



BIBC GUIDELINE: EFFECTIVE 01 FEBRUARY 2025
EXEMPTION APPLICATIONS
EXPANDED PUBLIC WORKS PROGRAMME (EPWP)

Introduction

- 1 All employers who operate within the BIBC's registered scope are bound by the BIBC's Collective Agreement, unless they have been exempted from compliance in terms of clause 57 of the Collective Agreement.
- 2 The BIBC fully supports the South African Government's Expanded Public Works Programme (EPWP) which creates temporary employment opportunities to assist in alleviating the current rate of unemployment. Exemption applications based on the EPWP have however been misunderstood or intentionally abused by employers in the past.
- 3 This guideline has therefore been issued to provide clarity to the industry and replaces all previous BIBC guidelines/directives relating to EPWP exemption applications.

Requirements for all exemption applications

- 4 Employers who wish to be exempted from certain or all of the provisions of the Collective Agreement may apply for exemption in compliance with the requirements contained in clause 57 of the Collective Agreement.
- 5 Clause 57(5) prescribes the following minimum requirements for a valid exemption application:
 - 5.1 the period for which exemption is required;
 - 5.2 the parts of the Collective Agreement from which exemption is required; and
 - 5.3 proof that the exemption has been discussed with the affected employees/workers or their representatives as well as their responses resulting from such consultation.
- 6 Clause 57(8)(i) further confirms that an exemption application will not be considered if the employees/workers and their representatives have not been properly consulted, and their views have not been fully recorded in an accompanying document.

- 7 All relevant factors will be considered when determining an exemption application which includes but is not limited to the factors listed in clause 57(8) of the Collective Agreement.
- 8 Each of those factors should therefore be dealt with specifically in an exemption application and the relevant supporting documents should be attached as proof.

Additional requirements for EPWP exemption applications

- 9 If an exemption application is based on the EPWP, an employer must also prove that the exemption application relates to genuine EPWP workers who will be working on a genuine EPWP project.
- 10 The requirements for the EPWP are set out in:
 - 10.1 The Code of Good Practice for Employment and Conditions of Work for Expanded Public Works Programmes¹ (the Code); and
 - 10.2 Ministerial Determination 4: Expanded Public Works Programmes² (the Determination).
- 11 The Determination explains that EPWP workers are workers in “*elementary occupations*” involving “*unskilled or semi-skilled*” work. It further provides specific terms and conditions such as a minimum wage rate, hours of work, leave etc, that applies to EPWP workers only.
- 12 This means that employers may not reduce the wages and benefits of their existing workforce (including for instance permanent or temporary artisans, semi-skilled workers, general workers and labourers) to EPWP rates or appoint new skilled employees at EPWP rates. Those employees must be paid in compliance with Collective Agreement and the agreed annual BIBC wage schedule.
- 13 The Determination also requires employers to give an EPWP worker a statement listing the name of the EPWP that they will be working on and the training that the worker will receive during the EPWP.
- 14 The Code provides that EPWP workers should be employed on a rotational basis from the local community with a focus on women, youth, and people with disabilities. The idea is to provide as many persons as possible with an opportunity to earn an income and gain work

¹ The 2011 EPWP Code can be downloaded from:

https://www.gov.za/sites/default/files/gcis_document/201409/34032gon129.pdf

² The 2012 EPWP Determination can be downloaded from:

https://www.gov.za/sites/default/files/gcis_document/201409/35310rg9745gon347.pdf

experience. It also deals with the selection process when appointing EPWP workers and provides a draft contract for employers to use as a template.

- 15 The infrastructure sector of the EPWP includes low-cost housing projects commonly referred to as Breaking New ground or “BNG” or “Low Cost” housing projects which are executed with funding that is made available by the National or Provincial Department of Human Settlements. This is not the same as a commercial contract with a local labour requirement; or a public tender for a construction project which has a prescribed percentage of local community participation in terms of the Preferential Procurement Policy Framework Act, 5 of 2000 and its associated regulations.
- 16 When applying for exemption on the basis of the EPWP, an employer must therefore (in addition to complying with clause 57 as set out above):
 - 16.1 explain why the project is a genuine EPWP project i.e. that it is for low-cost housing and funded by the National or Provincial Department of Human Settlements;
 - 16.2 attach the relevant underlying agreements relating to the EPWP project including an agreement that explains the funding mechanism for the project;

or

attach a letter from local, provincial or national government confirming the project’s EPWP status (which substantially complies with the example attached as “**Annexure A**” hereto);
 - 16.3 explain how many genuine EPWP job opportunities will be created during the project, for which periods those opportunities will be created, and in which elementary occupations;
 - 16.4 attach the relevant supporting documents to show that the Determination and Code have substantially been complied with such as:
 - 16.4.1 the recruitment documents;
 - 16.4.2 the EPWP appointment letters confirming the EPWP project and the nature of the unskilled or semi-skilled work; and
 - 16.4.3 a schedule listing the duration to the appointments, hours of work, wages
 - 16.4.4 and benefits; and
 - 16.5 complete and submit BIBC registration applications in relation to the employer and all EPWP workers to whom the exemption application relates.

Conclusion

- 17 Please note that each application will be assessed on its own merits and with reference to the evidence that has been provided to the BIBC.
- 18 Please further note that exemption applications based on the EPWP may be refused or granted for a limited period of up to one year and will be subject to certain conditions including but not limited to:
 - 18.1 registration with the BIBC as an employer and in relation to all EPWP workers to whom the exemption application relates;
 - 18.2 providing the BIBC with monthly participation reports submitted to government departments; and
 - 18.3 allowing the BIBC's inspectorate unfettered access to the relevant sites to monitor and enforce compliance.

All correspondence to be addressed to the Secretary

The BIBC House • 81 Voortrekker Road, Bellville 7530 • Private Bag X29, Bellville, 7535 • Tel: 021-950 7400 • Fax: 021-950 7405

Seven Oak Centre, Somerset West • Private Bag X29, Bellville, 7535 • Tel: 021-851 2160 • Fax: 021-950 7405

29 Lady Grey Street, Garlink Building, Paarl 7646 • PO Box 323, Paarl 7620 • Tel: 021-872 1505 • Fax: 021-872 2301

Unit B2, Birkenhead Building, Hermanus 7200 • PO Box 1825, Hermanus 7200 • Tel: 028-312 2861 • Fax: 028 312 2866

Email: bibc@bibc.co.za • Website: www.bibc.co.za | Registered under the Labour Relations Act No. 66 of 1995

