

## Basic Conditions of the Employment Act

The Basic Conditions of Employment Act (BCEA) is an act of parliament put in place by the government to regulate and protect employees from exploitation by their employers. It attempts to set minimum regulations for employers to follow. Any contract signed between an employer and an employee may not contradict the BCEA.



- Learn about various protections that you have as an employee
- Think about what is fair and not fair in a relationship between employer and employee
- How does the BCEA affect you?

Read through the summary of the BCEA below:

- Do you think that an employer can exceed the minimum conditions set by the BCEA as part of a company benefit?
- In an interview situation, do you think that an interviewer has a right to ask a female interviewee if she is planning to have children?
- What does notice period mean? How long should notice be?
- How much sick leave is an employee entitled to in a year?
- What is the maximum number of hours an employee may work in a week?

### **What is the notice period in terms of termination of employment?**

In terms of the Basic Conditions of Employment Act, any party to an employment contract must give to the other notice of termination as follows:

- One week, if the employee has been employed for 6 months or less;
- 2 weeks, if the employee has been employed for more than 6 months by not more than one year;
- 4 weeks, if the employee has been employed for more than 6 months
- A collective agreement may shorten the 4 weeks notice period to not less than 2 weeks
- Notice must be given unless it is given by an illiterate employee

### **What is the procedure for termination of employment?**

Whilst the contract of employment makes provision for the termination of employment, it must be understood that the services of an employee may not be terminated unless a valid and fair reason exists and fair procedure is followed. If an employee is dismissed without a valid reason or without a fair procedure the employee may approach the CCMA for assistance.

Pro-rata leave and severance pay might be payable.

In the event of a worker being unable to return for work due to disability the employer must investigate the nature of the disability and ascertain whether or not it is permanent or temporary. The employer must try to accommodate the employee as far as possible for example, amending or adopting their duties to suit the disability. However, in the event of it not being possible for the employer to adapt the worker's duties and/or to find alternatives then such employer may terminate the services of the worker.

The Labour Relations Act 66 of 1995 sets out the procedures to be followed at the termination of services in the Code for Good Practice, in Schedule 8.

### **What about matters such as transport allowances, bonuses, increases etc?**

These are not regulated by Basic Conditions of Employment Act and are therefore open to negotiation between the parties.

### **What does the Act says about working hours?**

A worker may not be made to:

- Work more than 45 hours a week;
- Work more than nine hours per day for a five day work week;



### **Overtime**

A Worker may not work more than three hours off overtime per day or 10 hours per week.

Overtime must be paid at 1.5 times the employer's normal wage or an employee may agree to receive paid time off.

Daily and weekly rest periods

A daily rest period of 12 consecutive hours and a weekly rest period of 36 consecutive ours, which must include Sunday, unless otherwise agreed, must be allowed.

The daily rest period by agreement be extended to 60 consecutive hours two weeks or be reduced to eight hours in any week if the rest period in the following week is extended equivalently.

### **What does the Act says about meal intervals?**

A worker is entitled to a one-hour break for a meal after not more than five hours work. Such interval may be reduced to 30 minutes, by agreement between the parties. If required or permitted to work during this period, remuneration must be paid

### **What does the Act says about Sunday work?**

Work on Sundays is voluntary and a worker can therefore not be forced to work on a Sunday.

If the employee works on a Sunday he/she shall be paid double the daily wage.

If the employee ordinarily works on a Sunday he/she shall be paid one and one-half times the wage for every hour worked. Paid time off in return for working on a Sunday may be agreed upon.

### **What does the Act say about Public holidays**

The days mentioned in the Public holidays Act must be granted but the parties can agree to further public holidays. Work on a public holiday is entirely voluntary and a worker may not be forced to work on such public holiday.

These days can be exchanged for any other day by agreement.

If the employee works a public holiday he/she shall be paid double the normal day's wage.

### **What does the Act say about annual Leave**

Annual leave may not be less than 21 consecutive days for full time workers or by agreement, one day for every 17 days worked or one hour for every 17 hours worked.

The leave must be granted not later than 6 months after the completion of the period of 12 consecutive months of employment. The leave may not be granted concurrent with any period of sick leave, nor with a period of notice of termination of the contract of employment.



### **What does the Act say about sick leave?**

During every sick leave cycle of 36 months an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.

During the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked.

The employer is not required to pay an employee if the employee has been absent from work for more than two consecutive days or more on more than two occasions during an eight week period and on the request by the employer does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury.

### **What does the Act says about maternity leave?**

The employee is entitled to at least four consecutive month's maternity leave. The employer is not obliged to pay the domestic worker for the period for which she is off work due to her pregnancy. However the parties may agree that the domestic worker will receive part of or her entire salary/wage for the time that she is off due



### **What does the Act says about family responsibility leave?**

Employee's employed for longer than four months and for at least four days a week are entitled to take three days paid family responsibility leave during each leave cycle when the employee's child is born, or when the employee's child is sick or in the event of the employee's spouse or life partner or parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

### **Can an employer make deductions from my salary without my permission?**

The Basic Conditions of Employment Act prohibits an employer from deducting any monies from the workers salary without his/her written permission. (Excluding pension, taxes and unemployment fund contributions).

**Are there any other issues, which are not regulated by the ACT?**

There are certain other issues which are not regulated by the Basic Conditions of Employment Act such as probationary periods, right of entry to the employers premises, afternoons off, weekends off and pension schemes, training/school fees, funeral benefits and savings account, however the aforementioned may be negotiated between the parties and included in the contract of employment.

**Is there any prohibition of employment?**

The Basic Conditions of Employment Act prohibits employment of any person under the age of 15 and it is therefore important for an employer to verify the age of the domestic worker by requesting a copy of the identity document or birth certificate.

**What does the Act says about other conditions of employment?**

There is no provision, which prevents any other conditions of employment being included in a contract of employment but any conditions that are less favourable than those set by the Act, should be invalid.