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The BCEA and annual leave for employees



The BCEA is only applicable to employees who work for the same employer for more than 24 hours a month.

Section 20 of the Basic Condition of Employment Act, Act 75 of 1997 (BCEA) deals with annual leave.

Employees should be granted **21** consecutive days' annual leave (with full remuneration) during each leave cycle. When the employee works **5** days a week, this means the employee will be entitled to **15** working days' leave, or **18** working days if the employee normally works **6** days a week. An annual leave cycle runs for a period of **12** months (with the same employer). The **12** months start directly after the commencement of employment or directly after the previous leave cycle ends. Although the BCEA prescribes the minimum number of days to be granted for annual leave, nothing prohibits an employer from granting additional days of leave to employees over and above the minimum days required.

The employer and employee may agree to one day of annual leave for every **17** days worked by the employee (or days for which the employee was entitled to be paid) or an hour of leave for every **17** hours the employee worked or was entitled to payment. This method of calculation is useful when dealing with temporary employees or those working on a fixed-term contract. In the absence of an agreement as referred to above, leave typically accrues at **1,25** days per month for employees who work **5** days a week. If the employee works **6** days a week, the leave will accrue at **1,5** days per month.

- o Annual leave should be granted within **6** months after the leave cycle ends.
- o An employer is prohibited from paying out annual leave except upon termination of the employee's contract.

Many companies have an annual shutdown period which should be communicated to employees early in the year. If an employee's annual leave has already been exhausted at the time of the annual shutdown, leave may still be granted, in which case it is advisable to treat this as unpaid leave. This is sometimes problematic as the shutdown periods are not determined by employees, but they are expected to take leave during such time. Employers may elect to grant leave that is not yet due, in which case employees go into a "negative leave" balance. Although nothing prohibits such a practice, it might cause problems later when an employee's employment is terminated. If an employee still has a negative balance when his/her employment is terminated, the value of the negative balance may not be deducted from the employee's final salary, as it had not been agreed that the leave granted previously (which was not yet due) would be treated as unpaid leave.

SERR Synergy guides and assists businesses in a practical and supportive way with regard to the required processes and procedures to ensure *labour legislation compliance* and to minimise the risk to which the business is exposed when employing staff. *Contact us* today for assistance.

About our author: Audrey Cloete obtained her LLB degree from the North-West University Potchefstroom in 2003. She completed her articles with the main focus on Criminal Law and is also an admitted Conveyancer. Audrey joined SERR Synergy in 2015 where she currently works as a Legal Compliance Advisor.

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