

## How to calculate severance pay due to employees during retrenchments



***It has been estimated that South Africa has lost approximately 2,2 million jobs in the second quarter of 2020.***

When the number of discouraged job seekers are included in the current unemployment statistics, the unemployment rate seems higher than 27% and closer to 43%. Further, according to the latest Bloomberg report, South Africa has the highest unemployment rate among 83 surveyed countries.

As a result, many employers have unfortunately had no choice but to retrench employees at great cost.

Many employers have a vague *understanding of the process of a retrenchment* but are unsure how to calculate an employee's severance pay.

In this blog, we will look at some of the fundamentals when calculating severance pay in the event of retrenchment.

## Where to start when you calculate an employee's severance pay?

The starting point to calculate the employee's severance pay will be to understand sections 35 and 41 of the Basic Conditions of Employment (BCEA). These sections were supplemented by a notice published in the *Government Gazette 24889*, dated 23 May 2003, which breaks down and explains how to interpret sections 35 and 41 of the BCEA.

## Calculation of remuneration and wages (section 35 of the BCEA)

(1) An employee's wage is calculated by reference to the **number of hours the employee ordinarily works**.

(3) An employee's monthly remuneration or wage is **four and one-third times the employee's weekly** remuneration or wage, respectively.

(4) If an employee's remuneration or wage is calculated, either wholly or in part, on a basis other than time or if an **employee's remuneration or wage fluctuates** significantly from period to period, any payment to that employee in terms of this Act must be calculated by reference to the employee's remuneration or wage during—

- the **preceding 13 weeks**; or
- if the employee has been in employment for a shorter period, that period.

## Understanding severance pay (section 41 of the BCEA)

(1) For the purposes of this section, "operational requirements" means requirements based on the economic, technological, structural or similar needs of an employer.

(2) An employer must pay an employee who is dismissed for reasons based on the employer's operational requirements **severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer**, calculated in accordance with section 35.

# **Government Gazette 24889 - calculation of employee's remuneration in terms of section 35 of the BCEA**

1. The following payments are **included in an employee's remuneration** for the purposes of calculating pay for **annual leave** in terms of section 21, payment instead of **notice** in terms of section 38, and **severance pay** in terms of section 41:

- Housing or accommodation allowance or subsidy or housing or accommodation received as a benefit in kind;
- Car allowance or provision of a car, except to the extent that the car is provided to enable the employee to work;
- Any cash payments made to an employee, except those listed as exclusions in terms of this schedule;
- Any other payment in kind received by an employee, except those listed as exclusions in terms of this schedule;
- Employer's contributions to medical aid, pension, provident fund or similar schemes;
- Employer's contributions to funeral or death benefit schemes.

2. The following items **do not form part of remuneration** for the purposes of these calculations:

- Any cash payment or payment in kind provided to enable the employee to work (for example, an equipment, tool or similar allowance or provision of transport or the payment of a transport allowance to enable the employee to travel to and from work);
- A relocation allowance;
- Gratuities (for example, tips received from customers) and gifts from the employer;
- Share incentive schemes;
- Discretionary payments not related to an employee's hours of work or performance (for example, a discretionary profit-sharing scheme);
- An entertainment allowance;
- An education or schooling allowance.

3. A payment received in a particular period in respect of a longer period **(e.g. a thirteenth cheque) must be pro-rated.**

*SERR Synergy assists employers to understand and appreciate the correct final payments to be made to employees during these extraordinary and challenging times.*

Our aim is to ensure that our clients make the correct payments to employees so that an employee's right to a fair dismissal for operational requirements and their dignity are protected throughout the retrenchment process. We can ensure that the dignity of the employee is respected by adhering to the calculations and formulae that constitute the final payments due to the employee.

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