

# BARGAINING COUNCIL FOR THE FOOD RETAIL, RESTAURANT, CATERING AND ALLIED TRADES

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## WAITERS IN THE JURISDICTION OF THE BARGAINING COUNCIL FOR THE FOOD RETAIL, RESTAURANT, CATERING AND ALLIED TRADES

1. The council will firstly determine whether the person is an employee or not. The Council will use Section 200A of the LRA to assist in determining such.

### “200A. Presumption as to who is employee

- (1) Until the contrary is proved, a person, who works for or renders services to any other person, is presumed, regardless of the form of the contract, to be an employee, if any one or more of the following factors are present:
    - (a) the manner in which the person works is subject to the control or direction of another person;
    - (b) the person’s hours of work are subject to the control or direction of another person
    - (c) in the case of a person who works for an organisation, the person forms part of that organisation;
    - (d) the person has worked for that other person for an average of at least 40 hours per month over the last three months;
    - (e) the person is economically dependent on the other person for whom he or she works or renders services;
    - (f) the person is provided with tools of trade or work equipment by the other person; or
    - (g) the person only works for or renders services to one person.
  - (2) Subsection (1) does not apply to any person who earns in excess of the amount determined by the Minister in terms of section 6(3) of the *Basic Conditions of Employment Act*.
  - (3) If a proposed or existing work arrangement involves persons who earn amounts equal to or below the amounts determined by the Minister in terms of section 6(3) of the *Basic Conditions of Employment Act*, any of the contracting parties may approach the Commission for an advisory award on whether the persons involved in the arrangement are employees.
  - (4) NEDLAC must prepare and issue a Code of Good Practice that sets out guidelines for determining whether persons, including those who earn in excess of the amount determined in subsection (2) are employees.”
2. Should the agent not be able to determine this, the agent will then refer the matter to the Council and the Commissioner will make a determination.
  3. If it is established that the person is an employee, the Council will enforce the Council’s main agreement with includes a minimum wage.
  4. The Council’s main agreement makes provision for a minimum wage for a waiter.
  5. Should the employee be paid Commission then the council will consider this. If the amount of Commission is less than the minimum wage then the employer will have to add the difference in order to ensure that the employee receives the minimum wage.
  6. The Council does not have jurisdiction to deal with tips.