

BASIC CONDITIONS OF EMPLOYMENT ACT (BCEA)

1) Introduction

In addition to the impact of the common law, the law of contract, and workplace customs and practices, legislation also has an important impact on the employment relationship.

As a general rule, employers and employees may deviate from those minimum terms and conditions only to improve them for employees – not the other way round.

A basic condition of employment in the BCEA constitutes a term of any contract of employment, *except* :

- where any other law provides a more favourable term to the employee
- where the contract itself provides a more favourable term to the employee
- where the basic condition has been replaced, varied or excluded in terms of the Act.

Generally then, employers and employees may not contract out of the BCEA. Only in limited circumstances will they be able to agree to terms and conditions less favourable than those prescribed by the BCEA.

2) Scope of Application

In essence the BCEA gives effect to and regulates the constitutional right to fair labour practices. In order to do this, the Act:

- ✓ establishes and enforces basic conditions of employment
- ✓ regulates the variation of such conditions by way of various mechanisms and within a framework of so-called “regulated flexibility”.

The BCEA is applicable to everyone under the protection of Labour Law, in other words to all employees. All the persons excluded from this protection are also excluded from the BCEA. In addition to these exclusions there are also partial exclusions : certain groups of people are excluded from certain chapters of the Act.

3) Minimum Conditions of Employment

*** Working Time**

Exclusions from Chapter 2 of the BCEA:

- *Senior Managerial staff*
- *Travelling sales staff who visit customers at their premises*
- *Employees who work less than 24 hours a month*
- *Employees who earn more than R172,000 a year.*

Maximum Working Hours Regulations

- Maximum of 45 hours per week – meaning if an employee works 5 days a week, each working day may not exceed 9 hours
- If an employee works for 6 days a week, they may not do so for more than 8 hours a day

Lunch Time Regulations

- An employee is entitled to a meal interval of at least one hour after five hours of continuous work

Overtime Regulations

- Maximum of 10 hours per week, but these may be increased to 15 hours by a collective agreement
- For work done after hours (overtime) employees are paid time and a half
- For work done on Sundays and public holidays employees are paid double the normal rate of pay
- Any night work is done between 18h00 and 06h00 and is only done after prior arrangements

* **Leave**

Exclusions from Chapter 3 of the BCEA:

→ *Employees who work less than 24 hours a month.*

Vacation Leave Regulations

- A minimum of 21 consecutive paid leave days (excluding public holidays) per year for most employees. This would amount to 15 working days.

Maternity Leave Regulations

- An employee is entitled to four consecutive months' maternity leave, which may commence at:
 - ✓ any time from 4 weeks before the expected date of birth
 - ✓ on a date which a medical doctor says it is necessary health-wise
- An employee may not work for 6 weeks after the birth of her child

Family Responsibility Leave Regulations

- An employee is entitled to 3 days' family responsibility leave for every 12 months worked
- Only applicable to employees who've been employed for more than 4 months and who work more than 4 days a week

Sick Leave Regulations

- Employees are entitled to six weeks' paid sick leave in every three-year work cycle

* **Other Matters**

Wages

- Neither the BCEA or any other law stipulates minimum wages for employees.
- Employees must be paid in SA currency daily, weekly, fortnightly or monthly. Either in cash, by cheque or via direct deposit into the employee's bank account.
- The employer must provide the employee with information in writing regarding the period for which the payment is made, the amount paid, any deductions and reasons, and basic calculation of the pay.

Notice Periods

- A contract of employment for an indefinite period may be terminated by either the employer or the employee by giving notice of such intention.
- If the contract doesn't make any provision for a notice period, the BCEA provides a minimum notice period which both parties need to comply with:
 - ∞ One week if employed for six months or less
 - ∞ Two weeks if employed for more than six months but less than a year
 - ∞ Four weeks if employed for one year or more, or is a farm or domestic worker employed for more than six months
- While notice periods may generally not be shortened, the period of four weeks may be reduced to two weeks by collective agreement.
- In addition the BCEA allows the employer to pay an employee an amount equal to the salary the employee would have earned during the notice period – meaning the notice period doesn't need to be worked.

Severance Pay

- When an employee is dismissed based on the employer's operational requirements in terms of the LRA, the employer must pay the employee severance pay equal to one week's pay for each year's service to the company.
- An employee who unreasonably refuses to accept an offer of alternative employment, is not entitled to severance pay.

Certificate of Service

- An employer is required to provide an employee with a certificate of service when employment comes to an end (references).
- The reason for the termination of the employment contract may be stated only at the employee's request.

4) Children and Forced Labour

The BCEA prohibits the employment of children under the age of 15 years (minimum school leaving age) – contravention of this section constitutes a criminal offence.

Children younger than 15 years are allowed to perform in advertising, sports, artistic and cultural activities, but only in terms of regulations issued by the Minister on a ministerial or sectoral determination. These regulations place conditions on such employment. Moreover, forced labour is prohibited under the BCEA.

5) Enforcement of the BCEA

*** Courts**

The Labour Court has concurrent jurisdiction with the civil courts to hear and decide any matter concerning the BCEA. The Labour Court has wide powers to enforce the BCEA such as making compliance orders and issuing fines.

*** Inspectors**

The BCEA provides for the appointment of labour inspectors who must monitor and enforce compliance with the BCEA (and other employment laws).

6) Variation of Basic Conditions

The BCEA allows for some terms and conditions of employment to be varied in different ways. Core terms cannot be varied at all. Except for these core terms, the BCEA allows for changing, replacing or excluding other rights by way of the following:

- Variation by way of collective agreement – An agreement between trade unions and employers may change conditions of work.
- Variation by way of a ministerial determination – Primarily replaces or excludes basic minimum conditions of employment in respect of any category of employees or employers, but doesn't set minimum wages. Such determinations may vary maximum ordinary weekly working hours if:
 - the determination has been agreed to collectively
 - the operational requirements of the sector necessitate this
 - the majority of employees aren't members of a registered trade union.
- Variation by way of a sectoral determination – Another way of establishing conditions of employment is by way of a sectoral determination by the Minister in terms of the BCEA. Such a determination primarily establishes and regulates minimum wages, but can also include other conditions of employment. The Employment Conditions Commission (ECC) has to advise the Minister on a range of factors which will impact on the specific sector and area, such as:
 - the ability of employers to continue to carry on their business successfully
 - the operation of small, medium, macro and new enterprises
 - the cost of living
 - the alleviation of poverty
 - inequality in wages
 - the likely impact of the determination on current and future employment.