

### **SUMMARY OF THE BASIC CONDITIONS OF EMPLOYMENT ACT**

Summaries of legislation are ordinarily prescribed summaries of a particular Act. These summaries have to be displayed at prominent places in the workplace in order to allow employees to take notice of and understand the legislation.

The purpose of the Basic Conditions of Employment Act is to give effect to the right to fair labour practices, as guaranteed by the Constitution of the Republic of South Africa. This is done by establishing and making provision for the regulation of basic conditions of employment, thereby assisting the Republic to comply with its obligations as a member state of the International Labour Organisation.

This summary sets out the bare minimum standards that ought to prevail at a workplace at all times. Any action, conduct, policy or decision inconsistent with the Act is illegal and can be penalized.

The following summary complies with the requirements and the following pages can be displayed at a prominent place on the school premises.

**(Regulation 2)**

**BASIC CONDITIONS OF EMPLOYMENT ACT, 1997**

**SUMMARY TO BE KEPT BY AN EMPLOYER IN TERMS OF SECTION 30**

The following is a summary of the provisions of the most important sections of the Basic Conditions of Employment Act, 1997, as amended.

**1. APPLICATION OF THE ACT: SECTION 3**

The Act applies to all employees and employers, except members of the National Defence Force, National Intelligence Agency, South African Secret Service and unpaid volunteers working for an organisation with a charitable purpose.

The basic conditions of employment stipulated by the Act form part of the employment contract of those employees covered by the Act. Some, but not all, basic conditions of employment may be varied by individual or collective agreements in accordance with the provisions of the Act (see paragraph 7 below).

**2. REGULATION OF WORKING TIME: CHAPTER 2**

**2.1 Application**

Chapter 2 does not apply to senior managerial employees, employees engaged as travelling sales staff, and employees who work fewer than 24 hours a month.

**2.2 Ordinary hours of work: Section 9**

No employer shall require or permit an employee to work more than \_

- (a) 45 hours in any week;
- (b) nine hours in any day if the employee works for five days or fewer in a week;
- or
- (c) eight hours in any day if an employee works on more than five days in a week.

**2.3 Overtime: Section 10**

2.3.1 An employer may not require or permit an employee \_

- (a) to work overtime, except by agreement; or
- (b) to work more than ten hours' overtime a week.

2.3.2 An agreement may not require or permit an employee to work more than 12 hours on any day.

2.3.3 A collective agreement may increase overtime to 15 hours per week for up to two months in any period of 12 months.

2.3.4 Overtime must be paid at 1½ times the employee's normal wage, or an employee may agree to receive paid time off.

## **2.4 Compressed working week: Section 11**

2.4.1 An employee may agree in writing to work up to 12 hours in a day without receiving overtime pay.

2.4.2 This agreement may not require or permit an employee to work \_

- (a) more than 45 ordinary hours in any week;
- (b) more than ten hours' overtime in any week; or
- (c) more than five days in any week.

## **2.5 Averaging of hours of work: Section 12**

2.5.1 A collective agreement may permit the hours of work to be averaged over a period of up to four months.

2.5.2 An employee who is bound by such a collective agreement may not work more than \_

- (a) an average of 45 ordinary hours in a week over the agreed period; or
- (b) an average of five hours' overtime in a week over the agreed period.

## **2.6 Meal intervals: Section 14**

2.6.1 An employee must have a meal interval of 60 minutes after five hours' work.

2.6.2 A written agreement may \_

- (a) reduce the meal interval to 30 minutes; and
- (b) dispense with the meal interval for employees who work fewer than six hours in a day.

## **2.7 Daily and weekly rest period: Section 15**

An employee must have a daily rest period of 12 consecutive hours, and a weekly rest period of 36 consecutive hours, which, unless otherwise agreed, must include Sundays.

## **2.8 Pay for work on Sundays: Section 16**

2.8.1 An employee who occasionally works on a Sunday must receive double pay for such work.

2.8.2 An employee who ordinarily works on a Sunday must be paid at 1½ times the normal wage for such work.

2.8.3 Paid time off in return for working on a Sunday may be agreed upon.

## **2.9 Night work: Section 17**

- 2.9.1 Employees who work at night, i.e. between 18:00 and 06:00, must be compensated by payment of an allowance, or by a reduction of working hours, and transport must be available.
- 2.9.2 Employees who regularly work after 23:00 and before 06:00 the next day must be informed \_
- (a) of any health and safety hazards associated with such work; and
  - (b) their right to undergo a medical examination in connection with those hazards.

## **2.10 Public holidays: Section 18**

- 2.10.1 Employees must be paid their ordinary pay for any public holiday that falls on a day on which they would ordinarily work.
- 2.10.2 Work on a public holiday is by agreement and is paid at double the normal rate.
- 2.10.3 A public holiday may be exchanged for another day by agreement.

## **3. LEAVE: CHAPTER 3**

### **3.1 Application**

Chapter 3 does not apply to an employee who works fewer than 24 hours a month for an employer, nor to leave granted in excess of the leave entitlement under the chapter.

### **3.2 Annual leave: Sections 20 & 21**

- 3.2.1 Employees are entitled to 21 consecutive days' annual leave or, by agreement, to one day for every 17 days worked or one hour for every 17 hours worked.
- 3.2.2 Leave must be granted no later than six months after the end of the annual leave cycle.
- 3.2.3 An employer may not pay an employee instead of granting leave, except on termination of employment.

### **3.3 Sick leave: Sections 22–24**

- 3.3.1 An employee is entitled to six weeks' paid sick leave in a period of 36 months.
- 3.3.2 In the first six months, an employee is entitled to one day's paid sick leave for every 26 days worked.

3.3.3 An employer may require an employee who has been absent for more than two consecutive days, or has been absent frequently, to produce a medical certificate before paying such employee.

### **3.4 Maternity leave: Sections 25 & 26**

3.4.1 A pregnant employee is entitled to four consecutive months' maternity leave.

3.4.2 An employee who is pregnant or is nursing her child is not allowed to perform work that is hazardous to her or the child.

### **3.5 Family responsibility leave: Section 27**

3.5.1 A full-time employee is entitled to three days' paid family responsibility leave per year at the employee's request when his/her child is born or sick, or in the event of the death of the employee's spouse or life partner, parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

3.5.2 An employer may require reasonable proof of any such event.

## **4. PARTICULARS OF EMPLOYMENT AND REMUNERATION: CHAPTER 4**

### **4.1 Application**

Chapter 4 does not apply to an employee who works fewer than 24 hours a month for an employer.

### **4.2 Written particulars of employment: Section 29**

4.2.1 When the employee commences employment, an employer must supply him/her with the following particulars in writing:

- (a) The employer's full name and address
- (b) The employee's name and occupation or a brief job description
- (c) Various places of work
- (d) Date of employment
- (e) Ordinary hours and days of work
- (f) Wage or rate of remuneration, and the calculation method
- (g) Rate for overtime work
- (h) Any other cash payments
- (i) Any payment in kind, and its value
- (j) Frequency of remuneration
- (k) Any deductions
- (l) Leave entitlement
- (m) Notice period, or duration of contract
- (n) A description of any council or sectoral determination that covers the employer's business
- (o) Period of employment with a previous employer that counts towards the current period of employment

- (p) A list of any other documents that form part of the contract, indicating where a copy of each may be obtained

4.2.2 Particulars must be revised whenever the terms of employment change.

#### **4.3 Informing employees of their rights: Section 30**

A statement of employees' rights must be displayed at the workplace in the official languages used at the workplace.

#### **4.4 Keeping of records: Section 31**

Every employer must keep a record containing the following information for each employee:

- (a) Name and occupation
- (b) Time worked
- (c) Remuneration paid
- (d) Date of birth if below 18 years of age
- (e) Any other prescribed information

#### **4.5 Information about remuneration: Section 33**

The following information must be provided in writing every time the employee is paid:

- (a) The employer's name and address
- (b) The employee's name and occupation
- (c) The period for which payment is made
- (d) Remuneration in money
- (e) Any deduction made from the remuneration
- (f) The actual amount paid
- (g) If relevant to the calculation of that employee's remuneration —
  - (i) the employee's rate of remuneration, and overtime rate;
  - (ii) the number of ordinary and overtime hours worked during the period of payment;
  - (iii) the number of hours worked on a Sunday or public holiday during that period; and
  - (iv) if an agreement on the averaging of working time exists, the total number of ordinary and overtime hours worked in the period of averaging.

#### **4.6 Deductions and other acts concerning remuneration: Sections 34 and 34A**

4.6.1 An employer may not deduct money from an employee's remuneration, unless —

- (a) the employee agrees in writing to the deduction of a specific debt; and
- (b) the deduction is made in terms of a collective agreement, law, court order or arbitration award.

4.6.2 A deduction in respect of damage or loss caused by the employee may be made only if so agreed with the employee, and after the employer has followed fair procedure.

4.6.3 Employers must pay deductions and employer's contributions to benefit funds within seven days.

#### **4.7 Calculation of remuneration and wages: Section 35**

4.7.1 Wages are calculated by the number of hours ordinarily worked.

4.7.2 A monthly remuneration or wage is  $4\frac{1}{3}$  times the weekly remuneration or wage.

4.7.3 If calculated on a basis other than time, or if the employee's remuneration or wage fluctuates significantly from one period to the next, any payment must be calculated by referring to the remuneration or wage during \_

- (a) the preceding 13 weeks; or
- (c) if employed for a shorter period, that period.

4.7.4 Employers and employees should consult a schedule published in the Government Gazette to determine whether a particular category of payment forms part of an employee's remuneration for the purpose of calculations made in terms of the Basic Conditions of Employment Act.

### **5. TERMINATION OF EMPLOYMENT: CHAPTER 5**

#### **5.1 Application**

Chapter 5 does not apply to an employee who works fewer than 24 hours in a month for an employer.

#### **5.2 Notice of termination of employment: Section 37**

5.2.1 A contract of employment may be terminated on notice of at least \_

- (a) one week, if the employee has been employed for six months or fewer;
- (b) two weeks, if the employee has been employed for more than six months, but not more than one year; and
- (c) four weeks, if the employee has been employed for one year or more, or if a farm worker or domestic worker has been employed for more than six months.

5.2.2 A collective agreement may shorten the four-week notice period to no fewer than two weeks.

5.2.3 Notice must be given in writing, except where it is given by an illiterate employee.

- 5.2.4 Notice of termination of employment given by an employer in terms of the act does not prevent the employee from challenging the fairness or lawfulness of the dismissal in terms of the Labour Relations Act, 1995, or any other law.

### **5.3 Severance pay: Section 41**

An employee who is dismissed for operational requirements, or whose contract of employment is terminated in terms of section 38 of the Insolvency Act, 1936, is entitled to one week's severance pay for every year of service completed.

### **5.4 Certificate of service: Section 42**

On termination of employment, an employee is entitled to a certificate of service.

## **6. PROHIBITION OF EMPLOYMENT OF CHILDREN AND FORCED LABOUR: SECTIONS 43–48**

- 6.1 It is a criminal offence to employ a child below 15 years of age.
- 6.2 Children below 18 may not be employed to do work that is inappropriate for their age or that puts them at risk.
- 6.3 Causing, demanding or requiring forced labour is a criminal offence.

## **7. VARIATION OF BASIC CONDITIONS OF EMPLOYMENT: SECTIONS 49–50**

- 7.1 A collective agreement concluded by a bargaining council may replace or exclude any basic condition of employment, except where such agreement:
- (a) reduces the duty to arrange working time with due regard to employees' health and safety as well as family responsibilities (sections 7, 9 and 13);
  - (b) reduces the protection afforded to employees who work at night (sections 17(3) and (4));
  - (c) reduces annual leave to fewer than two weeks (section 20);
  - (d) reduces entitlement to maternity leave (section 25);
  - (e) reduces entitlement to sick leave by more than the extent permitted (sections 22–24); and
  - (f) is in conflict with the prohibition of child and forced labour (section 48).
- 7.2 Collective agreements and individual agreements may replace or exclude basic conditions of employment only to the extent permitted by the Basic Conditions of Employment Act or a sectoral determination (section 49).
- 7.3 The Minister of Labour may make a determination to vary or exclude a basic condition of employment. This may also be done on application by an employer or employers' organisation (section 50).



- 7.4 A determination on the variation of basic conditions of employment may not be issued unless a trade union representing the employees has consented to it or has had the opportunity to make representations to the Minister. The employer must display a copy of any determination at the workplace and must make it available to employees (section 50).

## **8. SECTORAL DETERMINATIONS: SECTION 51**

Sectoral determinations may be made to establish basic conditions of employment for employees in a sector and area.

## **9. MONITORING, ENFORCEMENT AND LEGAL PROCEEDINGS: SECTIONS 63–81**

- 9.1 To promote and monitor compliance with a labour law, labour inspectors may advise employees and employers on their rights and obligations in terms of such law, conduct inspections, investigate complaints, question persons and inspect, copy and remove records and other relevant documents (sections 64–66).
- 9.2 An inspector may serve a compliance order on an employer who is not complying with a provision of the Basic Conditions of Employment Act. The employer may object against the order to the Director-General of Labour, who, having received such representations, may confirm, modify or set aside the order. The Director-General's decision is subject to appeal to the Labour Court (sections 68–73).
- 9.3 Employees may not be discriminated against for exercising their rights in terms of the Basic Conditions of Employment Act (sections 78–81).

## **10. PRESUMPTION AS TO WHO IS AN EMPLOYEE: SECTION 83A**

- 10.1 A person who works for, or provides services to, another person is presumed to be an employee if (s)he —
- (a) has a manner or hours of work that are subject to control or direction;
  - (b) forms part of the employer's organisation;
  - (c) has worked for the other person for at least 40 hours per month over the previous three months;
  - (d) is economically dependent on the other person;
  - (e) is provided with his or her tools or work equipment; or
  - (f) works for, or renders services to, only one person.
- 10.2 If one of these factors applies, the person is presumed to be an employee until the employer proves otherwise.

## **11. GENERAL: SECTION 92**

It is an offence to \_

- (a) obstruct or attempt to improperly influence a person who is performing a function in terms of the Basic Conditions of Employment Act;
- (b) obtain or attempt to obtain any prescribed document by means of fraud, false pretences, or by presenting or submitting a false or forged document;
- (c) pretend to be a labour inspector or any other person performing a function in terms of the act;
- (d) refuse or fail to answer fully any lawful question put by a labour inspector or any other person performing a function in terms of the act;
- (e) refuse or fail to comply with any lawful request of, or lawful order by, a labour inspector or any other person performing a function in terms of the act; and
- (f) hinder or obstruct a labour inspector or any other person performing a function in terms of the act.