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Understanding written particulars of employment



Employers and Employees often complain about being unsure what is expected of them regarding aspects of their employment relationship.

It is advisable to conclude a contract of employment which stipulates the respective contractual obligations, rights and the terms and conditions so as to limit both parties' risks and ensure to that they are aware of what is expected of them.

In this blog, we will outline the written particulars which should be incorporated into the contract of employment for each person employed in your company in accordance with the Basic Conditions of Employment Act (BCEA).

What are written particulars of employment?

The BCEA requires an employer to provide an employee with written particulars of employment which could form part of a written contract of employment, a letter of appointment or merely a written notice. The employer must take steps to ensure that the employee fully understands and grasps the contents of the document, which ever one of the above is opted for and where necessary, obtain the assistance of an interpreter to explain the contents in a language that the employee will understand. Should any details change, the written particulars of employment document should be amended accordingly.

The above requirement is not applicable to an employer who employs fewer than five employees, and to an employee who works fewer than 24 hours a month.

What information should be included in the written particulars of employment?

The following information must be included in the written particulars of employment as per section 29 (1) of the BCEA:

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 commenced;
- 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 or letter of employment indicating a place that is reasonably accessible to the employee where a copy of each may be obtained.

The Department of Employment and Labour could instruct a labour inspector to monitor and enforce compliance with the above requirement in accordance with the BCEA.

What are the advantages of concluding a contract of employment instead of a letter of appointment?

The contract of employment can be regarded as an extension of the letter of appointment and provides certainty and clarity regarding the contractual obligations, rights and the terms and conditions of both parties and that is governed by laws of contract as well as employment law.

The main advantage of concluding a contract of employment is protection, by mitigating the risk of any breach of contract from either party during the employment relationship.

The contract of employment assists the employer in taking corrective action against employees and creates structure and stability in the employment relationship and provides the employee with job security and limits the risks for exploitation from the employer.

Furthermore, various conditions of employment can only be introduced or amended with the permission of the employee, such as the working of overtime. A letter of appointment is regarded as a one-sided document addressed to the employee by the employer. It does not constitute mutual consent or consensus as with a contract. Therefore, a *contract of employment has the added advantage of complying with the consent requirement set by the BCEA.*

In conclusion, *SERR Synergy assists employers in the drafting of contracts of employment in a thorough and supportive way, ensuring that the contract of employment is compliant with the latest relevant labour legislation* (Basic Conditions of Employment Act, 15 of 1997 (BCEA) as amended, the National Minimum Wage Act, 9 of 2018 (NMWA) or any industry collective agreement or industry-specific determination recognised by law.) and to avoid any unnecessary complications with the Department of Employment and Labour during a labour inspection.

Sources:

- Basic Conditions of Employment Act 75 of 1997, as amended

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