ii) a certificate from the employer in the form prescribed by the Management Committee for this purpose from time to time in the case of all members;
  - (iii) a police report if required on 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 willful injury;
  - (iv) application for 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.
2. In the case of family responsibility leave benefits -

- (i) a certificate signed by a medical practitioner stating the nature and duration of his child's illness referred to in the definition of "family responsibility leave" in rule 3;
- (ii) the original death certificate or a certified copy thereof referred to in the definition of "family responsibility leave" in rule 3;
- (iii) 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.

## **10. PAYMENT OF BENEFITS**

### **1. Sick Benefits -**

- (a) No payment shall be made to a member -
  - (i) if the applicant fails to supply any relevant information which the Management Committee may require;
  - (ii) unless his employer(s) has made contributions to the Fund in respect of a waiting period of at least sixteen (16) weeks;
  - (iii) should the member's contribution be in arrears for 1 month or more.
- (b) Members undergoing military service in pursuance of the Defence Act, 1957 (Act 44 of 1957), shall not be entitled to any benefits whilst carrying on such service.
- (c) 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.
- (d) In cases where members leave the Republic of Southern Africa, payment will only be made at the discretion of the Management Committee.
- (e) Notwithstanding anything to the contrary contained in this rule a member shall not be entitled to the benefits referred to in sub-rule (3) of this rule -
  - (i) if he is absent from work due to any illness, accident or disablement falling within the provisions of the Workmen's Compensation Act, 1941;
  - (ii) if he is suffering from Aids, alcoholism, drug addiction or their sequelae or is incapacitated through sickness due to his own willful negligence or misconduct;
  - (iii) if he suffers injury, whether willful or accidental for which a third party is liable to pay and does pay compensation;
  - (iv) whilst undergoing special treatments recommended by persons, other than registered medical practitioners;
  - (v) for injury inflicted by any military or usurped power, whether or not there has been a declaration of war, or due to riots or civil commotion or engaging in fighting;
  - (vi) if engaging in hunting, mountaineering, or racing on wheels, professional sport, motor cycling other than motor cycling to and from employee's normal work;
  - (vii) if he fails or declines to observe the instructions of a medical practitioner and/or dentist or if, in the opinion of a medical practitioner and/or dentist, he had by his own willful actions aggravated his condition or retarded his recovery;

- (viii) if a member fails to submit his application on the Fund's official form, with a medical practitioner's and/or dentist's certificate in the case of workers in Areas A, B, C, D, & E, 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 illness or injury the medical practitioner's and/or dentist's certificate shall be deemed sufficient notification.
  - (f) Sick benefit payment shall only continue during such time as the medical practitioner 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 a 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.
  - (g) No member shall engage in employment whether for remuneration or not during the period he is in receipt of benefits.
  - (h) Should a member follow any remunerative occupation during the period he is in receipt of benefits without the consent of the Management Committee, he shall refund the benefits received.
2. Family responsibility leave benefits :-
- (a) No payment shall be made to a member -
    - (i) if the applicant fails to supply any relevant information which the Management Committee may require;
    - (ii) unless his employer(s) has made contributions to the Fund in respect of at least sixteen (16) weeks;
    - (iv) if a member fails to submit his application on the Fund's official form and to which must be attached a medical certificate obtained from a medical practitioner which must clearly state the nature and duration of his child's illness or the original death certificate or a certified copy thereof referred to in the definition of "family responsibility leave" in rule 3.
  - (b) should a member follow any remunerative occupation during the period he is in receipt of benefits he shall refund the benefits received to the Fund.
3. Sick Benefit Payment : -
- (a) A member who by reason of sickness or accident is unable to follow his employment shall be entitled to benefits in accordance with the following provisions:
    - (i) in a cycle of one year from the date on which a member is unable to work the following benefits shall be payable:
      - (aa) Workers in Areas A, B, C, D & E – calculated at 75 per cent (75%) of the upper rate of the hourly wage band of the contribution received for a period not exceeding twenty (20) working days: Provided that if a member has already claimed family responsibility leave during the cycle referred to in sub-rule 3(a)(i) hereof, the number of family responsibility leave days shall be deducted from the twenty (20) days and the balance will be available for sick leave;
    - (ii) Workers in Area A, B, C, D, & E, who by reason of the fact that he is unemployed, does not qualify for a stamp contribution from his employer during any week, shall be credited by the Fund with a special stamp contribution of such value as may be determined by the Council from time to time.

- (aa) a worker shall only be entitled to benefits if the period of his absence from work due to sickness or accident is for a period of not less than three (3) consecutive working days;
  - (ab) should the period of absence due to sickness or accident exceed three consecutive working days, benefits shall commence from the first day from which he is unable to follow his employment.
  - (iii) Notwithstanding the provisions of sub-rule (3)(a)(i) when a worker in Areas A, B, C, D & E, after having received benefits for the full period in terms of sub-rule (3)(a)(i)(aa) and in respect of whom an employer again makes contributions to the Fund for a period of at least sixteen (16) weeks, resume work, a new cycle of one year shall start from the date on which such member is again unable to work, and thereafter the provisions of sub-rule (3)(i)(aa) shall mutates mutandis apply.
- (b) Permanent Disability payment in the case of workers in Areas A, B, C, D & E -
- (i) Application for benefits under this heading shall, be considered from
    - (aa) 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;
    - (ab) employees included in the category referred to in (aa) 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 Workmen's Compensation Act;
    - (ac) employees in receipt of benefits prescribed in sub-rule (3)(a)(i)(aa) and (ii) who are permanently disabled and incapable of working at their trade and / or occupation;
  - (ii) 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 mentioned in paragraph (b)(i)(aa), but shall not be excess of an amount of R960 per annum for any one member;
  - (iii) payments made under this sub-rule 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.

#### 4 Family responsibility leave payment -

- (a) A member who by reason of the death of his spouse or life partner; or parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling; or when a member's child is born; or when a member's child is sick, qualifies for family responsibility leave, shall be entitled to the following benefits during each period of 12 consecutive months after his employer(s) has made contributions to the Fund in respect of at least sixteen (16) weeks:
  - (i) Workers in Areas A, B, C, D & E – subject to the proviso of sub-rule (3)(a)(i)(aa) hereof, payment for a period not exceeding three (3) working days in the event of any one death or serious illness of an immediate family member referred to in the definition of “family responsibility leave” in rule 3:
- (b) Workers in Areas A, B, C, D, & E, who by reason of having applied for and was granted three (3) days family responsibility leave and therefore does not qualify for a stamp contribution during that week, shall be credited by the Fund with a special stamp contribution of such value as may be determined by the Council from time to time.

**11. BENEFITS PAID IN ERROR**

If an employee has received benefits to which he is not entitled under the provisions of rule 10(3) and (4), 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 at its discretion demand repayment of any lesser amount, or relieve such employee of the repayment of the whole amount.

**12. BENEFITS INALIENABLE**

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 membership of the Fund shall be terminated.

**13. 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.

**14. MEDICAL EXAMINATION**

The Management Committee reserves the right at any time to require a member, a member's wife, child or biological parent to undergo a medical examination at the Fund's expense by any dentist or medical practitioner which it may nominate and may also require the member to make an affidavit.

**15. EX-GRATIA PAYMENTS**

The Committee shall not authorize the payment of benefits other than those provided, increase the benefits of these rules as an "ex-gratia" award.

**16. APPLICATION AND DETERMINATION OF THE RULES**

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.
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.
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.
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 decision.