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Advanced Tips on the Basic Conditions of Employment Act (BCEA)



Should an employer provide an employee with a signed contract of employment?

Despite legislation governing compliance, there are still employers who do not provide their employees with a signed contract of employment. This seems to be more prevalent among certain industries.

Section 29 of the Basic Conditions of Employment Act (BCEA) stipulates:

***"An employer must supply an employee, when the employee commences employment, with the following particulars in writing**…"*

The employer has no discretion in this regard.

Some employers who do provide employees with a contract of employment unfortunately do not include the basic conditions as prescribed by the *Basic Conditions of Employment Act (BCEA)*. An employer may not randomly decide on such conditions and should comply strictly with the BCEA.

Employers of businesses that operate within a specific industry should consult the Bargaining Council and familiarise themselves with the contents of the specific Collective Agreement or Sectorial Determination applicable to their industry. The BCEA will apply where an employer does not fall under any specific industry.

Section 29 of the Basic Conditions of Employment Act (BCEA) determines that:

An employer must supply an employee, when the employee commences employment, with the following particulars in writing —

- *the full name and address of the employer;*
- *the name and occupation of the employee, or a brief description of the work for which the employee is employed;*
- *the place of work, and, where the employee is required or permitted to work at various places, an indication of this;*
- *the date on which the employment began;*
- *the employee's ordinary hours of work and days of work;*
- *the employee's wage or the rate and method of calculating wages;*
- *the rate of pay for overtime work;*
- *any other cash payments that the employee is entitled to;*
- *any payment in kind that the employee is entitled to and the value of the payment in kind;*
- *how frequently remuneration will be paid;*
- *any deductions to be made from the employee's remuneration;*
- *the leave to which the employee is entitled;*
- *the period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate;*
- *a description of any council or sectoral determination which covers the employer's business;*
- *any period of employment with a previous employer that counts towards the employee's period of employment;*
- *a list of any other documents that form part of the contract of employment, indicating a place that is reasonably accessible to the employee where a copy of each may be obtained.*

Employers should think carefully before adding any condition not specified above. After signing a contract of employment with an employee, the employer will not be allowed to amend anything agreed upon unless he/she first consults the employee and both parties sign the amendment. Including unnecessary conditions may complicate matters. Such conditions should instead be dealt with via internal policies which may be altered unilaterally by the employer.

The Basic Conditions of Employment Act (BCEA) requires another important aspect to be included as a condition in the contract of employment, namely **overtime**. In terms of Section 10 of the BCEA, an employer may not require or permit an employee to work overtime except in accordance with an agreement. This should therefore be a condition agreed upon in the contract of employment.

For professional advise on any of your Labour matters, contact *SERR Synergy.* We deal comprehensively on your behalf with the relevant labour legislation.

About the 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, however broadened her horizons after being admitted as attorney to take on other legal disciplines. She is also an admitted Conveyancer. Audrey joined SERR Synergy in 2015 where she currently works as a Legal Compliance Advisor.

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