

# EMPLOYMENT PRACTICES LIABILITY SECTION

## DEFINED EVENTS

Damages which the Insured shall become legally liable to pay arising out of any Employment Practices in respect of any current or former Employees, Deemed Employees or applicants for employment which occurred within the Territorial Limits on or after the retroactive date stated in the schedule, and which results in a Claim or Claims first being made against the Insured in writing during the period of insurance.

## DEFINITIONS

**Business** shall mean and be restricted to no more than that as stated in the schedule of this policy.

**Claim** shall mean written or oral notice presented by:

1. any current or former Employee, Deemed Employee or applicant for employment by the Insured; or
2. any administrative or regulatory agency, attorney or agent on behalf of such person in 1 above, that the Insured is responsible for Damages arising out of any Employment Practices. Claim includes any civil proceedings brought before the Commission for Conciliation, Mediation and Arbitration (CCMA) and/or the Labour Court or any other duly constituted court within the Republic of South Africa, in which either Damages are alleged or fact finding will take place, when either is the actual or alleged result of any Employment Practices to which this insurance applies. This includes:
  - 2.1 an arbitration proceeding in which such Damages are claimed and to which the Insured submits with the Company's consent;
  - 2.2 any alternative dispute resolution proceeding in which such Damages are claimed and to which the Insured submits with the Company's consent; or
  - 2.3 any administrative proceedings instituted before the CCMA or Labour Court in terms of the Labour Relations Act, No. 66 of 1995 (as amended, or any Act passed in substitution thereof), insofar as they may be applicable to Employment Practices covered under this section.

**Damages** shall mean monetary amounts to which this insurance applies and which the Insured is legally obligated to pay by way of a final judgement, adjudication, determination or award, or as a settlement to which the Company has agreed in writing.

Damages include:

1. the capital amount of any judgement, adjudication, determination, award or settlement;
2. any interest payable on that capital amount; and
3. the plaintiff's legal costs.

**Damages do not include:**

1. **civil, criminal, administrative or other fines or penalties, including any portion of a judgement or award that represents a multiple of the compensatory amount, punitive, constitutional, exemplary or vindictive damages;**
2. **equitable relief, injunctive or interdict relief, declarative relief or any other relief or recovery other than monetary amounts, unless specifically provided herein;**
3. **judgements or awards because of conduct which is, or is deemed, uninsurable by law;**
4. **any payments which the Insured is obliged to pay pursuant to an express obligation, whether under a statute, contract of employment or otherwise (except back pay arising from reinstatement or reemployment) in the event of termination of employment, including payment instead of notice.**

**Deemed employee** shall mean a person who is not an Employee as defined herein, but is considered as such by operation of law due to the degree of control and supervision provided by the Insured. This term may include the following workers, but only when they are considered as the Insured's Employees by operation of law: contract workers; leased workers; temporary workers; volunteers; employees of independent contractors or any individual who is an independent contractor; or non-executive directors.

**Defence costs** shall mean payments or costs for the investigation, settlement, or defence of any Claim, including:

1. lawyer fees and all other legal expenses;
2. reasonable expenses incurred by the Insured at the Company's request to assist the Company in the investigation or defence of any Claim, including actual loss of earnings because of time off from work;

**Employee** shall mean any person while employed under a contract, oral or in writing, of service or apprenticeship with the Insured, but Employee does not include any Deemed Employee.

**Employment practices** shall mean any of the actual or alleged practices listed below which are directed against any of the Insured's current or former Employees, Deemed Employees or applicants for employment by the Insured, and for which remedy is sought in terms

of the common law or in terms of the Labour Relations Act, No. 66 of 1995 (as amended, or any Act passed in substitution thereof), the Employment Equity Act, No. 55 of 1998 (as amended, or any Act passed in substitution thereof), and any rules, regulations and codes of practice as promulgated in terms of those Acts:

1. unfair refusal to employ a qualified applicant for employment;
2. unfair conduct relating to employment, promotion, demotion or training;
3. unfair suspension or other disciplinary action short of dismissal;
4. unfair dismissal including but not limited to constructive dismissal and operational terminations;
5. unfair discrimination, whether direct or indirect, including victimisation which may include discrimination on the grounds of race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, and birth as provided for in terms of the Employment Equity Act, No. 55 of 1998, or as subsequently amended or any Act passed in substitution thereof;
6. employment related sexual harassment; or
7. oral or written publication of material that, defames or violates or invades the right of privacy.

**Event** shall mean and include, but not limited to, any Employment Practices and any known, direct or indirect, facts or circumstances which may give rise to a claim under this section.

**Insured** shall mean and include:

1. the Insured as reflected in the schedule (including any person, persons, partnership, corporation or other entity also reflected as the Insured in the schedule) **but only with respect to the conduct of the insured Business;**
2. any current and former principals, partners, members or directors, officers and Employees of the Insured described in 1 above **but only with respect to their duties as principals, partners, directors, officers and Employees of the Insured as described in 1 above;**
3. any heirs, executors, administrators, assignees or legal representatives of any Insured referred to in 1 or 2 above, in the event of the death, bankruptcy or incapacity of such Insured, **but only to the extent that cover under this section would have been available to such Insured;**
4. any organisation the Insured newly acquires or forms, other than a partnership or joint venture, and over which the Insured maintains ownership or majority interests if there is no other similar insurance available to that organization provided that:
  - 4.1 the Insured must provide written notice to the Company of such acquisition or formation within 30 days of the effective date of the Insured's acquisition or formation;
  - 4.2 **cover does not apply to any Employment Practices that occurred before the Insured acquired or formed the organisation;**
  - 4.3 **cover under this provision is afforded only until the 30th day after the Insured acquires or forms the organisation;**
  - 4.4 after the end of the 30-day period in 4.3 above, cover will only apply if the new organisation is included by endorsement and any additional premium due, if any, is paid.

**No person or organisation is an Insured with respect to the conduct of any current or past partnership, or joint venture that is not named as an Insured in the schedule.**

**Territorial limits** shall mean:

1. the Republic of South Africa;
2. anywhere in the world with respect to the activities of a person whose place of employment is in the territorial limits described in 1 above, while he or she is away for a short time on the Insured's Business provided that the Insured's responsibility to pay Damages is determined in a suit (or in any other type of civil proceeding as described under the definition of Claim) on the merits in, and first brought in the Republic of South Africa under the substantive laws of the Republic of South Africa.

**Wilful or Wilfulness** shall mean acting or failing to act, with intentional or reckless disregard for the consequences of the act or failure to act.

## THE LIMIT OF INDEMNITY

The liability of the Company under this section including:

1. all Damages which the Insured shall become legally liable to pay as per the Defined Events;
2. all Defence Costs indemnifiable under this section;
3. all other costs incurred by the Company where the Company exercises its rights in terms of General Condition 7;
4. any interest accrued and payable in terms of the Prescribed Rate of Interest Act, No. 55 of 1975 (as amended, or any Act passed in substitution thereof);

**for any one Event or series of Events with one original cause or source or during any one period of insurance, shall not exceed in the aggregate the limit of indemnity stated in the schedule.** If the premium is paid monthly by debit order, the words "period of insurance" are amended to read "for any one period of 12 consecutive months from the inception or anniversary date".

## SPECIFIC EXCLUSIONS

The Company will not indemnify the Insured for any liability arising out of any Claim/s alleging, arising out of, or based on, or attributable to, or in any way involving directly or indirectly any:

1. breach of any express obligation:
  - 1.1 under any contract of employment, whether individual or collective. However, this does not apply to liabilities that the Insured would have in the absence of such contract of employment; or
  - 1.2 under any statute, contract of employment or otherwise, to make payments in the event of termination of employment, including payment instead of notice and/or redundancy payments;
2. liability assumed by the Insured under any contract, undertaking or agreement where such liability would not have attached to the Insured in the absence of such contract, undertaking or agreement;
3. laws relating to:
  - 3.1 Workers Compensation and Employers' Liability, disability benefits, unemployment compensation, or any similar laws, however this exclusion shall not apply to any Claim based upon, arising from, or in consequence of any actual or alleged retaliatory treatment of the claimant by the Insured on account of the claimant's exercise of rights pursuant to any such law;
  - 3.2 the Basic conditions of Employment Act, No. 75 of 1997 (as amended, or any Act passed in substitution thereof), the Skills Development Act, No. 97 of 1998 (as amended, or any Act passed in substitution thereof), the Occupational Health and Safety Act, No. 85 of 1993 (as amended, or any Act passed in substitution thereof), the Mine Health and Safety Act, No. 29 of 1996 (as amended, or any Act passed in substitution thereof), or any act arising solely out of a right conferred by the Constitution of the Republic of South Africa Act, No. 108 of 1996 (as amended). This exclusion also applies to any rules or regulations promulgated under any of the foregoing and amendments thereto or any similar provisions of any law and to that part of any damages awarded for the cost or replacement of any insurance benefits due to, or alleged to be due to any current or former Employee;
  - 3.3 the Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000 (as amended, or any Act passed in substitution thereof), the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No. 19 of 1998 (as amended, or any Act passed in substitution thereof) and the Extension of Security of Tenure Act, No. 62 of 1997 (as amended, or any Act passed in substitution thereof). This exclusion also applies to any rules and regulations promulgated under any of the foregoing and amendments thereto, or any similar provisions of any law;
  - 3.4 contracts alleged to be harsh, unfair, unconscionable or contrary to public interest;
  - 3.5 the administration of any employee benefit plan including but not limited to, pension, provident and retirement funds, medical schemes and deferred compensation and/or stock/share options. This includes fiduciary liability and any other liability under any such laws;
  - 3.6 the establishment or regulation of collective bargaining rights.
4. oral or written publication of material, if such material:
  - 4.1 was published by or at the direction of the Insured with knowledge of its falsity; or
  - 4.2 was first published before the retroactive date stated in the schedule;
5. conduct relating to or failure to comply with any law or any governmental or administrative order or regulation or any order or award of any court or tribunal if the act or failure was:
  - 5.1 by the Insured or with the Insured's consent; and
  - 5.2 determined by a judgement or final adjudication to be dishonest, criminal, fraudulent or Wilful.

For the purposes of this exclusion the dishonesty, crime, fraud or Wilfulness of an Insured shall not be imputed to any other Insured;
6. death or physical injury to the body, mental injury, sickness or disease of any sort including, but not limited to, post-traumatic stress syndrome, and sickness or disease of any sort sustained by any person as a result of, or arising out of, or in any way connected with any cause whatsoever;
7. Employment Practices which occur when or after:
  - 7.1 the Insured file for or are placed in bankruptcy, winding-up or liquidation; or
  - 7.2 any other business entity acquires an ownership interest in the Insured or Business which is greater than fifty per cent;
8. costs of complying with physical modifications to the Insured's premises or any changes to the Insured's business operations as may be mandated by the Employment Equity Act, No 55 of 1998 (as amended, or any Act passed in substitution thereof) or any similar legislation;
9. lockout, strike, picketing, related worker replacement(s) or other similar actions resulting from labour disputes or labour negotiations, including any claim for just and equitable compensation in terms of the Labour Relations Act, No. 66 of 1995 (as amended, or any Act passed in substitution thereof);

10. Damages in respect of judgements delivered or obtained in the first instance otherwise than by a court of competent jurisdiction within the Republic of South Africa;
11. costs and legal expenses recovered by any claimant from the Insured which are not incurred in and recoverable in the area described in 10 above;
12. Claim arising from any Event which Event was known to, or which reasonably ought to have been known by, or which was suspected by, the Insured:
  - 12.1 which Event is not reported in writing to the Company in terms of General condition 6;
  - 12.2 which Event occurred and was completed prior to the inception of this section;
13. Claim (in the event of cancellation or non-renewal of this section) not first made in writing against the Insured within the 48-month period (or extended period in respect of minors) as specified in Specific condition 2;
14. legal liability caused by, arising out of, or in any way contributed to by any Employment Practices occurring within the Territorial Limits and at any time prior to the retroactive date stated in the schedule, and which same Employment Practices continued after the retroactive date and resulted in a Claim or Claims first being made against the Insured in writing during the period of insurance;
15. first amount payable stated in the schedule which shall be applicable for each and every Claim, or any number of Claims arising from all Events of a series consequent upon or attributable to any one source or original cause. If there should be no Damages paid in respect of any Claim the Insured is still obliged to pay the applicable first amount for any Defence Costs incurred by the Company and the limit of indemnity shall be reduced by such payment.

## SPECIFIC CONDITIONS

1. Any Claim first made against the Insured as a result of a defined event reported in terms of General condition 6 (hereinafter termed reported event) shall be treated as if it had first been made against the Insured on the same day that the Insured reported the Event to the Company.
2. In the event of cancellation or non-renewal of the policy:
  - 2.1 any Claim resulting from a reported Event, first made against the Insured during the 48 months immediately following cancellation or non-renewal shall be treated as having been made against the Insured on the same day that the Insured reported the Event. If the claimant is a minor, the period of 48 months will be extended until the expiry of 12 months after the attainment of majority by the claimant;
  - 2.2 **the Insured may report an Event in terms of General condition 6 to the Company for up to 15 days after cancellation or non-renewal**, provided that:
    - 2.2.1 such Event occurred during the period of insurance;
    - 2.2.2 any subsequent Claim first made in writing against the Insured as a result of such Event shall be treated as if it had first been made on the last day preceding cancellation or non-renewal and is subject to the 48 month period specified in 2.1 above;
3. Any series of Claims made against the Insured by one or more than one claimant during any period of insurance consequent upon one Event or series of Events with one original cause or source shall be treated as if they all had first been made in writing against the Insured:
  - 3.1 on the date that the Event was reported by the Insured in terms of General condition 6, or
  - 3.2 if the Insured was not aware of any Event or could not reasonably be expected to be aware of such Events, or did not suspect an Event which could have given rise to a Claim, on the date that the first Claim of the series was first made against the Insured;
4. The Insured's right and duties under this section may not be transferred without the Company's prior written consent;
5. Subject to Specific exception 7.1, the bankruptcy, winding-up or liquidation of the Insured or of the Insured's estate will not relieve the Company of its obligations under this section.

## CLAUSES AND EXTENSIONS

### Extended reporting option

At the option of the Insured and subject to payment of an additional premium to be determined and subject to all the terms, exclusions and conditions of this section, the Company agrees to extend the period during which the Insured may report an Event in terms of General condition 6 for a period to be agreed, **but in no circumstances exceeding 36 months** [hereinafter referred to as extended reporting period], provided that:

1. this option may only be exercised in the event of the Company cancelling or refusing to renew this section;
2. **this option must be exercised by the Insured in writing within 30 days of cancellation or non-renewal;**
3. once exercised, the option cannot be cancelled by either the Insured or the Company;
4. the Insured has not obtained insurance equal in scope and cover to this section as expiring;
5. **the Company shall only be liable for a defined event which occurred after the retroactive date but prior to date of cancellation or non-renewal;**

6. Claims first made against the Insured or any reported Events by the Insured during the extended reporting period shall be treated as if they were first made or reported on the last day preceding the cancellation or non-renewal;
7. **the total amount payable by the Company for Claims made or reported Events during the extended reporting period shall not have the effect of increasing the limit of indemnity applicable as on the last day preceding the cancellation or non-renewal;**
8. **any Claim, following a reported Event during the extended reporting period, which is first made against the Insured more than 48 months after the last day preceding cancellation or non-renewal, shall not be subject to indemnification by this extension. If the claimant is a minor, the period of 48 months is extended until the expiry of 12 months after the attainment of majority by the claimant.**

Version 1	Product: Agriculture	Country: South Africa
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