

Basic Conditions of Employment Act, 1997

To give effect to the right to fair labour practices referred to in section 23(1) of the Constitution by establishing and making provision for the regulation of basic conditions of employment; and thereby to comply with the obligations of the Republic as a member state of the International Labour Organisation; and to provide for matters connected therewith.

Basic Conditions of Employment Act, 1997

Chapter One: Definitions, purpose and application of this Act

1. Definitions

In this Act, unless the context indicates otherwise--

"agreement"

includes a collective agreement;

"area"

includes any number of areas, whether or not contiguous;

"bargaining council"

means a bargaining council registered in terms of the Labour Relations Act, 1995, and, in relation to the public service, includes the bargaining councils referred to in section 35 of that Act;

"basic condition of employment"

means a provision of this Act or sectoral determination that stipulates a minimum term or condition of employment;

"CCMA"

means the Commission for Conciliation, Mediation and Arbitration established in terms of section 112 of the Labour Relations Act, 1995 ;

"child"

means a person who is under 18 years of age;

"code of good practice"

means a code of good practice issued by the Minister in terms of section 87 of this Act;

"collective agreement"

means a written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded by one or more registered trade unions, on the one hand and, on the other hand--

- a) one or more employers;
- b) one or more registered employers' organisations; or
- c) one or more employers and one or more registered employers' organisation;

"Commission"

means the Employment Conditions Commission established by [section 59\(1\)](#);

"compliance order"

means a compliance order issued by a labour inspector in terms of [section 69\(1\)](#);

"Constitution"

means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

"council"

includes a bargaining council and a statutory council;

"Department"

means the Department of Labour;

"Director-General"

means the Director-General of Labour;

"dispute"

includes an alleged dispute;

"domestic worker"

means an employee who performs domestic work in the home of his or her employer and includes--

- a) a gardener;
- b) a person employed by a household as driver of a motor vehicle; and
- c) a person who takes care of children, the aged, the sick, the frail or the disabled, but does not include a farm worker;

"employee"

means--

- a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and
- b) any other person who in any manner assists in carrying on or conducting the business of an employer,

and "employed" and "employment" have a corresponding meaning;

"employers' organisation"

means any number of employers associated together for the purpose, whether by itself or with other purposes, of regulating relations between employers and employees or trade unions;

"employment law"

includes this Act, any other Act the administration of which has been assigned to the Minister, and any of the following Acts :

- a) The Unemployment Insurance Act, 1966 (Act No. 30 of 1966);
- b) the Skills Development Act 1998(Act No 97 of 1998)
- c) the Employment Equity Act, 1998 (Act No. 55 of 1998);
- d) the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
- e) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 15 130 of 1993);

"farm worker"

means an employee who is employed mainly in or in connection with farming activities, and includes an employee who wholly or mainly performs domestic work in a home on a farm;

"Labour Appeal Court"

means the Labour Appeal Court established by section 167 of the Labour Relations Act, 1995;

"Labour Court"

means the Labour Court established by section 151 of the Labour Relations Act, 1995;

"labour inspector"

means a labour inspector appointed under section 63, and includes any person designated by the Minister under that section to perform any function of a labour inspector;

"Labour Relations Act, 1995"

means the Labour Relations Act, 1995 (Act No. 66 of 1995);

"medical practitioner"

means a person entitled to practise as a medical practitioner in terms of section 17 of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

"midwife"

means a person registered or enrolled to practise as a midwife in terms of section 16 of the Nursing Act, 1978 (Act No. 50 of 1978);

"Minister"

means the Minister of Labour;

"month"

means a calendar month;

"NEDLAC"

means the National Economic, Development and Labour Council established by section 2 of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994);

"ordinary hours of work"

means the hours of work permitted in terms of section 9 or in terms of any agreement in terms of sections 11 or 12;

"overtime"

means the time that an employee works during a day or a week in excess of ordinary hours of work;

"prescribe"

means to prescribe by regulation and "prescribed" has a corresponding meaning;

"public holiday"

means any day that is a public holiday in terms of the Public Holidays Act, 1994 (Act No. 36 of 1994);

"public service"

means the public service referred to in section 1(1) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and includes any organisational component contemplated in section 7(4) of that Act and specified in the first column of Schedule 2 to that Act, but excluding--

- a) the members of the National Defence Force,
- b) the National Intelligence Agency,
- c) the South African Secret Service, and
- d) the South African National Academy of Intelligence.

"registered employers' organisation"

means an employers' organisation registered under section 96 of the Labour Relations Act, 1995;

"registered trade union"

means a trade union registered under section 96 of the Labour Relations Act, 1995;

"remuneration"

means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State, and "remunerate" has a corresponding meaning,

"sector"

means an industry or a service or a part of an industry or a service;

"sectoral determination"

means a sectoral determination made under Chapter Eight;

"senior managerial employee"

means an employee who has the authority to hire, discipline and dismiss employees and to represent the employer internally and externally;

"serve"

means to send by registered post, telegram, telex, telefax or deliver by hand;

"statutory council"

means a council established under Part E of Chapter III of the Labour Relations Act, 1995;

"temporary employment service"

means any person who, for reward, procures for, or provides to, a client, other persons--

- a) who render services to, or perform work for, the client; and
- b) who are remunerated by the temporary employment service;

"this Act"

includes the Schedules and any regulation made under this Act, but does not include the headings or footnotes;

"trade union"

means an association of employees whose principal purpose is to regulate relations between employees and employers, including any employers organisations;

"trade union official"

includes an official of a federation of trade unions;

"trade union representative"

means a trade union representative who is entitled to exercise the rights contemplated in section 14 of the Labour Relations Act, 1995;

"wage"

means the amount of money paid or payable to an employee in respect of ordinary hours of work or, if they are shorter, the hours an employee ordinarily works in a day or week;

"week"

in relation to an employee, means the period of seven days within which the working week of that employee ordinarily falls;

"workplace"

means any place where employees work;

"workplace forum"

means a workplace forum established under Chapter V of the Labour Relations Act, 1995.

Basic Conditions of Employment Act, 1997

Chapter One: Definitions, purpose and application of this Act

2. Purpose of this Act

The purpose of this Act is to advance economic development and social justice by fulfilling the primary objects of this Act which are--

- a) to give effect to and regulate the right to fair labour practices conferred by section 23(1) of the Constitution--
 - i) by establishing and enforcing basic conditions of employment; and
 - ii) by regulating the variation of basic conditions of employment;
- b) to give effect to obligations incurred by the Republic as a member state of the International Labour Organisation.

Basic Conditions of Employment Act, 1997

Chapter One: Definitions, purpose and application of this Act

3. Application of this Act

- 1) This Act applies to all employees and employers except--
 - a) members of the National Defence Force, the National Intelligence Agency, the South African Secret Service and the South African National Academy of Intelligence; and
 - b) unpaid volunteers working for an organisation serving a charitable purpose.
- 2) This Act applies to persons undergoing vocational training except to the extent that any term or condition of their employment is regulated by the provisions of any other law.
- 3) This Act, except section 41, does not apply to persons employed on vessels at sea in respect of which the Merchant Shipping Act, 1951 (Act No. 57 of 1951), applies except to the extent provided for in a sectoral determination.

Basic Conditions of Employment Act, 1997

Chapter One: Definitions, purpose and application of this Act

4. Inclusion of provisions in contracts of employment

A basic condition of employment constitutes a term of any contract of employment

except to the extent that--

- a) any other law provides a term that is more favourable to the employee;
- b) the basic condition of employment has been replaced, varied, or excluded in accordance with the provisions of this Act; or
- c) a term of the contract of employment is more favourable to the employee than the basic condition of employment.

Basic Conditions of Employment Act, 1997
Chapter One: Definitions, purpose and application of this Act
5. This Act not affected by agreements

This Act or anything done under it takes precedence over any agreement, whether entered into before or after the commencement of this Act.

Basic Conditions of Employment Act, 1997
Chapter Two: Regulation of working time
6. Application of this Chapter

Referenced by:

- 1) This Chapter, except section 7, does not apply to--
 - a) senior managerial employees;
 - b) employees engaged as sales staff who travel to the premises of customers and who regulate their own hours of work;
 - c) employees who work less than 24 hours a month for an employer.
- 2) Sections 9, 10(1), 14(1), 15(1), 17(2) and 18(1) do not apply to work which is required to be done without delay owing to circumstances for which the employer could not reasonably have been expected to make provision and which cannot be performed by employees during their ordinary hours of work.
- 3) The Minister must, on the advice of the Commission, make a determination that excludes the application of this Chapter or any provision of it to any category of employees earning in excess of an amount stated in that determination.
- 4) Before the Minister issues a notice in terms of subsection (3), the Minister must--
 - a) publish in the *Gazette* a draft of the proposed notice; and
 - b) invite interested persons to submit written representations on the proposed notice within a reasonable period.

Basic Conditions of Employment Act, 1997
Chapter Two: Regulation of working time
7. Regulation of working time

Referenced by:

Every employer must regulate the working time of each employee--

- a) in accordance with the provisions of any Act governing occupational health and safety;
- b) with due regard to the health and safety of employees;
- c) with due regard to the Code of Good Practice on the Regulation of Working Time issued under section 87(1)(a); and
- d) with due regard to the family responsibilities of employees.

Basic Conditions of Employment Act, 1997
Chapter Two: Regulation of working time
8. Interpretation of day

For the purposes of sections 9 to 16, 'day' means a period of 24 hours measured from the time when the employee normally commences work, and 'daily' has a corresponding meaning.

Basic Conditions of Employment Act, 1997
Chapter Two: Regulation of working time
9. Ordinary hours of work

Referenced by:

- 1) Subject to this Chapter, an employer may not require or permit an employee to work more than--
 - a) 45 hours in any week; and
 - b) nine hours in any day if the employee works for five days or fewer in a week;
 - c) eight hours in any day if the employee works on more than five days in a week.
- 2) An employee's ordinary hours of work in terms of subsection (1) may by agreement be extended by up to 15 minutes in a day but not more than 60 minutes in a week to enable an employee whose duties include serving members of the public to continue performing those duties after the completion of ordinary hours of work.
- 3) Schedule 1 establishes procedures for the progressive reduction of the maximum ordinary hours of work to a maximum of 40 ordinary hours of work per week and eight ordinary hours of work per day.

Basic Conditions of Employment Act, 1997
Chapter Two: Regulation of working time
10. Overtime

Referenced by:

- 1) Subject to this Chapter, an employer may not require or permit an employee to work –
 - a) overtime except in accordance with an agreement;
 - b) more than
 - i) ten hours' overtime a week.
- 1A) An agreement in terms of subsection (1) may not require or permit an employee to work more than 12 hours on any day.
- 2) An employer must pay an employee at least one and one-half times the employee's wage for overtime worked.
- 3) Despite subsection (2), an agreement may provide for an employer to--
 - a) pay an employee not less than the employee's ordinary wage for overtime worked and grant the employee at least 30 minutes' time off on full pay for every hour of overtime worked; or
 - b) grant an employee at least 90 minutes' paid time off for each hour of overtime worked.
- 4)
 - a) An employer must grant paid time off in terms of subsection (3) within one month of the employee becoming entitled to it.
 - b) An agreement in writing may increase the period contemplated by paragraph (a) to 12 months.
- 5) An agreement concluded in terms of subsection (1) with an employee when the employee commences employment, or during the first three months of employment, lapses after one year.
- 6)
 - a) A collective agreement may increase the maximum permitted overtime to 15 hours a week.
 - b) A collective agreement contemplated in paragraph (a) may not apply for more than two months in any period of 12 months.

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Chapter Two: Regulation of working time
11. Compressed working week

Referenced by:

- 1) An agreement in writing may require or permit an employee to work up to twelve hours in a day, inclusive of the meal intervals required in terms of section 14, without receiving overtime pay.
- 2) An agreement in terms of subsection (1) may not require or permit an employee to work--
 - a) more than 45 ordinary hours of work in any week;
 - b) more than ten hours' overtime in any week; or
 - c) on more than five days in any week.

Basic Conditions of Employment Act, 1997
Chapter Two: Regulation of working time
12. Averaging of hours of work

Referenced by:

- 1) Despite sections 9(1) and (2) and 10(1)(b), the ordinary hours of work and overtime of an employee may be averaged over a period of up to four months in terms of a collective agreement.
- 2) An employer may not require or permit an employee who is bound by a collective agreement in terms of subsection (1) to work more than--
 - a) an average of 45 ordinary hours of work in a week over the agreed period;
 - b) an average of five hours' overtime in a week over the agreed period.
- 3) A collective agreement in terms of subsection (1) lapses after 12 months.
- 4) Subsection (3) only applies to the first two collective agreements concluded in terms of subsection (1).

Basic Conditions of Employment Act, 1997
Chapter Two: Regulation of working time
13. Determination of hours of work by Minister

Referenced by:

- 1) Despite this Chapter, the Minister, on grounds of health and safety, may prescribe by regulation the maximum permitted hours of work, including overtime, that any category of employee may work--
 - a) daily, weekly or during any other period specified in the regulation; and
 - b) during a continuous period without a break.
- 2) A regulation in terms of subsection (1) may not prescribe maximum hours in excess of those permitted in sections 9 and 10.
- 3) A regulation in terms of subsection (1) may be made only--
 - a) on the advice of the chief inspector appointed in terms of section 27 of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), or the chief inspector appointed in terms of section 48 of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996); and
 - b) after consulting the Commission.

Basic Conditions of Employment Act, 1997
Chapter Two: Regulation of working time
14. Meal intervals

Referenced by:

- 1) An employer must give an employee who works continuously for more than five hours a meal interval of at least one continuous hour.
- 2) During a meal interval the employee may be required or permitted to perform only duties that cannot be left unattended and cannot be performed by another employee.
- 3) An employee must be remunerated--
 - a) for a meal interval in which the employee is required to work or is required to be available for work; and
 - b) for any portion of a meal interval that is in excess of 75 minutes, unless the employee lives on the premises at which the workplace is situated.
- 4) For the purposes of subsection (1), work is continuous unless it is interrupted by an interval of at least 60 minutes.
- 5) An agreement in writing may--
 - a) reduce the meal interval to not less than 30 minutes;
 - b) dispense with a meal interval for an employee who works fewer than six hours on a day.

Basic Conditions of Employment Act, 1997
Chapter Two: Regulation of working time
15. Daily and weekly rest period

Referenced by:

- 1) An employer must allow an employee--
 - a) a daily rest period of at least twelve consecutive hours between ending and recommencing work; and
 - b) a weekly rest period of at least 36 consecutive hours which, unless otherwise agreed, must include Sunday.

- 2) A daily rest period in terms of subsection (1)(a) may, by written agreement, be reduced to 10 hours for an employee--
 - a) who lives on the premises at which the workplace is situated; and
 - b) whose meal interval lasts for at least three hours.

- 3) Despite subsection (1)(b), an agreement in writing may provide for--
 - a) a rest period of at least 60 consecutive hours every two weeks; or
 - b) an employee's weekly rest period to be reduced by up to eight hours in any week if the rest period in the following week is extended equivalently.

Basic Conditions of Employment Act, 1997
Chapter Two: Regulation of working time
16. Pay for work on Sundays

Referenced by:

- 1) An employer must pay an employee who works on a Sunday at double the employee's wage for each hour worked, unless the employee ordinarily works on a Sunday, in which case the employer must pay the employee at one and one-half times the employee's wage for each hour worked.

- 2) If an employee works less than the employee's ordinary shift on a Sunday and the payment that the employee is entitled to in terms of subsection (1) is less than the employee's ordinary daily wage, the employer must pay the employee the employee's ordinary daily wage.

- 3) Despite subsections (1) and (2), an agreement may permit an employer to grant an employee who works on a Sunday paid time off equivalent to the difference in value between the pay received by the employee for working on the Sunday and the pay that the employee is entitled to in terms of subsections (1) and (2).

- 4) Any time worked on a Sunday by an employee who does not ordinarily work on a Sunday is not taken into account in calculating an employee's ordinary hours of work in terms of section 9(1) and (2), but is taken into account in calculating the overtime worked by the employee in terms of section 10(1)(b).
- 5) If a shift worked by an employee falls on a Sunday and another day, the whole shift is deemed to have been worked on the Sunday, unless the greater portion of the shift was worked on the other day, in which case the whole shift is deemed to have been worked on the other day.
- 6)
 - a) An employer must grant paid time off in terms of subsection (3) within one month of the employee becoming entitled to it.
 - b) An agreement in writing may increase the period contemplated by paragraph (a) to 12 months.

Basic Conditions of Employment Act, 1997

Chapter Two: Regulation of working time

17. Night work

Referenced by:

- 1) In this section, "night work" means work performed after 18:00 and before 06:00 the next day.
- 2) An employer may only require or permit an employee to perform night work, if so agreed, and if--
 - a) the employee is compensated by the payment of an allowance, which may be a shift allowance, or by a reduction of working hours; and
 - b) transportation is available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's shift.
- 3) An employer who requires an employee to perform work on a regular basis after 23:00 and before 06:00 the next day must--
 - a) inform the employee in writing, or orally if the employee is not able to understand a written communication, in a language that the employee understands--
 - i) of any health and safety hazards associated with the work that the employee is required to perform; and
 - ii) of the employee's right to undergo a medical examination in terms of paragraph (b),

- b) at the request of the employee, enable the employee to undergo a medical examination, for the account of the employer, concerning those hazards--
 - i) before the employee starts, or within a reasonable period of the employee starting, such work; and
 - ii) at appropriate intervals while the employee continues to perform such work; and
 - c) transfer the employee to suitable day work within a reasonable time if--
 - i) the employee suffers from a health condition associated with the performance of night work; and
 - ii) it is practicable for the employer to do so.
- 4) For the purposes of subsection (3), an employee works on a regular basis if the employee works for a period of longer than one hour after 23:00 and before 06:00 at least five times per month or 50 times per year.
- 5) The Minister may, after consulting the Commission, make regulations relating to the conduct of medical examinations for employees who perform night work."

Basic Conditions of Employment Act, 1997

Chapter Two: Regulation of working time

18. Public holidays

Referenced by:

- 1) An employer may not require an employee to work on a public holiday except in accordance with an agreement.
- 2) If a public holiday falls on a day on which an employee would ordinarily work, an employer must pay--
 - a) an employee who does not work on the public holiday, at least the wage that the employee would ordinarily have received for work on that day;
 - b) an employee who does work on the public holiday--
 - i) at least double the amount referred to in paragraph (a); or
 - ii) if it is greater, the amount referred to in paragraph (a) plus the amount earned by the employee for the time worked on that day.
- 3) If an employee works on a public holiday on which the employee would not ordinarily work, the employer must pay that employee an amount equal to--
 - a) the employee's ordinary daily wage; plus
 - b) the amount earned by the employee for the work performed that day, whether calculated by reference to time worked or any other method.

- 4) An employer must pay an employee for a public holiday on the employee's usual pay day.
- 5) If a shift worked by an employee falls on a public holiday and another day, the whole shift is deemed to have been worked on the public holiday, but if the greater portion of the shift was worked on the other day, the whole shift is deemed to have been worked on the other day.

Basic Conditions of Employment Act, 1997

Chapter Three: Leave

19. Application of this Chapter

- 1) This Chapter does not apply to an employee who works less than 24 hours a month for an employer.
- 2) Unless an agreement provides otherwise, this Chapter does not apply to leave granted to an employee in excess of the employee's entitlement under this Chapter.

Basic Conditions of Employment Act, 1997

Chapter Three: Leave

20. Annual leave

Referenced by:

- 1) In this Chapter, "annual leave cycle" means the period of 12 months' employment with the same employer immediately following--
 - a) an employee's commencement of employment; or
 - b) the completion of that employee's prior leave cycle.
- 2) An employer must grant an employee at least--
 - a) 21 consecutive days' annual leave on full remuneration in respect of each annual leave cycle; or
 - b) by agreement, one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid;
 - c) by agreement, one hour of annual leave on full remuneration for every 17 hours on which the employee worked or was entitled to be paid.
- 3) An employee is entitled to take leave accumulated in an annual leave cycle in terms of subsection (2) on consecutive days.
- 4) An employer must grant annual leave not later than six months after the end of the annual leave cycle.

- 5) An employer may not require or permit an employee to take annual leave during--
 - a) any other period of leave to which the employee is entitled in terms of this Chapter; or
 - b) any period of notice of termination of employment.
- 6) Despite subsection (5), an employer must permit an employee, at the employee's written request, to take leave during a period of unpaid leave.
- 7) An employer may reduce an employee's entitlement to annual leave by the number of days of occasional leave on full remuneration granted to the employee at the employee's request in that leave cycle.
- 8) An employer must grant an employee an additional day of paid leave if a public holiday falls on a day during an employee's annual leave on which the employee would ordinarily have worked.
- 9) An employer may not require or permit an employee to work for the employer during any period of annual leave.
- 10) Annual leave must be taken--
 - a) in accordance with an agreement between the employer and employee; or
 - b) if there is no agreement in terms of paragraph (a), at a time determined by the employer in accordance with this section.
- 11) An employer may not pay an employee instead of granting paid leave in terms of this section except--
 - a) on termination of employment; and
 - b) in accordance with section 40(b) and (c).

Basic Conditions of Employment Act, 1997

Chapter Three: Leave

21. Pay for annual leave

Referenced by:

- 1) An employer must pay an employee leave pay at least equivalent to the remuneration that the employee would have received for working for a period equal to the period of annual leave, calculated--
 - a) at the employee's rate of remuneration immediately before the beginning of the period of annual leave; and
 - b) in accordance with section 35.
- 2) An employer must pay an employee leave pay--
 - a) before the beginning of the period of leave; or
 - b) by agreement, on the employee's usual pay day.

Basic Conditions of Employment Act, 1997
Chapter Three: Leave
22. Sick leave

Referenced by:

- 1) In this Chapter, "sick leave cycle" means the period of 36 months' employment with the same employer immediately following--
 - a) an employee's commencement of employment; or
 - b) the completion of that employee's prior sick leave cycle.
- 2) During every sick leave cycle, an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.
- 3) Despite subsection (2), during the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked.
- 4) During an employee's first sick leave cycle, an employer may reduce the employee's entitlement to sick leave in terms of subsection (2) by the number of days sick leave taken in terms of subsection (3).
- 5) Subject to section 23, an employer must pay an employee for a day's sick leave--
 - a) the wage the employee would ordinarily have received for work on that day; and
 - b) on the employee's usual pay day.
- 6) An agreement may reduce the pay to which an employee is entitled in respect of any day's absence in terms of this section if--
 - a) the number of days of paid sick leave is increased at least commensurately with any reduction in the daily amount of sick pay; and
 - b) the employee's entitlement to pay--
 - i) for any day's sick leave is at least 75 per cent of the wage payable to the employee for the ordinary hours the employee would have worked on that day; and
 - ii) for sick leave over the sick leave cycle is at least equivalent to the employee's entitlement in terms of subsection (2).

Basic Conditions of Employment Act, 1997

Chapter Three: Leave

23. Proof of incapacity

Referenced by:

- 1) An employer is not required to pay an employee in terms of section 22 if the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury.
- 2) The medical certificate must be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament.
- 3) If it is not reasonably practicable for an employee who lives on the employer's premises to obtain a medical certificate, the employer may not withhold payment in terms of subsection (1) unless the employer provides reasonable assistance to the employee to obtain the certificate.

Basic Conditions of Employment Act, 1997

Chapter Three: Leave

24. Application to occupational accidents or diseases

Referenced by:

Sections 22 and 23 do not apply to an inability to work caused by an accident or occupational disease as defined in the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), or the Occupational Diseases in Mines and Works Act, 1973 (Act No. 78 of 1973), except in respect of any period during which no compensation is payable in terms of those Acts.

Basic Conditions of Employment Act, 1997

Chapter Three: Leave

25. Maternity leave

Referenced by:

- 1) An employee is entitled to at least four consecutive months' maternity leave.
- 2) An employee may commence maternity leave--
 - a) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
 - b) on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.

- 3) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
- 4) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.
- 5) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to--
 - a) commence maternity leave; and
 - b) return to work after maternity leave.
- 6) Notification in terms of subsection (5) must be given--
 - a) at least four weeks before the employee intends to commence maternity leave;
 - b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- 7) The payment of maternity benefits will be determined by the Minister subject to the provisions of the Unemployment Insurance Act, 1966 (Act No. 30 of 1966).

Basic Conditions of Employment Act, 1997

Chapter Three: Leave

26. Protection of employees before and after birth of a child

Referenced by:

- 1) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her child.
- 2) During an employee's pregnancy, and for a period of six months after the birth of her child, her employer must offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if--
 - a) the employee is required to perform night work, as defined in section 17(1) or her work poses a danger to her health or safety or that of her child; and
 - b) it is practicable for the employer to do so.

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Chapter Three: Leave
27. Family responsibility leave

Referenced by:

- 1) This section applies to an employee-
 - a) who has been in employment with an employer for longer than four months; and
 - b) who works for at least four days a week for that employer.
- 2) An employer must grant an employee, during each annual leave cycle, at the request of the employee, three days' paid leave, which the employee is entitled to take--
 - a) when the employee's child is born;
 - b) when the employee's child is sick; or
 - c) in the event of the death of--
 - i) the employee's spouse or life partner; or
 - ii) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.
- 3) Subject to subsection (5), an employer must pay an employee for a day's family responsibility leave--
 - a) the wage the employee would ordinarily have received for work on that day; and
 - b) on the employee's usual pay day.
- 4) An employee may take family responsibility leave in respect of the whole or a part of a day.
- 5) Before paying an employee for leave in terms of this section, an employer may require reasonable proof of an event contemplated in subsection (2) for which the leave was required.
- 6) An employee's unused entitlement to leave in terms of this section lapses at the end of the annual leave cycle in which it accrues.
- 7) A collective agreement may vary the number of days and the circumstances under which leave is to be granted in terms of this section.

Basic Conditions of Employment Act, 1997
Chapter Four: Particulars of employment and remuneration
28. Application of this Chapter

- 1) This Chapter does not apply to an employee who works less than 24 hours a month for an employer.
- 2) Sections 29(1)(n), (o) and (p), 30, 31 and 33 do not apply to--
 - a) an employer who employs fewer than five employees; and
 - b) [deleted by the Basic Conditions of Employment Act, No. 11 of 2002]**

Basic Conditions of Employment Act, 1997
Chapter Four: Particulars of employment and remuneration
29. Written particulars of employment

Referenced by:

- 1) An employer must supply an employee, when the employee commences employment, with the following particulars in writing--
 - a) the full name and address of the employer;
 - b) the name and occupation of the employee, or a brief description of the work for which the employee is employed;
 - c) the place of work, and, where the employee is required or permitted to work at various places, an indication of this;
 - d) the date on which the employment began;
 - e) the employee's ordinary hours of work and days of work;
 - f) the employee's wage or the rate and method of calculating wages;
 - g) the rate of pay for overtime work;
 - h) any other cash payments that the employee is entitled to;
 - i) any payment in kind that the employee is entitled to and the value of the payment in kind;
 - j) how frequently remuneration will be paid;
 - k) any deductions to be made from the employee's remuneration;
 - l) the leave to which the employee is entitled;
 - m) the period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate;
 - n) a description of any council or sectoral determination which covers the employer's business;
 - o) any period of employment with a previous employer that counts towards the employee's period of employment;
 - p) 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.

- 2) When any matter listed in subsection (1) changes--
 - a) the written particulars must be revised to reflect the change; and
 - b) the employee must be supplied with a copy of the document reflecting the change.
- 3) If an employee is not able to understand the written particulars, the employer must ensure that they are explained to the employee in a language and in a manner that the employee understands.
- 4) Written particulars in terms of this section must be kept by the employer for a period of three years after the termination of employment.

Basic Conditions of Employment Act, 1997
Chapter Four: Particulars of employment and remuneration
30. Informing employees of their rights

Referenced by:

An employer must display at the workplace where it can be read by employees a statement in the prescribed form of the employee's rights under this Act in the official languages which are spoken in the workplace.

Basic Conditions of Employment Act, 1997
Chapter Four: Particulars of employment and remuneration
31. Keeping of records

Referenced by:

- 1) Every employer must keep a record containing at least the following information:
 - a) The employee's name and occupation;
 - b) the time worked by each employee;
 - c) the remuneration paid to each employee;
 - d) the date of birth of any employee under 18 years of age; and
 - e) any other prescribed information.
- 2) A record in terms of subsection (1) must be kept by the employer for a period of three years from the date of the last entry in the record.
- 3) No person may make a false entry in a record maintained in terms of subsection (1).
- 4) An employer who keeps a record in terms of this section is not required to keep any other record of time worked and remuneration paid as required by any other employment law.

Basic Conditions of Employment Act, 1997
Chapter Four: Particulars of employment and remuneration
32. Payment of remuneration

- 1) An employer must pay to an employee any remuneration that is paid in money--
 - a) in South African currency;
 - b) daily, weekly, fortnightly or monthly; and
 - c) in cash, by cheque or by direct deposit into an account designated by the employee.
- 2) Any remuneration paid in cash or by cheque must be given to each employee--
 - a) at the workplace or at a place agreed to by the employee;
 - b) during the employee's working hours or within 15 minutes of the commencement or conclusion of those hours; and
 - c) in a sealed envelope which becomes the property of the employee.
- 3) An employer must pay remuneration not later than seven days after--
 - a) the completion of the period for which the remuneration is payable; or
 - b) the termination of the contract of employment.
- 4) Subsection (3)(b) does not apply to any pension or provident fund payment to an employee that is made in terms of the rules of the fund.

Basic Conditions of Employment Act, 1997
Chapter Four: Particulars of employment and remuneration
33. Information about remuneration

Referenced by:

- 1) An employer must give an employee the following information in writing on each day the employee is paid:
 - a) The employer's name and address;
 - b) the employee's name and occupation;
 - c) the period for which the payment is made;
 - d) the employee's remuneration in money;
 - e) the amount and purpose of any deduction made from the remuneration;
 - f) the actual amount paid to the employee; and
 - 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 by the employee during the period for which the payment is made;

- iii) the number of hours worked by the employee on a Sunday or public holiday during that period; and
 - iv) if an agreement to average working time has been concluded in terms of section 12, the total number of ordinary and overtime hours worked by the employee in the period of averaging.
- 2) The written information required in terms of subsection (1) must be given to each employee--
- a) at the workplace or at a place agreed to by the employee; and
 - b) during the employee's ordinary working hours or within 15 minutes of the commencement or conclusion of those hours.

Basic Conditions of Employment Act, 1997
Chapter Four: Particulars of employment and remuneration
34. Deductions and other acts concerning remuneration

- 1) An employer may not make any deduction from an employee's remuneration unless--
- a) subject to subsection (2), the employee in writing agrees to the deduction in respect of a debt specified in the agreement; or
 - b) the deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.
- 2) A deduction in terms of subsection (1)(a) may be made to reimburse an employer for loss or damage only if--
- a) the loss or damage occurred in the course of employment and was due to the fault of the employee;
 - b) the employer has followed a fair procedure and has given the employee a reasonable opportunity to show why the deductions should not be made;
 - c) the total amount of the debt does not exceed the actual amount of the loss or damage; and
 - d) the total deductions from the employee's remuneration in terms of this subsection do not exceed one-quarter of the employee's remuneration in money.
- 3) A deduction in terms of subsection (1)(a) in respect of any goods purchased by the employee must specify the nature and quantity of the goods.
- 4) An employer who deducts an amount from an employee's remuneration in terms of subsection (1) for payment to another person must pay the amount to the person in accordance with the time period and other requirements specified in the agreement, law, court order or arbitration award.

- 5) An employer may not require or permit an employee to--
 - a) repay any remuneration except for overpayments previously made by the employer resulting from an error in calculating the employee's remuneration;
 - b) acknowledge receipt of an amount greater than the remuneration actually received.

Basic Conditions of Employment Act, 1997
Chapter Four: Particulars of employment and remuneration
34A. Payment of contributions to benefit funds

- 1) For the purposes of this section, a benefit fund is a pension, provident, retirement, medical aid or similar fund.
- 2) An employer that deducts from an employee's remuneration any amount for payment to a benefit fund must pay the amount to the fund within seven days of the deduction being made.
- 3) Any contribution that an employer is required to make to a benefit fund on behalf of an employee, that is not deducted from the employee's remuneration, must be paid to the fund within seven days of the end of the period in respect of which the payment is made.
- 4) This section does not affect any obligation on an employer in terms of the rules of a benefit fund to make any payment within a shorter period than that required by subsections (2) or (3).

Basic Conditions of Employment Act, 1997
Chapter Four: Particulars of employment and remuneration
35. Calculation of remuneration and wages

Referenced by:

Please refer to the proposed schedule on calculation of remuneration.

- 1) An employee's wage is calculated by reference to the number of hours the employee ordinarily works.
- 2) For the purposes of calculating the wage of an employee by time, an employee is deemed ordinarily to work--
 - a) 45 hours in a week, unless the employee ordinarily works a lesser number of hours in a week;
 - b) nine hours in a day, or seven and a half hours in the case of an employee who works for more than five days a week, or the number of hours that an employee works in a day in terms of an agreement concluded in accordance with section 11, unless the employee ordinarily works a lesser number of hours in a day.

- 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--
 - a) the preceding 13 weeks; or
 - b) if the employee has been in employment for a shorter period, that period.
- 5)
 - a) The Minister may, by notice in the Gazette, after consultation with the Commission and NEDLAC, determine whether a particular category of payment, whether in money or in kind, forms part of an employee's remuneration for the purpose of any calculation made in terms of this Act.
 - b) Without limiting the Minister's powers in terms of paragraph (a), the Minister may--
 - i) determine the value, or a formula for determining the value, of any payment that forms part of remuneration;
 - ii) place a maximum or minimum value on any payment that forms part of remuneration; and
 - iii) for the purposes of any calculation, differentiate between different categories of payment and different sectors.
 - c) Before the Minister issues a notice in terms of paragraph (a), the Minister must--
 - i) publish a draft of the proposed notice in the Gazette; and
 - ii) invite interested parties to submit written representations on the draft notice within a reasonable period.

Basic Conditions of Employment Act, 1997
Chapter Five: Termination of employment
36. Application of this Chapter

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

Basic Conditions of Employment Act, 1997
Chapter Five: Termination of employment
37. Notice of termination of employment

Referenced by:

- 1) Subject to section 38, a contract of employment terminable at the instance of a party to the contract may be terminated only on notice of not less than -
 - a) one week, if the employee has been employed for six months or less;
 - b) two weeks, if the employee has been employed for more than six months but not more than one year;
 - c) four weeks, if the employee--
 - i) has been employed for one year or more; or
 - ii) is a farm worker or domestic worker who has been employed for more than six months.
- 2)
 - a) A collective agreement may permit a notice period shorter than that required by subsection (1).
 - b) Despite paragraph (a), a collective agreement may permit the notice period of four weeks required by subsection (1)(c)(i) to be reduced to not less than two weeks.
- 3) No agreement may require or permit an employee to give a period of notice longer than that required of the employer.
- 4)
 - a) Notice of termination of a contract of employment must be given in writing, except when it is given by an illiterate employee.
 - b) If an employee who receives notice of termination is not able to understand it, the notice must be explained orally by, or on behalf of, the employer to the employee in an official language the employee reasonably understands.
- 5) Notice of termination of a contract of employment given by an employer must--
 - a) not be given during any period of leave to which the employee is entitled in terms of Chapter Three; and
 - b) not run concurrently with any period of leave to which the employee is entitled in terms of Chapter Three, except sick leave.
- 6) Nothing in this section affects the right--
 - a) of a dismissed employee to dispute the lawfulness or fairness of the dismissal in terms of Chapter VIII of the Labour Relations Act, 1995, or any other law; and
 - b) of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law.

Basic Conditions of Employment Act, 1997
Chapter Five: Termination of employment
38. Payment instead of notice

Referenced by:

- 1) Instead of giving an employee notice in terms of section 37, an employer may pay the employee the remuneration the employee would have received, calculated in accordance with section 35, if the employee had worked during the notice period.
- 2) If an employee gives notice of termination of employment, and the employer waives any part of the notice, the employer must pay the remuneration referred to in subsection (1), unless the employer and employee agree otherwise.

Basic Conditions of Employment Act, 1997
Chapter Five: Termination of employment
39. Employees in accommodation provided by employers

- 1) If the employer of an employee who resides in accommodation that is situated on the premises of the employer or that is supplied by the employer terminates the contract of employment of that employee--
 - a) before the date on which the employer was entitled to do so in terms of section 37; or
 - b) in terms of section 38,the employer is required to provide the employee with accommodation for a period of one month, or if it is a longer period, until the contract of employment could lawfully have been terminated.
- 2) If an employee elects to remain in accommodation in terms of subsection (1) after the employer has terminated the employee's contract of employment in terms of section 38, the remuneration that the employer is required to pay in terms of section 38 is reduced by that portion of the remuneration that represents the agreed value of the accommodation for the period that the employee remains in the accommodation.

Basic Conditions of Employment Act, 1997
Chapter Five: Termination of employment
40. Payments on termination

Referenced by:

On termination of employment, an employer must pay an employee--

- a) for any paid time off that the employee is entitled to in terms of section 10(3) or 16(3) that the employee has not taken;
- b) remuneration calculated in accordance with section 21(1) for any period of annual leave due in terms of section 20(2) that the employee has not taken; and
- c) if the employee has been in employment longer than four months, in respect of the employee's annual leave entitlement during an incomplete annual leave cycle as defined in section 20(1)--
 - i) one day's remuneration in respect of every 17 days on which the employee worked or was entitled to be paid; or
 - ii) remuneration calculated on any basis that is at least as favourable to the employee as that calculated in terms of subparagraph (i).

Basic Conditions of Employment Act, 1997
Chapter Five: Termination of employment
41. Severance pay

Referenced by:

- 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 or whose contract of employment terminates or is terminated in terms of section 38 of the Insolvency Act, 1936 (Act No. 24 of 1936), 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.
- 3) The Minister may vary the amount of severance pay in terms of subsection (2) by notice in the *Gazette*. This variation may only be done after consulting NEDLAC and the Public Service Coordinating Bargaining Council established under Schedule 1 of the Labour Relations Act, 1995.
- 4) An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer, is not entitled to severance pay in terms of subsection (2).
- 5) The payment of severance pay in compliance with this section does not affect an employee's right to any other amount payable according to law.

- 6) If there is a dispute only about the entitlement to severance pay in terms of this section, the employee may refer the dispute in writing to--
 - a) a council, if the parties to the dispute fail within the registered scope of that council; or
 - b) the CCMA, if no council has jurisdiction.
- 7) The employee who refers the dispute to the council or the CCMA must satisfy it that a copy of the referral has been served on all the other parties to the dispute.
- 8) The council or the CCMA must attempt to resolve the dispute through conciliation.
- 9) If the dispute remains unresolved, the employee may refer it to arbitration.
- 10) If the Labour Court is adjudicating a dispute about a dismissal based on the employer's operational requirements, the Court may inquire into and determine the amount of any severance pay to which the dismissed employee may be entitled and the Court may make an order directing the employer to pay that amount.

Basic Conditions of Employment Act, 1997
Chapter Five: Termination of employment
42. Certificate of service

Referenced by:

On termination of employment an employee is entitled to a certificate of service stating--

- a) the employee's full name;
- b) the name and address of the employer;
- c) a description of any council or sectoral employment standard by which the employer's business is covered;
- d) the date of commencement and date of termination of employment;
- e) the title of the job or a brief description of the work for which the employee was employed at date of termination;
- f) the remuneration at date of termination; and
- g) if the employee so requests, the reason for termination of employment.

Basic Conditions of Employment Act, 1997
Chapter Six: Prohibition of Employment of Children and Forced Labour
43. Prohibition of employment of children

Referenced by:

- 1) No person may employ a child--
 - a) who is under 15 years of age; or
 - b) who is under the minimum school-leaving age in terms of any law, if this is 15 or older.
- 2) No person may employ a child in employment--
 - a) that is inappropriate for a person of that age;
 - b) that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.
- 3) A person who employs a child in contravention of subsection (1) or (2) commits an offence.

Basic Conditions of Employment Act, 1997
Chapter Six: Prohibition of Employment of Children and Forced Labour
44. Employment of children of 15 years or older

Referenced by:

- 1) Subject to section 43(2), the Minister may, on the advice of the Commission, make regulations to prohibit or place conditions on the employment of children who are at least 15 years of age and no longer subject to compulsory schooling in terms of any law.
- 2) A person who employs a child in contravention of subsection (1) commits an offence.

Basic Conditions of Employment Act, 1997
Chapter Six: Prohibition of Employment of Children and Forced Labour
45. Medical examinations

The Minister may, after consulting the Commission, make regulations relating to the conduct of medical examinations of children in employment.

Basic Conditions of Employment Act, 1997
Chapter Six: Prohibition of Employment of Children and Forced Labour
46. Prohibitions

Referenced by:

It is an offence to--

- a) assist an employer to employ a child in contravention of this Act; or
- b) discriminate against a person who refuses to permit a child to be employed in contravention of this Act.

Basic Conditions of Employment Act, 1997
Chapter Six: Prohibition of Employment of Children and Forced Labour
47. Evidence of age

In any proceedings in terms of this Act, if the age of an employee is a relevant factor for which insufficient evidence is available, it is for the party who alleges that the employment complied with the provisions of this Chapter to prove that it was reasonable for that party to believe, after investigation, that the person was not below the permitted age in terms of section 43 or 44.

Basic Conditions of Employment Act, 1997
Chapter Six: Prohibition of Employment of Children and Forced Labour
48. Prohibition of forced labour

Referenced by:

- 1) Subject to the Constitution, all forced labour is prohibited.
- 2) No person may for his or her own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of subsection (1).
- 3) A person who contravenes subsection (1) or (2) commits an offence.

Basic Conditions of Employment Act, 1997
Chapter Seven: Variation of Basic Conditions of Employment
49. Variation by agreement

Referenced by:

- 1) A collective agreement concluded in a bargaining council may alter, replace or exclude any basic condition of employment if the collective agreement is consistent with the purpose of this Act and the collective agreement does not--
 - a) reduce the protection afforded to employees by sections 7, 9 and any regulation made in terms of section 13;
 - b) reduce the protection afforded to employees who perform night work in terms of section 17(3) and (4);
 - c) reduce an employee's annual leave in terms of section 20 to less than two weeks;
 - d) reduce an employee's entitlement to maternity leave in terms of section 25;
 - e) reduce an employee's entitlement to sick leave in terms of sections 22, 23 and 24;
 - f) conflict with the provisions of Chapter Six.
- 2) A collective agreement, other than an agreement contemplated in subsection (1), may replace or exclude a basic condition of employment, to the extent permitted by this Act or a sectoral determination.
- 3) An employer and an employee may agree to replace or exclude a basic condition of employment to the extent permitted by this Act or a sectoral determination.
- 4) No provision in this Act or a sectoral determination may be interpreted as permitting--
 - a) a contract of employment or agreement between an employer and an employee contrary to the provisions of a collective agreement;
 - b) a collective agreement contrary to the provisions of a collective agreement concluded in a bargaining council.

Basic Conditions of Employment Act, 1997
Chapter Seven: Variation of Basic Conditions of Employment
50. Variation by Minister

Referenced by:

- 1) The Minister may, if it is consistent with the purpose of this Act, make a determination to replace or exclude any basic condition of employment provided for in this Act in respect of--
 - a) any category of employees or category of employers; or

- b) any employer or employee in respect of whom an application is made by--
 - i) the employer;
 - ii) the registered employers' organisation;
 - iii) the employer and the registered employers' organisation.

- 2) A determination in terms of subsection (1)-
 - a) may not be made in respect of sections 7, , 17(3) and (4), 43(2), 44 or 48 or a regulation made in terms of section 13; and
 - b) may only be made in respect of section 43(1) to allow the employment of children in the performance of advertising, sports, artistic or cultural activities.

- 2A) A determination in terms of subsection (1) may only be made in respect of section 9 if-
 - a) the employees' ordinary hours of work, rest periods and annual leave are on the whole more favourable to the employees than the basic conditions of employment in terms of sections 9, 10, 14, 15 and 20; and
 - b) the determination-
 - i) has been agreed to in a collective agreement;
 - ii) is necessitated by the operational circumstances of the sector in respect of which the variation is sought and the majority of employees in the sector are not members of a registered trade union; or
 - iii) applies to the agricultural sector or the private security sector.

- 3) A determination in terms of subsection (1)(a) must--
 - a) be made on the advice of the Commission; and
 - b) be issued by a notice in the *Gazette*.

- 4) The Minister may request the Commission--
 - a) to advise on any application made in terms of subsection (1)(b);
 - b) to prepare guidelines for the consideration of applications made in terms of subsection (1)(b).

- 5) A determination in terms of subsection (1) that applies to the public service must be made by the Minister with the concurrence of the Minister for the Public Service and Administration.

- 6) If a determination in terms of subsection (1) concerns the employment of children, the Minister must consult with the Minister for Welfare and Population Development before making the determination.

- 7)
 - a) A determination in terms of subsection (1)(b) may be issued if the application has the consent of every registered trade union that represents the employees in respect of whom the determination is to apply.

- b) If no consent contemplated in paragraph (a) is obtained, a determination in terms of subsection (1)(b) may be issued if--
 - i) the employer or employers' organisation has served a copy of the application, together with a notice stating that representations may be made to the Minister, on any registered trade union that represents employees affected by the application; and
 - ii) in the case where the majority of employees are not represented by a registered trade union, the employer or employer's organisation has taken reasonable steps to bring the application and the fact that representations may be made to the Minister, to the attention of those employees.

- 8) A determination made in terms of subsection (1)(b)--
 - a) may be issued on any conditions and for a period determined by the Minister;
 - b) may take effect on a date earlier than the date on which the determination is given, but not earlier than the date on which application was made;
 - c) must be issued in a notice in the prescribed form if the determination is made in respect of an application made by an employer;
 - d) must be published in a notice in the *Gazette* if the determination is made in respect of an application made by an employers' organisation.

- 9)
 - a) The Minister may on application by any affected party and after allowing other affected parties a reasonable opportunity to make representations, amend or withdraw a determination issued in terms of subsection (1).
 - b) For the purposes of paragraph (a), an affected party is--
 - i) an employer or employer's organisation that is covered by the determination;
 - ii) a registered trade union representing employees covered by the determination, or an employee covered by the determination who is not a member of a registered trade union.

- 10) An employer in respect of whom a determination has been made, or whose employees are covered by a determination in terms of subsection (1), must--
 - a) display a copy of the notice conspicuously at the workplace where it can be read by the employees to whom the determination applies;
 - b) notify each employee in writing of the fact of the determination and of where a copy of the notice has been displayed; and
 - c) give a copy of the notice to every--
 - i) registered trade union representing those employees;
 - ii) trade union representative representing those employees; and
 - iii) employee who requests a copy.

Basic Conditions of Employment Act, 1997
Chapter Eight: Sectoral Determinations
51. Sectoral determination

Referenced by:

- 1) The Minister may make a sectoral determination establishing basic conditions of employment for employees in a sector and area.
- 2) A sectoral determination must be made in accordance with this Chapter and by notice in the *Gazette*.

Basic Conditions of Employment Act, 1997
Chapter Eight: Sectoral Determinations
52. Investigation

Referenced by:

- 1) Before making a sectoral determination, the Minister must direct the Director-General to investigate conditions of employment in the sector and area concerned.
- 2) The Minister must determine terms of reference for the investigation, which must include--
 - a) the sector and area to be investigated;
 - b) the categories or classes of employees to be included in the investigation; and
 - c) the matters to be investigated, which may include any matter listed in section 55(4).
- 3) The Minister must publish a notice in the *Gazette* setting out the terms of reference of the investigation and inviting written representations by members of the public.
- 4) If an organisation representing employers or employees in a sector and area makes a written request to the Minister to investigate conditions of employment in that sector and area, the Minister must either--
 - a) direct the Director-General to conduct an investigation; or
 - b) request the Commission to advise the Minister on whether the requested investigation ought to be conducted.

Basic Conditions of Employment Act, 1997
Chapter Eight: Sectoral Determinations
53. Conduct of investigation

Referenced by:

- 1) For the purposes of conducting an investigation in terms of section 52(1), the Director-General may--
 - a) question any person who may be able to provide information relevant to any investigation; or
 - b) require, in writing, any employer or employee in a sector and area that is being investigated or any other person to furnish any information, book, document or object that is material to the investigation within a specified period, which must be reasonable.
- 2) A person may not refuse to answer any relevant question by the Director-General that he or she is legally obliged to answer.

Basic Conditions of Employment Act, 1997
Chapter Eight: Sectoral Determinations
54 Preparation of report

Referenced by:

- 1) On completion of an investigation, and after considering any representations made by members of the public, the Director-General must prepare a report.
- 2) A copy of the report must be submitted to the Commission for its consideration.
- 3) When advising the Minister on the publication of a sectoral determination, the Commission must consider in respect of the sector and area concerned--
 - a) the report prepared in terms of subsection (1);
 - b) the ability of employers to carry on their business successfully;
 - c) the operation of small, medium or micro-enterprises, and new enterprises;
 - d) the cost of living;
 - e) the alleviation of poverty;
 - f) conditions of employment;
 - g) wage differentials and inequality;
 - h) the likely impact of any proposed condition of employment on current employment or the creation of employment;
 - i) the possible impact of any proposed conditions of employment on the health, safety or welfare of employees;
 - j) any other relevant information made available to the Commission.

- 4) The Commission must prepare a report for the Minister containing recommendations on the matters which should be included in a sectoral determination for the relevant sector and area.

Basic Conditions of Employment Act, 1997

Chapter Eight: Sectoral Determinations

55. Making of sectoral determination

Referenced by:

- 1) After considering the report and recommendations of the Commission contemplated in section 54(4), the Minister may make a sectoral determination for one or more sector and area.
- 2) If the Minister does not accept a recommendation of the Commission made in terms of section 54(4), the Minister must refer the matter to the Commission for its reconsideration indicating the matters on which the Minister disagrees with the Commission.
- 3) After considering the further report and recommendations of the Commission, the Minister may make a sectoral determination.
- 4) A sectoral determination may in respect to the sector and area concerned--
 - a) set minimum terms and conditions of employment, including minimum rates of remuneration;
 - b) provide for the adjustment of minimum rates of remuneration;
 - c) regulate the manner, timing and other conditions of payment of remuneration;
 - d) prohibit or regulate payment of remuneration in kind;
 - e) require employers to keep employment records;
 - f) require employers to provide records to their employees;
 - g) prohibit or regulate task-based work, piecework, home work and contract work;
 - h) set minimum standards for housing and sanitation for employees who reside on their employers' premises;
 - i) regulate payment of traveling and other work-related allowances;
 - j) specify minimum conditions of employment for trainees;
 - k) specify minimum conditions of employment for persons other than employees;
 - l) regulate training and education schemes;
 - m) regulate pension, provident, medical aid, sick pay, holiday and unemployment schemes or funds; and
 - n) regulate any other matter concerning remuneration or other terms or conditions of employment.
- 5) Any provisions of a sectoral determination may apply to all or some of the employers and employees in the sector and area concerned.

- 6) A sectoral determination in terms of subsection (1)--
 - a) may not be made in respect of section 7, 43(2), or 44 or 48;
 - b) may only be made in respect of section 43(1) to allow the employment of children in the performance of advertising, sports, artistic or cultural activities;
 - c) may not reduce the protection afforded to employees by sections 17(3) and (4) and 25, or a regulation made in terms of section 13.
 - d) may vary the basic conditions of employment in section 9 in the circumstances contemplated by section 50(2A).

- 7) The Minister may not publish a sectoral determination--
 - a) covering employees and employers who are bound by a collective agreement concluded at a bargaining council;
 - b) regulating any matter in a sector and area in which a statutory council is established and in respect of which that statutory council has concluded a collective agreement;
 - c) regulating any matter regulated by a sectoral determination for a sector and area which has been in effect for less than 12 months.

Basic Conditions of Employment Act, 1997

Chapter Eight: Sectoral Determinations

56. Period of operation of sectoral determination

- 1) The provisions of a sectoral determination remain binding until they are amended or superseded by a new or amended sectoral determination, or they are cancelled or suspended by the Minister.

- 2) If a collective agreement contemplated in section 55(6)(a) or (b) is concluded, the provisions of a sectoral determination cease to be binding upon employers and employees covered by the agreement.

- 3) The Minister may, by notice in the *Gazette*--
 - a) cancel or suspend any provision of a sectoral determination, either in the sector and area as a whole or in part of the sector or in a specific area; or
 - b) correct or clarify the meaning of any provision of a sectoral determination as previously published.

- 4) Before publishing a notice of cancellation or suspension in terms of subsection (3)(a) the Minister must, by notice in the *Gazette*, announce the intention to do so, and allow an opportunity for public comment.

Basic Conditions of Employment Act, 1997

Chapter Eight: Sectoral Determinations

57. Legal effect of sectoral determination

If a matter regulated in this Act is also regulated in terms of a sectoral determination, the provision in the sectoral determination prevails.

Basic Conditions of Employment Act, 1997

Chapter Eight: Sectoral Determinations

58. Employer to keep a copy of sectoral determination

Unless a sectoral determination provides otherwise, every employer on whom the sectoral determination is binding must--

- a) keep a copy of that sectoral determination available in the workplace at all times;
- b) make that copy available for inspection by an employee; and
- c) give a copy of that sectoral determination--
 - i) to an employee who has paid the prescribed fee; and
 - ii) free of charge, on request, to an employee who is a trade union representative or a member of a workplace forum.

Basic Conditions of Employment Act, 1997

Chapter Nine: Employment Conditions Commission

59. Establishment and functions of Employment Conditions Commission

Referenced by:

- 1) The Employment Conditions Commission is hereby established.
- 2) The functions of the Commission are to advise the Minister--
 - a) on sectoral determinations in terms of Chapter Eight;
 - b) on any matter concerning basic conditions of employment;
 - c) on any matter arising out of the application of this Act;
 - d) on the effect of the policies of the government on employment;
 - e) on trends in collective bargaining and whether any of those trends undermine the purpose of this Act;
 - f) and the Minister for Welfare and Population Development, on any matter concerning the employment of children, including the review of section 43;
 - g) and the Minister for the Public Service and Administration, on any matter concerning basic conditions of employment in the public service.
- 3) The Commission may draw up rules for the conduct of its meetings and public hearings.
- 4) Subject to the laws governing the public service, the Minister must provide the Commission with the staff that the Minister considers necessary for the performance of its functions.
- 5) The Minister must direct the Director-General to undertake research that is required to enable the Commission to perform its functions.

- 6) The expenses of the Commission are to be met by money appropriated by Parliament for that purpose and which is subject to audit by the Auditor-General, referred to in section 188 of the Constitution.

Basic Conditions of Employment Act, 1997
Chapter Nine: Employment Conditions Commission
60. Composition of Commission

Referenced by:

- 1) The Minister must, after consultation with NEDLAC, appoint as members of the Commission three persons who are knowledgeable about the labour market and conditions of employment, including the conditions of employment of vulnerable and unorganised workers, and designate one of them as the chairperson.
- 2) The Minister must, in addition, appoint to the Commission--
 - a) one member and one alternate member nominated by the voting members of NEDLAC representing organised labour;
 - b) one member and one alternate member nominated by the voting members of NEDLAC representing organised business.
- 3) The chairperson and members of the Commission--
 - a) must be citizens or permanent residents of the Republic;
 - b) must act impartially when performing any function of the Commission;
 - c) may not engage in any activity that may undermine the integrity of the Commission; and
 - d) must recuse themselves from advising the Minister on any matter in respect of which they have a direct financial interest or any other conflict of interest.
- 4) The Minister must determine--
 - a) the term of office of the chairperson and members of the Commission, which may not be more than three years;
 - b) with the concurrence of the Minister of Finance, the remuneration and allowances to be paid to members of the Commission; and
 - c) any other conditions of appointment not provided for in this section.
- 5) The Minister must appoint a member to act as chairperson whenever--
 - a) the chairperson is absent from the Republic or from duty, or for any reason is temporarily unable to function as chairperson; or
 - b) the office of chairperson is vacant.
- 6) A person whose period of office as the chairperson or a member of the Commission has expired is eligible for reappointment.
- 7) The chairperson or a member of the Commission may resign in writing.

- 8) The Minister may remove the chairperson or a member of the Commission from office for--
 - a) serious misconduct;
 - b) permanent incapacity; or
 - c) engaging in any activity that may undermine the integrity of the Commission.

Basic Conditions of Employment Act, 1997
Chapter Nine: Employment Conditions Commission
61. Public hearings

The Commission may hold public hearings at which it may permit members of the public to make oral representations on any matter that the Commission is considering in terms of section 59(2).

Basic Conditions of Employment Act, 1997
Chapter Nine: Employment Conditions Commission
62. Report by Commission

- 1) The Commission's advice to the Minister must be in the form of a written report.
- 2) The Commission must, when performing any function in terms of section 59(2)(b) to (e), take into account the considerations set out in section 54(3) to the extent that they are appropriate.
- 3) The members of the Commission must endeavour to prepare a unanimous report to the Minister. If the members are not able to prepare a unanimous report, each member is entitled to have his or her views reflected in the report

Basic Conditions of Employment Act, 1997
Chapter Ten: Monitoring, Enforcement and Legal proceedings
Part A: Monitoring and Enforcement
63. Appointment of labour inspectors

Referenced by:

- 1) The Minister may--
 - a) appoint any person in the public service as a labour inspector;
 - b) designate any person in the public service, or any person appointed as a designated agent of a bargaining council in terms of section 33 of the Labour Relations Act, 1995, to perform any of the functions of a labour inspector.
- 2) Any person appointed under subsection (1) must perform his or her functions in terms of this Chapter, subject to the direction and control of the Minister.

- 3) The Minister must provide each labour inspector with a signed certificate in the prescribed form stating--
 - a) that the person is a labour inspector;
 - b) which legislation that labour inspector may monitor and enforce; and
 - c) which of the functions of a labour inspector that person may perform.

Basic Conditions of Employment Act, 1997

Chapter Ten: Monitoring, Enforcement and Legal proceedings

Part A: Monitoring and Enforcement

64. Functions of labour inspectors

- 1) A labour inspector appointed under section 63(1) may promote, monitor and enforce compliance with an employment law by--
 - a) advising employees and employers of their rights and obligations in terms of an employment law;
 - b) conducting inspections in terms of this Chapter;
 - c) investigating complaints made to a labour inspector;
 - d) endeavouring to secure compliance with an employment law by securing undertakings or issuing compliance orders; and
 - e) performing any other prescribed function.
- 2) A labour inspector may not perform any function in terms of this Act in respect of an undertaking in respect of which the labour inspector has, or may reasonably be perceived to have, any personal, financial or similar interest.

Basic Conditions of Employment Act, 1997

Chapter Ten: Monitoring, Enforcement and Legal proceedings

Part A: Monitoring and Enforcement

65. Powers of entry

Referenced by:

- 1) In order to monitor and enforce compliance with an employment law, a labour inspector may, without warrant or notice, at any reasonable time, enter--
 - a) any workplace or any other place where an employer carries on business or keeps employment records, that is not a home;
 - b) any premises used for training in terms of the Manpower Training Act, 1981 (Act No. 56 of 1981); or
 - c) any private employment office registered under section 15 of the Guidance and Placement Act, 1981 (Act No. 62 of 1981).
- 2) A labour inspector may enter a home or any place other than a place referred to in subsection (1) only--
 - a) with the consent of the owner or occupier; or
 - b) if authorised to do so in writing in terms of subsection (3).

- 3) The Labour Court may issue an authorisation contemplated in subsection (2) only on written application by a labour inspector who states under oath or affirmation the reasons for the need to enter a place in order to monitor or enforce compliance with any employment law.
- 4) If it is practical to do so, the employer and a trade union representative must be notified that the labour inspector is present at a workplace and of the reason for the inspection.

Basic Conditions of Employment Act, 1997
Chapter Ten: Monitoring, Enforcement and Legal proceedings
Part A: Monitoring and Enforcement
66. Powers to question and inspect

Referenced by:

- 1) In order to monitor or enforce compliance with an employment law, a labour inspector may--
 - a) require a person to disclose information, either orally or in writing, and either alone or in the presence of witnesses, on any matter to which an employment law relates, and require that the disclosure be made under oath or affirmation;
 - b) inspect, and question a person about, any record or document to which an employment law relates;
 - c) copy any record or document referred to in paragraph (b), or remove these to make copies or extracts;
 - d) require a person to produce or deliver to a place specified by the labour inspector any record or document referred to in paragraph (b) for inspection;
 - e) inspect, question a person about, and if necessary remove, any article, substance or machinery present at a place referred to in section 65;
 - f) inspect or question a person about any work performed; and
 - g) perform any other prescribed function necessary for monitoring or enforcing compliance with an employment law.
- 2) A labour inspector may be accompanied by an interpreter and any other person reasonably required to assist in conducting the inspection.
- 3) A labour inspector must--
 - a) produce on request the certificate referred to in section 63(3);
 - b) provide a receipt for any record, document, article, substance or machinery removed in terms of subsection (1)(c) or (e); and
 - c) return anything removed within a reasonable period of time.
- 4) The powers provided for in this Part are in addition to any power of a labour inspector in terms of any other employment law.

Basic Conditions of Employment Act, 1997
Chapter Ten: Monitoring, Enforcement and Legal proceedings
Part A: Monitoring and Enforcement
67. Co-operation with Labour inspectors

- 1) Any person who is questioned by a labour inspector in terms of section 66 must answer all relevant questions lawfully put to that person truthfully and to the best of his or her ability.
- 2) Every employer and each employee must provide any facility and assistance at a workplace that is reasonably required by a labour inspector to perform the labour inspector's functions effectively.

Basic Conditions of Employment Act, 1997
Chapter Ten: Monitoring, Enforcement and Legal proceedings
Part A: Monitoring and Enforcement
68. Securing an undertaking

Referenced by:

- 1) A labour inspector who has reasonable grounds to believe that an employer has not complied with any provision of this Act must endeavour to secure a written undertaking by the employer to comply with the provision.
- 1A) A labour inspector may endeavour to secure a written undertaking by the employer to comply with subsection (1) either by -
 - a) meeting with the employer or a representative of the employer; or
 - b) serving a document, in the prescribed form, on the employer.
- 2) In endeavouring to secure the undertaking, the labour inspector--
 - a) may seek to obtain agreement between the employer and employee as to any amount owed to the employee in terms of this Act;
 - b) may arrange for payment to an employee of any amount paid as a result of an undertaking;
 - c) may, at the written request of an employee, receive payment on behalf of the employee; and
 - d) must provide a receipt for any payment received in terms of paragraph (c).

Basic Conditions of Employment Act, 1997
Chapter Ten: Monitoring, Enforcement and Legal proceedings
Part A: Monitoring and Enforcement
69. Compliance order

Referenced by:

- 1) A labour inspector who has reasonable grounds to believe that an employer has not complied with a provision of this Act may issue a compliance order.
- 2) A compliance order must set out--
 - a) the name of the employer, and the location of every workplace, to which it applies;
 - b) any provision of this Act that the employer has not complied with, and details of the conduct constituting non-compliance;
 - c) any amount that the employer is required to pay to an employee;
 - d) any written undertaking by the employer in terms of section 68(1) and any failure by the employer to comply with a written undertaking;
 - e) any steps that the employer is required to take including, if necessary, the cessation of the contravention in question and the period within which those steps must be taken; and
 - f) the maximum fine that may be imposed upon the employer in accordance with Schedule Two for a failure to comply with a provision of this Act.
- 3)
 - a) A labour inspector must serve a copy of the compliance order on the employer named in it, and on each employee affected by it unless this is impractical, and on a representative of the employees.
 - b) The failure to serve a copy of a compliance order on any employee or any representative of employees in terms of paragraph (a) does not invalidate the order.
- 4) The employer must display a copy of the compliance order prominently at a place accessible to the affected employees at each workplace named in it.
- 5) An employer must comply with the compliance order within the time period stated in the order unless the employer objects in terms of section 71.

Basic Conditions of Employment Act, 1997
Chapter Ten: Monitoring, Enforcement and Legal proceedings
Part A: Monitoring and Enforcement
70. Limitations

A labour inspector may not issue a compliance order in respect of any amount payable to an employee as a result of a failure to comply with a provision of this Act if--

- a) the employee is covered by a collective agreement that provides for resolution by arbitration of disputes concerning amounts owing in terms of this Act;
- b) the employee is employed in a category of employees mentioned in section 6(1)(a) or in respect of which a notice has been issued in terms of section 6(3);
- c) any proceedings have been instituted for the recovery of that amount or, if proceedings have been instituted, those proceedings have been withdrawn; or
- d) that amount has been payable by the employer to the employee for longer than 12 months before the date on which a complaint was made to a labour inspector by or on behalf of the employee or, if no complaint was made, the date on which a labour inspector first endeavoured to secure a written undertaking by the employer in terms of section 68.

Basic Conditions of Employment Act, 1997
Chapter Ten: Monitoring, Enforcement and Legal proceedings
Part A: Monitoring and Enforcement
71. Objections to compliance order

Referenced by:

- 1) An employer may object to a compliance order by making representations in writing to the Director-General within 21 days of receipt of that order.
- 2) If the employer shows good cause at any time, the Director-General may permit the employer to object after the period of 21 days has expired.
- 3) After considering any representations by the employer and any other relevant information, the Director-General--
 - a) may confirm, modify or cancel an order or any part of an order; and
 - b) must specify the period within which the employer must comply with any part of an order that is confirmed or modified.
- 4) The information that the Director-General must consider includes--
 - a) any evidence concerning the employer's compliance record;
 - b) the likelihood that the employer was aware of the relevant provisions; and
 - c) the steps taken by the employer to ensure compliance with the relevant provision.

- 5) The Director-General must serve a copy of the order made in terms of subsection (3) on the employer and on each employee affected by it or, if this is impractical, on a representative of the employees.
- 6) If the Director-General confirms or modifies the order or any part of the order, the employer must comply with that order within the time period specified in that order.

Basic Conditions of Employment Act, 1997

Chapter Ten: Monitoring, Enforcement and Legal proceedings

Part A: Monitoring and Enforcement

72. Appeals from order of Director-General

- 1) An employer may appeal to the Labour Court against an order of the Director-General within 21 days of receipt of that order.
- 2) The order is suspended pending the final determination of the appeal by the Labour Court or any appeal from the Labour Court.
- 3) If the employer shows good cause at any time, the Labour Court may permit the employer to appeal after the period of 21 days has expired.

Basic Conditions of Employment Act, 1997

Chapter Ten: Monitoring, Enforcement and Legal proceedings

Part A: Monitoring and Enforcement

73. Order may be made order of Labour Court

- 1) The Director-General may apply to the Labour Court for a compliance order to be made an order of the Labour Court in terms of section 158(1)(c) of the Labour Relations Act, 1995, if the employer has not complied with the order and has not lodged an objection against the order in terms of section 71(1).
- 2) The Director-General may apply to the Labour Court for an order of the Director-General in terms of section 71(3) to be made an order of the Labour Court in terms of section 158(1)(c) of the Labour Relations Act, 1995, if the employer has not complied with the order and has not appealed against the order in terms of section 72(1).
- 3) ***[deleted by the Basic Conditions of Employment Act, No. 11 of 2002]***

Basic Conditions of Employment Act, 1997
Chapter Ten: Monitoring, Enforcement and Legal proceedings
Part B: Legal proceedings
74. Consolidation of proceedings

- 1) A dispute concerning a contravention of this Act may be instituted jointly with proceedings instituted by an employee under Part C of this Chapter.
- 2) If an employee institutes proceedings for unfair dismissal, the Labour Court or the arbitrator hearing the matter may also determine any claim for an amount that is owing to that employee in terms of this Act if--
 - a) the claim is referred in compliance with section 191 of the Labour Relations Act, 1995;
 - b) the amount had not been owing by the employer to the employee for longer than one year prior to the dismissal; and
 - c) no compliance order has been made and no other legal proceedings have been instituted to recover the amount.
- 3) A dispute concerning any amount that is owing to an employee as a result of a contravention of this Act may be initiated jointly with a dispute instituted by that employee over the entitlement to severance pay in terms of section 41(6).

Basic Conditions of Employment Act, 1997
Chapter Ten: Monitoring, Enforcement and Legal proceedings
Part B: Legal proceedings
75. Payment of interest

An employer must pay interest on any amount due and payable in terms of this Act at the rate of interest prescribed in terms of section 1 of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), to any person to whom a payment should have been made.

Basic Conditions of Employment Act, 1997
Chapter Ten: Monitoring, Enforcement and Legal proceedings
Part B: Legal proceedings
76. Proof of compliance

- 1) In any proceedings concerning a contravention of this Act or any sectoral determination it is for an employer--
 - a) to prove that a record maintained by or for that employer is valid and accurate;
 - b) who has failed to keep any record required by this Act that is relevant to those proceedings, to prove compliance with any provision of this Act.

Basic Conditions of Employment Act, 1997
Chapter Ten: Monitoring, Enforcement and Legal proceedings
Part B: Legal proceedings
77. Jurisdiction of Labour Court

- 1) Subject to the Constitution and the jurisdiction of the Labour Appeal Court, and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters in terms of this Act, except in respect of an offence specified in sections 43, 44, 46, 48, 90 and 92.
- 2) The Labour Court may review the performance or purported performance of any function provided for in this Act or any act or omission of any person in terms of this Act on any grounds that are permissible in law.
- 3) The Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of that contract.
- 4) Subsection (1) does not prevent any person relying upon a provision of this Act to establish that a basic condition of employment constitutes a term of a contract of employment in any proceedings in a civil court or an arbitration held in terms of an agreement.
- 5) If proceedings concerning any matter contemplated in terms of subsection (1) are instituted in a court that does not have jurisdiction in respect of that matter, that court may at any stage during proceedings refer that matter to the Labour Court.

Basic Conditions of Employment Act, 1997
Chapter Ten: Monitoring, Enforcement and Legal proceedings
Part B: Legal proceedings
77A. Powers of Labour Court

Subject to the provisions of this Act, the Labour Court may make any appropriate order, including an order-

- a) making a compliance order issued in terms of this Act, an order of the Labour Court, on application by the Director-General in terms of section 73(1) or 73(2);
- b) condoning the late filing of any document with, or the late referral of any dispute to, the Labour Court;
- c) confirming, varying or setting aside all or part of an order made by the Director-General in terms of section 71(3), on appeal by the employer in terms of section 72;
- d) reviewing the performance or purported performance of any function provided for in terms of this Act or any act or omission by any person or body in terms of this Act, on any grounds permissible in law;

- e) making a determination that it considers reasonable on any matter concerning a contract of employment in terms of section 77(3), which determination may include an order for specific performance, an award of damages or an award of compensation;
- f) imposing a fine in accordance with Schedule 2 to this Act or for any contravention of any provision of this Act for which a fine can be imposed; and
- g) dealing with any matter necessary or incidental to performing its functions in terms of this Act.

Basic Conditions of Employment Act, 1997
Chapter Ten: Monitoring, Enforcement and Legal proceedings
Part C: Protection of Employees against Discrimination
78. Rights of employees

- 1) Every employee has the right to--
 - a) make a complaint to a trade union representative, a trade union official or a labour inspector concerning any alleged failure or refusal by an employer to comply with this Act;
 - b) discuss his or her conditions of employment with his or her fellow employees, his or her employer or any other person;
 - c) refuse to comply with an instruction that is contrary to this Act or any sectoral determination;
 - d) refuse to agree to any term or condition of employment that is contrary to this Act or any sectoral determination;
 - e) inspect any record kept in terms of this Act that relates to the employment of that employee;
 - f) participate in proceedings in terms of this Act;
 - g) request a trade union representative or a labour inspector to inspect any record kept in terms of this Act and that relates to the employment of that employee.
- 2) Every trade union representative has the right, at the request of an employee, to inspect any record kept in terms of this Act that relates to the employment of that employee.

Basic Conditions of Employment Act, 1997
Chapter Ten: Monitoring, Enforcement and Legal proceedings
Part C: Protection of Employees against Discrimination
79. Protection of rights

- 1) In this section, "employee" includes a former employee or an applicant for employment.
- 2) No person may discriminate against an employee for exercising a right conferred by this Part and no person may do, or threaten to do, any of the following:
 - a) Require an employee not to exercise a right conferred by this Part;
 - b) prevent an employee from exercising a right conferred by this Part; or

- c) prejudice an employee because of a past, present or anticipated--
 - i) failure or refusal to do anything that an employer may not lawfully permit or require an employee to do;
 - ii) disclosure of information that the employee is lawfully entitled or required to give to another person; or
 - iii) exercise of a right conferred by this Part.
- 3) No person may favour, or promise to favour, an employee in exchange for the employee not exercising a right conferred by this Part. However, nothing in this section precludes the parties to a dispute from concluding an agreement to settle the dispute.

Basic Conditions of Employment Act, 1997
Chapter Ten: Monitoring, Enforcement and Legal proceedings
Part C: Protection of Employees against Discrimination
80. Procedure for disputes

- 1) If there is a dispute about the interpretation or application of this Part, any party to the dispute may refer the dispute in writing to--
 - a) a council, if the parties to the dispute fall within the registered scope of that council; or
 - b) the CCMA, if no council has jurisdiction.
- 2) The party who refers a dispute must satisfy the council or the CCMA that a copy of the referral has been served on all the other parties to the dispute.
- 3) The council or the CCMA must attempt to resolve a dispute through conciliation.
- 4) If a dispute remains unresolved, any party to the dispute may refer it to the Labour Court for adjudication.
- 5) In respect of a dispute in terms of this Part, the relevant provisions of Part C of Chapter VII of the Labour Relations Act, 1995, apply with the changes required by the context.

Basic Conditions of Employment Act, 1997
Chapter Ten: Monitoring, Enforcement and Legal proceedings
Part C: Protection of Employees against Discrimination
81. Burden of proof

In any proceeding in terms of this Part--

- a) an employee who alleges that a right or protection conferred by this Part has been infringed, must prove the facts of the conduct said to constitute such infringement; and
- b) the party who allegedly engaged in the conduct in question must then prove that the conduct did not infringe any provision of this Part.

Basic Conditions of Employment Act, 1997

Chapter Eleven: General

82. Temporary employment services

- 1) For the purposes of this Act, a person whose services have been procured for, or provided to, a client by a temporary employment service is the employee of that temporary employment service, and the temporary employment service is that person's employer.
- 2) Despite subsection (1), a person who is an independent contractor is not an employee of a temporary employment service, nor is the temporary employment service the employer of that person.
- 3) The temporary employment service and the client are jointly and severally liable if the temporary employment service, in respect of any employee who provides services to that client, does not comply with this Act or a sectoral determination.

Basic Conditions of Employment Act, 1997

Chapter Eleven: General

83. Deeming of persons as employees

Referenced by:

- 1) The Minister may, on the advice of the Commission and by notice in the *Gazette*, deem any category of persons specified in the notice to be-
 - a) employees for purposes of the whole or any part of this Act, any other employment law other than the Unemployment Insurance Act, 1966 Act No. 30 of 1966), or any sectoral determination;
 - b) contributors for purposes of the whole or any part of the Unemployment Insurance Act, 1966.
- 2) Before the Minister issues a notice under subsection (1), the Minister must-
 - a) publish a draft of the proposed notice in the *Gazette*; and
 - b) invite interested persons to submit written representations on the proposed notice within a reasonable period.

Basic Conditions of Employment Act, 1997

Chapter Eleven: General

83A. Presumption as to who is employee

- 1) A person who works for, or renders services to, an other person is presumed, until the contrary is proved, to be an employee, regardless of the form of the contract, if any one or more of the following factors is present:
 - a) The manner in which the person works is subject to the control or direction of another person;
 - b) the person's hours of work are subject to the control or direction of another person;

- c) in the case of a person who works for an organisation, the person is a part of that organisation;
 - d) the person has worked for that other person for an average of at least 40 hours per month over the last three months;
 - e) the person is economically dependent on the other person for whom 35 that person works or renders services;
 - f) the person is provided with tools of trade or work equipment by the other person; or
 - g) the person only works for or renders services to one person.
- 2) Subsection (1) does not apply to any person who earns in excess of the amount determined by the Minister in terms of section 6(3).
 - 3) If a proposed or existing work arrangement involves persons who earn amounts equal to or below the amounts determined by the Minister in terms of section 6(3), any of the contracting parties may approach the CCMA for an advisory award about whether the persons involved in the arrangement are employees.

Basic Conditions of Employment Act, 1997
Chapter Eleven: General
84. Duration of employment

- 1) For the purposes of determining the length of an employee's employment with an employer for any provision of this Act, previous employment with the same employer must be taken into account if the break between the periods of employment is less than one year.
- 2) Any payment made or any leave granted in terms of this Act to an employee contemplated in subsection (1) during a previous period of employment must be taken into account in determining the employee's entitlement to leave or to a payment in terms of this Act.

Basic Conditions of Employment Act, 1997
Chapter Eleven: General
85. Delegation

- 1) The Minister may in writing delegate or assign to the Director-General or any employee in the public service of the rank of assistant director or of a higher rank, any power or duty conferred or imposed upon the Minister in terms of this Act, except the Minister's powers in terms of sections 6(3), 55(1), 60, 83, 87 and 95(2) and the Minister's power to make regulations.
- 2) A delegation or assignment in terms of subsection (1) does not limit or restrict the Minister's authority to exercise or perform the delegated or assigned power or duty.
- 3) Any person to whom a power or duty is delegated or assigned in terms of subsection (1) must exercise or perform that power or duty subject to the direction of the Minister.

- 4) The Minister may at any time--
 - a) withdraw a delegation or assignment made in terms of subsection (1); and
 - b) withdraw or amend any decision made by a person exercising or performing a power or duty delegated or assigned in terms of subsection (1).
- 5) The Director-General may in writing delegate or assign any power or duty conferred or imposed upon the Director-General by Chapter Ten of this Act to any employee in the Department of the rank of assistant director or of a higher rank.
- 6) Subsections (2), (3) and (4) apply with changes required by the context to any delegations or assignments by the Director-General under subsection (5).

Basic Conditions of Employment Act, 1997

Chapter Eleven: General

86. Regulations

- 1) The Minister may by notice in the *Gazette*, after consulting the Commission, make regulations regarding any matter that may be necessary or expedient to prescribe in order to achieve the objects of this Act.
- 2) A regulation regarding state revenue or expenditure may be made only with the concurrence of the Minister of Finance.

Basic Conditions of Employment Act, 1997

Chapter Eleven: General

87. Codes of Good Practice

Referenced by:

- 1) The Minister, after consulting NEDLAC--
 - a) must issue a Code of Good Practice on the Arrangement of Working Time;
 - b) must issue a Code of Good Practice on the Protection of Employees during Pregnancy and after the Birth of a Child;
 - c) may issue other codes of good practice; and
 - d) may change or replace any code of good practice.
- 2) Any code of good practice or any change to or replacement of a code of good practice must be published in the *Gazette*.
- 3) Any person interpreting or applying this Act must take into account relevant codes of good practice.

- 4) A Code of Good Practice issued in terms of this section may provide that the Code must be taken into account in applying or interpreting any employment law.

Basic Conditions of Employment Act, 1997

Chapter Eleven: General

88. Minister's power to add and change footnotes

The Minister may, by notice in the *Gazette*, add to, change or replace any footnote in this Act.

Basic Conditions of Employment Act, 1997

Chapter Eleven: General

89. Representation of employees or employers

- 1) A registered trade union or registered employers' organisation may act in any one or more of the following capacities in any dispute to which any of its members is a party:
 - a) In its own interest;
 - b) on behalf of any of its members;
 - c) in the interest of any of its members.
- 2) A registered trade union or a registered employers' organisation is entitled to be a party to any proceedings in terms of this Act if one or more of its members is a party to these proceedings.

Basic Conditions of Employment Act, 1997

Chapter Eleven: General

90. Confidentiality

Referenced by:

- 1) It is an offence for any person to disclose information which that person acquired while exercising or performing any power or duty in terms of this Act and which relates to the financial or business affairs of any other person, except if the information is disclosed in compliance with the provisions of any law--
 - a) to enable a person to perform a function or exercise a power in terms of an employment law;
 - b) for the purposes of the proper administration of this Act;
 - c) for the purposes of the administration of justice.
- 2) Subsection (1) does not prevent the disclosure of any information concerning an employer's compliance or non-compliance with the provisions of any employment law.

- 3) The record of any medical examination performed in terms of this Act must be kept confidential and may be made available only--
 - a) in accordance with the ethics of medical practice;
 - b) if required by law or court order; or
 - c) if the employee has in writing consented to the release of that information.

Basic Conditions of Employment Act, 1997

Chapter Eleven: General

91. Answers not to be used in criminal prosecutions

No answer by any person to a question by a person conducting an investigation in terms of [section 53](#) or by a [labour inspector](#) in terms of [section 66](#) may be used against that person in any criminal proceedings except proceedings in respect of a charge of perjury or making a false statement.

Basic Conditions of Employment Act, 1997

Chapter Eleven: General

92. Obstruction, undue influence and fraud

Referenced by:

It is an offence to--

- a) obstruct or attempt to influence improperly a person who is performing a function in terms of this Act;
- b) obtain or attempt to obtain any [prescribed](#) document by means of fraud, false pretenses, 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 this Act;
- d) refuse or fail to answer fully any lawful question put by a labour inspector or 1 any other person performing a function in terms of [this 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 this Act;
- f) hinder or obstruct a labour inspector or any other person performing a function in terms of this Act.

Basic Conditions of Employment Act, 1997

Chapter Eleven: General

93. Penalties

- 1) Any magistrates' court has jurisdiction to impose a penalty for an offence provided for in this Act.

- 2) Any person convicted of an offence in terms of any section mentioned in the first column of the table below may be sentenced to a fine or imprisonment for a period not longer than the period mentioned in the second column of that table opposite the number of that section.

Offences and Penalties

Section under which convicted	Maximum term of imprisonment
<u>Section 43</u>	3 years
<u>Section 44</u>	3 years
<u>Section 46</u>	3 years
<u>Section 48</u>	3 years
<u>Section 90(1) and (3)</u>	1 year
<u>Section 92</u>	1 year

Basic Conditions of Employment Act, 1997

Chapter Eleven: General

94. This Act binds the State

This Act binds the State except in so far as criminal liability is concerned.

Basic Conditions of Employment Act, 1997

Chapter Eleven: General

95. Transitional arrangements and amendment and repeal of laws

Referenced by:

- 1) The provisions of Schedule Three apply to the transition from other laws to this Act.
- 2) The Minister may for the purposes of regulating the transition from any law to this Act add to or change Schedule Three.
- 3) Any addition or change to Schedule Three must be tabled in the National Assembly and takes effect--
 - a) if the National Assembly does not pass a resolution that the addition or change is not binding within 14 days of the date of the tabling; and
 - b) on publication in the *Gazette*.
- 4) Section 186 of the Labour Relations Act, 1995, is hereby amended by the deletion of subparagraph (ii) of paragraph (c).
- 5) The laws mentioned in the first two columns of Schedule Four are hereby repealed to the extent indicated opposite that law in the third column of that Schedule.

- 6) The repeal of any law by subsection (5) does not affect any transitional arrangement provided for in Schedule Three.

Basic Conditions of Employment Act, 1997

Chapter Eleven: General

96. Short title and commencement

This is the Basic Conditions of Employment Act, 1997, and comes into effect on a date to be fixed by the President by proclamation in the *Gazette*.

Basic Conditions of Employment Act, 1997

Schedule One: Procedures for Progressive Reduction of Maximum Working Hours

1. Goal

This Schedule records the procedures to be adopted to reduce the working hours of employees to the goal of a 40 hour working week and an eight hour working day--

- a) through collective bargaining and the publication of sectoral determinations;
- b) having due regard to the impact of a reduction of working hours on existing employment and opportunities for employment creation, economic efficiency and the health, safety and welfare of employees.

Basic Conditions of Employment Act, 1997

Schedule One: Procedures for Progressive Reduction of Maximum Working Hours

2. Collective bargaining

When during negotiations on terms and conditions of employment, a party to the negotiations introduces the reduction of maximum working hours as a subject for negotiation, the parties must negotiate on that issue.

Basic Conditions of Employment Act, 1997

Schedule One: Procedures for Progressive Reduction of Maximum Working Hours

3. Role of Employment Conditions Commission

The Commission may investigate the possibility of reducing working hours in a particular sector and area and make recommendations to the Minister thereon.

Basic Conditions of Employment Act, 1997
Schedule One: Procedures for Progressive Reduction of
Maximum Working Hours
4. Investigation by Department of Labour

- 1) The Department of Labour must, after consultation with the Commission, conduct an investigation as to how the reduction of weekly working hours to a level of 40 hours per week may be achieved.
- 2) The investigation must be completed and the report submitted to the Minister not later than 18 months after the Act has come into operation.

Basic Conditions of Employment Act, 1997
Schedule One: Procedures for Progressive Reduction of
Maximum Working Hours
5. Reports

- 1) The Department of Labour must, after consultation with the Commission--
 - a) monitor and review progress made in reducing working hours;
 - b) prepare and publish a report for the Minister on the progress made in the reduction of working hours.
- 2) The Department must publish reports every two years.
- 3) The reports must be tabled at NEDLAC and in Parliament by the Minister.
- 4) The Minister may prescribe the returns to be submitted by employers, trade unions and councils on any matter concerning this Schedule.

Basic Conditions of Employment Act, 1997
Schedule Two: Maximum Permissible Fines that may be
Imposed for Failure to Comply with this Act

- 1) This Schedule sets out the maximum fine that may be imposed in terms of Chapter Ten for a failure to comply with a provision of this Act.
- 2) The maximum fine that may be imposed--
 - a) for a failure to comply with a provision of this Act not involving a failure to pay an amount due to an employee in terms of any basic condition of employment, is the fine determined in terms of Table One or Table Two;
 - b) involving a failure to pay an amount due to an employee, is the greater of the amount determined in terms of Table One or Table Two.

Table One: Maximum Permissible Fine not Involving an Underpayment

No previous failure to comply	R100 per employee in respect of whom the failure to comply occurs
A previous failure to comply in respect of the same provision	R200 per employee in respect of whom the failure to comply occurs
A previous failure to comply within the previous 12 months or two previous failures to comply in respect of the same provision within three years	R300 per employee in respect of whom the failure to comply occurs
Three previous failures to comply in respect of the same provision within three years	R400 per employee in respect of whom the failure to comply occurs
Four previous failures to comply in respect of the same provision within three years	R500 per employee in respect of whom the failure to comply occurs

Table Two: Maximum Permissible Fine Involving an Underpayment

No previous failure to comply	25% of the amount due, including any interest owing on the amount at the date of the order
A previous failure to comply in respect of the same provision within three years	50% of the amount due, including any interest owing on the amount at the date of the order
A previous failure to comply in respect of the same provision within a year, or two previous failures to comply in respect of the same provision within three years	75% of the amount due, including any interest owing on the amount at the date of the order
Three previous failures to comply in respect of the same provision within three years	100% of the amount due, including any interest owing on the amount at the date of the order
Four previous failures to comply in respect of the same provision within three years	200% of the amount due, including any interest owing on the amount at the date of the order

Basic Conditions of Employment Act, 1997
Schedule Three: Transitional Provisions
2. Application to public service

This Act, except section 41, does not apply to the public service for 18 months after the commencement of this Act, unless a bargaining council concludes a collective agreement that a provision of this Act will apply from an earlier date.

Basic Conditions of Employment Act, 1997
Schedule Three: Transitional Provisions
3. Application to farm workers

- 1) Section 6A, section 10(2A) and section 14(4A) **of the Basic Conditions of Employment Act, 1983**, continue to apply to the employment of a farm worker until such time as the matters regulated by those provisions are regulated by a sectoral determination applicable to the farm worker.
- 2) Until regulated by a sectoral determination, section 17(3) applies to farm workers who work after 20:00 and before 04:00 at least five times per month or 50 times per year.

Basic Conditions of Employment Act, 1997
Schedule Three: Transitional Provisions
4. Payment in kind of domestic workers and farm workers

- 1) The definition of "wage" in section 1(1) of the Basic Conditions of Employment Act, 1983, and the definition of "payment in kind" in the regulations published under that Act continue to apply to the employment of domestic workers and farm workers, until regulated by a sectoral determination.
- 2) The Minister may, by notice in the *Gazette*, amend any cash amount prescribed in the definition of "payment in kind" in accordance with section 37 of the Basic Conditions of Employment Act, 1983, as if that section had not been repealed.

Basic Conditions of Employment Act, 1997

Schedule Three: Transitional Provisions

5. Ordinary hours of work

An employer may require or permit an employee who is employed as a farm worker, mineworker or security guard to work ordinary hours of work in excess of those prescribed by section 9(1) and (2) for the period specified in column two of Table One: Provided that--

- a) any condition in column two of Table One is complied with;
- b) the employee's hours of work do not exceed any limit on hours of work in any law or any wage-regulating measure applicable to that category of employee immediately before this Act came into effect;
- c) the employee and his or her employer do not conclude an agreement in terms of sections 11 and 12.

Table One

Farm workers	For a period of 12 months after the commencement date of this Act, provided that the employee's ordinary hours of work do not exceed 48 hours per <u>week</u> .
Mineworkers	For a period of 12 months after the commencement date of <u>this Act</u> , provided that the employee's total hours of work do not exceed any limit on hours or work <u>prescribed</u> in any applicable regulation that is in force in terms of item 4 of Schedule 4 to the Mine Health and Safety Act, 1996 (Act No. 29 of 1996).
Security guards	For a period of 12 <u>months</u> after the commencement date of this Act, provided that the employee's ordinary hours of work do not exceed 55 hours per week; and thereafter for a further period of 12 months, provided that the employee's <u>ordinary hours of work</u> do not exceed 50 hours per week.
Security guards in the private security sector	Despite the preceding sentence, for a period of 12 months after the commencement date of a sectoral determination for the private security sector, provided that the employee's ordinary hours of work do not exceed 55 hours per week; and thereafter for a further period of 12 months, provided that the employee's ordinary hours of work do not exceed 50 hours per week.

Basic Conditions of Employment Act, 1997

Schedule Three: Transitional Provisions

6. Leave pay

- 1) The entitlement in terms of section 20(2) of an employee employed continuously before and after the commencement of this Act takes effect on the date on which, but for the enactment of this Act, the employee would next have commenced a leave cycle in terms of section 12 of the Basic Conditions of Employment Act, 1983, or any wage determination.

- 2) Any accrued leave to which an employee was entitled in terms of section 12 of the Basic Conditions of Employment Act, 1983, or a wage determination, but which has not been granted by the date on which section 20(2) takes effect with respect to that employee, must be added to the paid leave earned by that employee in terms of this Act.
- 3) Section 22(3) does not apply to any leave earned by the employee in respect of any period prior to the date on which this Act takes effect

Basic Conditions of Employment Act, 1997
Schedule Three: Transitional Provisions
7. Pay for sick leave

- 1) Table Two applies in respect of any employee, as defined in the Basic Conditions of Employment Act, 1983, in employment at the commencement of this Act.
- 2) An employee listed in column one who was in continuous employment before the commencement of this Act for the period set out in column two becomes entitled to the rights under section 22(2) on the date listed in column three and section 22(3) on the date listed in column four.

Table Two: Transitional Arrangements in Relation to Sick Leave

Employees as defined in the Basic Conditions of Employment Act, 1983	Period of continuous employment before commencement date of this Act	Date of entitlement to six weeks' paid sick leave over 36-months sick Leave cycle in terms of section 22(2)	Date of entitlement to one day's paid sick leave every 26 days worked during the first six consecutive months of employment in terms of section 22(3)
<u>Employees</u> and regular day workers	Less than six months	Six months after commencement day of employment	Date on which employee began employment
Casual employees	Less than six months	Six months after commencement day of employment	Commencement date of this Act
Regular day workers and casual employees	More than six months	Commencement date of <u>this Act</u>	Not applicable
Employees (other than casual workers and regular day workers)	Between six and twelve months	Commencement date of this Act	Not applicable

Employees	More than twelve <u>months</u>	At conclusion of current sick leave cycle in terms of section 13(1) of the Basic Conditions of Employment Act, 1983	Not applicable
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- 3) Any period of paid sick leave granted to an employee in accordance with Table Two, may be deducted from the employee's entitlement in terms of either section 22(2) or section 22(3), if--
 - a) it was taken before the commencement of this Act; or
 - b) it was taken during the period that the relevant section was in effect with respect to that employee.

Basic Conditions of Employment Act, 1997
Schedule Three: Transitional Provisions
8. Exemptions

Any exemption granted under section 34 of the Basic Conditions of Employment Act, 1983, in force immediately before the commencement of this Act remains in force for the period for which the exemption was granted, or if the exemption was granted for an indefinite period, for a period of six months after the commencement of this Act as if that Act had not been repealed, unless it is withdrawn by the Minister, before the end of such period.

Basic Conditions of Employment Act, 1997
Schedule Three: Transitional Provisions
9. Wage determinations

- 1) Any wage determination and any amendment to a wage determination made in terms of section 15 of the Wage Act, 1957, in force immediately before the commencement of the Basic Conditions of Employment Amendment Act, 2002 (hereafter referred to as a `wage determination') is deemed to be a sectoral determination made in accordance with section 55 of this Act.
- 2) Any provision in a wage determination stipulating a minimum term or condition of employment is deemed to be a basic condition of employment defined in section 1 of this Act.
- 3) The Minister may amend, cancel, suspend, clarify or correct any wage determination in accordance with Chapter Eight of this Act.
- 4) The provisions of a wage determination may be enforced in accordance with Chapter Ten of this Act.

- 5) Any prosecution concerning a contravention of, or failure to comply with, a binding wage determination or licence of exemption from 1 November 1998 until the commencement of the Basic Conditions of Employment Amendment Act, 2002, which prosecution commenced prior to or within three months of the commencement date of the Basic Conditions of Employment Amendment Act, 2002, must be dealt with in terms of the Wage Act, 1957, as if the Wage Act, 1957, had not been repealed.
- 6) The Director of Public Prosecutions having jurisdiction is deemed to have issued a certificate in terms of section 23(3)(x) of the Wage Act, 1957, in respect of any contravention or failure contemplated in subitem (5) in respect of which no prosecution is commenced within three months of the commencement date of the Basic Conditions of Employment Amendment Act, 2002.

Basic Conditions of Employment Act, 1997

Schedule Three: Transitional Provisions

10. Exemptions to wage determination

Any licence of exemption granted in respect of a wage determination in terms of section 19 of the Wage Act, 1957, in force immediately before the commencement of this Act is deemed to be withdrawn as from a date six months after the commencement date of the Basic Conditions of Employment Amendment Act, 2002.

Basic Conditions of Employment Act, 1997

Schedule Three: Transitional Provisions

11. Agreements

- 1) Any agreement entered into before the commencement of this Act which is permitted by this Act remains valid and binding.
- 2) Any provision in a collective agreement concluded in a bargaining council that was in force immediately before this Act came into effect remains in effect for--
 - a) six months after the commencement date of this Act in the case of a provision contemplated by section 49(1)(a) to (d); and
 - b) 18 months after the commencement date of this Act in the case of a provision contemplated by section 49(1)(e).

Basic Conditions of Employment Act, 1997
Schedule Four: Laws Repealed by Section 95(5)

Number and year of law	Short title	Extent of Repeal
Act No. 5 of 1957	Wage Act, 1957	The Whole
Act No. 48 of 1981	Wage Amendment Act, 1981	The Whole
Act No. 3 of 1983	Basic Conditions of Employment Act, 1983	The Whole
Act No. 26 of 1984	Wage Amendment Act, 1984	The Whole
Act No. 27 of 1984	Basic Conditions of Employment Act, 1984	The Whole
Act No. 104 of 1992	Basic Conditions of Employment Act, 1992	The Whole
Act No. 137 of 1993	Basic Conditions of Employment Act, 1993	The Whole
Act No. 147 of 1993	Agricultural Labour Act, 1993	Chapter 2
Act No. 50 of 1994	Agricultural Labour Amendment Act, 1994	Section 2
Act No. 66 of 1995	Labour Act, 1995	Section 196

Basic Conditions of Employment Act, 1997
General Administrative Regulations
2. Informing Employees of Their Rights

An employer must keep the statement of employees rights referred to in section 30 of this Act in the form of BCEA 1 in all official languages.

Form BCEA 1A	English
Form BCEA 1B	Afrikaans
Form BCEA 1C	Sepedi
Form BCEA 1D	Sesotho
Form BCEA 1E	Setswana
Form BCEA 1F	siSwati
Form BCEA 1G	Tshivenda
Form BCEA 1H	Xitsonga
Form BCEA 1I	isiNdebele
Form BCEA 1J	isiXhosa
Form BCEA 1K	isiZulu

Basic Conditions of Employment Act, 1997
General Administrative Regulations
3. Keeping of Records

- 1) The record that an employer is required to keep in terms of section 31 must comprise
 - a) a wages register in the form of BCEA 2 or some other record that contains the information set out in that form; and
 - b) an attendance register in the form of BCEA 3 or some other record that contains the information set out in that form.

Basic Conditions of Employment Act, 1997
General Administrative Regulations
4. Record of Employee's Wages

The information about remuneration that an employer is required to give an employee in terms of section 33 of the Act must be given in the form of BCEA 4, or contain the information required by that form.

Basic Conditions of Employment Act, 1997
General Administrative Regulations
5. Written particulars of Employment

Within six months of the date on which the Act comes into effect, an employer must give an employee who was in employment on that date the written particulars of employment required by Section 29.

Basic Conditions of Employment Act, 1997
General Administrative Regulations
6. Certificate of Service

The certificate of service that an employer is required to give an employee in terms of section 42 must be given in the form of BCEA 5, or contain the information required by that form.

Basic Conditions of Employment Act, 1997
General Administrative Regulations
7. Ministerial Determination

An application for a Ministerial determination in terms of Section 50(1)(b) of the Act must be in the form of BCEA 6, or contain the information required by that form. A Ministerial determination must be issued in the form of BCEA 7, or contain the information required by that form.

Basic Conditions of Employment Act, 1997
General Administrative Regulations
8. Subpoenas

- 1) For the purpose of performing the functions referred to in section 66 of the Act, a labour inspector may--
 - a) subpoena for questioning any person who may be able to give information or whose presence may help the inspector in performing the inspector's functions;
 - b) subpoena any person who is believed to have possession or control of any book, document or object relevant to an inspection or investigation to appear before the inspector to be questioned or to produce that book, document or object;
 - c) call, and if necessary subpoena, any expert to appear before the inspector to give evidence relevant to an inspection or investigation;
 - d) call any person present at an inspection or investigation who was or could have been subpoenaed for any purpose set out in these regulations, to be questioned about any matter relevant to an inspection or investigation;
 - e) administer an oath or accept an affirmation from any person called to give evidence or be questioned;
 - f) examine, demand the production of, and seize any book, document or object that is on or in those premises and that is relevant to an inspection or investigation;
 - g) take a statement in respect of any matter relevant to an inspection or investigation from any person on the premises who is willing to make a statement; and
 - h) inspect, and retain for a reasonable period, any of the books, documents, or objects that have been produced to, or seized by, the inspector.
- 2) A subpoena issued in terms of sub-regulation (1) must be made in the form of BCEA 8.
- 3) A subpoena issued for any purpose in terms of sub-regulation (1) must be signed by the Director General or a person authorised by the Director-General and must -
 - a) specifically require the person named in it to appear before the inspector;
 - b) sufficiently identify the book, document or object to be produced; and
 - c) State the date, time and place at which the person is to appear.

Basic Conditions of Employment Act, 1997
General Administrative Regulations
9. Securing an Undertaking

- 1) Any request in writing to comply with an undertaking in terms of section 68(1A)(b) must be in the form of BCEA 8A or contain the information required by that form.

- 2) Any undertaking secured by a labour inspector in terms of Section 68(2) of the Act must be in the form of BCEA 9 or contain the information required by that form.
- 3) A receipt for any payment in terms of Section 68(2)(d) of the Act must be in the form of BCEA 10 or contain the information required by that form.

Basic Conditions of Employment Act, 1997
General Administrative Regulations
10. Compliance Order

A compliance order issued by a labour inspector in terms of Section 69 of the Act must be in the form of BCEA 12 or contain the information set out in that form.

Basic Conditions of Employment Act, 1997
General Administrative Regulations
11. Objections to Compliance Order

- 1) An objection lodged by an employer in terms of Section 71 of the Act must be in the form of BCEA 13 or contain the information set out in that form.
- 2) The objection must be lodged at any office of the Department of Labour listed in regulation 1(2).

Basic Conditions of Employment Act, 1997
General Administrative Regulations
12. Proof of Service

Whenever a party is required to satisfy any person that a copy of a referral, objection or other document has been served on another party, that party may do so by providing -

- a) a copy of the proof of mailing the referral, objection or other document by registered post to the other party;
- b) copy of the telegram, telex or telefax including proof of transmission, communicating the referral, objection or other document to the other party;
- c) copy of a receipt signed by the other party or on that party's behalf if the copy of the referral, objection or other document was delivered by hand; or
- d) statement confirming service signed by the person who delivered a copy of the referral objection or other party.

Basic Conditions of Employment Act, 1997
General Administrative Regulations
13. Inspector certificates in terms of section 63

- 1) A certificate issued to a labour inspector in terms of section 63(3) must be in the form of Annexure 14A
- 2) Every labour inspector who is issued with a certificate in terms of sub-regulation (1) must also be issued with a certificate in the form of an inspector card in the form of Annexure 14B
- 3) Production of a certificate by a labour inspector in the form of either Annexure 14A or Annexure 14 B constitutes
 - a) Proof that the person identified in the certificate is a labour inspector;
 - b) Compliance with a request for the productions of a certificate in terms of section 65(3)(a) of the Act."

Basic Conditions of Employment Act, 1997
General Administrative Regulations
Form BCEA 1
Summary to be kept by an Employer in terms of Section 30

[Click here to download this summary in Word 97/2000 format.](#)

(Regulation 2)

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

([Section 30](#))

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 contained in the Act form part of the contract of employment of employees covered by the Act. Some, but not all, basic conditions of employments 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 Two

2.1) Application

This chapter does not apply to : senior managerial employees, employees engaged as sales staff who travel and employees who work less 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 an employee works for five days or less 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 an agreement;
- 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 fifteen hours per week for up to two months in any period of 12 months.

2.3.4) Overtime must be paid at 1.5 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;
 - 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;
 - b) dispense with the meal interval for employees who work fewer than six hours on a day.

2.7) The 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 Sunday.

2.8) Pay for work on Sundays : Section 16

- 2.8.1) An employee who occasionally works on a Sunday must receive double pay.
- 2.8.2) An employee who ordinarily works on a Sunday must be paid at 1.5 times the normal wage.
- 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 between 18h00 and 06h00 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 work regularly after 23:00 and before 06:00 the next day must be informed -
- a) of any health and safety hazards; and
 - b) the right to undergo a medical examination.

2.10) Public holidays : Section 18

- 2.10.1) Employees must be paid their ordinary pay for any public holiday that falls on a working day.
- 2.10.2) Work on a public holiday is by agreement and paid at double the rate.

- 2.10.3) A public holiday may be exchanged with another day-by agreement.

3) Leave : Chapter Three

3.1) Application

The chapter on leave does not apply to an employee who works less than 24 hours a month for an employer and to leave granted-in excess of the leave entitlement under this chapter.

3.2) Annual leave : Sections 20 & 21

3.2.1) Employees are entitled to 21 consecutive days' annual leave or by agreement, one day for every 17 days worked or one hour for every 17 hours worked.

3.2.2) Leave must be granted not later than six months after the end of the annual leave cycle.

3.2.3) An employer must 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) During 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 a medical certificate before paying an employee who is absent for more than two consecutive days or who is frequently absent.

3.4) Maternity leave : Sections 25 & 26

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

3.4.2) A pregnant employee or employee nursing her child is not allowed to perform work that is hazardous to her or her child.

3.5) Family responsibility leave : Section 27

3.5.1) Full time employees are entitled to three days paid family responsibility leave per year, on request, when the employee's child is born or sick, or in the event of the death of the employee's spouse or life partner, or the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

3.5.2) An employer may require reasonable proof.

4) Particulars of Employment and Remuneration : Chapter Four

4.1) Application

This chapter does not apply to an employee who works less than 24 hours a month for an employer.

4.2) Written particulars of employment : Section 29

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

- a) full name and address of the employer;
- b) name and occupation of the employee, or a brief description of the work ;
- c) various places of work;
- d) date of employment;
- e) ordinary hours of work and days of work;
- f) wage or the rate and method of calculating;
- g) rate for overtime work;
- h) any other cash payments;
- i) any payment in kind and the value thereof;
- j) frequency of remuneration;
- k) Any deductions;
- l) leave entitlement;
- m) period of notice or period of contract;
- n) description of any council or sectoral determination which covers the employer's business
- o) period of employment with a previous employer that counts towards the period of employment;
- p) list of any other documents that form part of the contract, indicating a place where a copy of each may be obtained.

4.2.2) Particulars must be revised if 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 official languages used at the workplace.

4.4) Keeping of records : Section 31

Every employer must keep a record containing the following information:

- a) employee's name and occupation;
- b) time worked;
- c) remuneration paid;
- d) date of birth if under 18 years of age; and
- e) any other prescribed information.

4.5) Information about remuneration : Section 33

The following information must be given in writing when the employee is paid

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

4.6) Deductions and other acts concerning remuneration : Section: 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;
- 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 only be made with agreement and after the employer has followed a fair procedure.

4.6.3) Employers must pay deductions and employer contributions to benefit funds to the fund 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) Monthly remuneration or wage is four and one-third times the weekly wage.

4.7.3) If calculated on a basis other than time, or if the employee's remuneration or wage fluctuates significantly from period to period, any payment must be calculated by reference to remuneration or wage during –

- a) the preceding 13 weeks; or
- b) 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 this Act.

5) Termination of Employment : Chapter Five

5.1) Application

This chapter does not apply to an employee who works less 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 not less than-
- a) one week, if the employee has been employed for six months or less;
 - b) two weeks, if the employee has been employed for more than six months but not more than one year;
 - 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 weeks notice period to not less than two weeks,

5.2.3) Notice must be given in writing except when it is given by an illiterate employee.

5.2.4) The notice on termination of employment by an employer in terms of the Ad does not prevent the employee 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 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.

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 under 15 years of age.
- 6.2) Children under 18 may not be employed to do work inappropriate for their age or that places 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 the following:
 - a) the duty to arrange working time with regard to the health and safety and family responsibility of employees (S.7,9 and 13);
 - b) reduce the protection afforded to employees who perform night work(S. 17(3) and (4));
 - c) reduce annual leave to less than two weeks (S. 20);
 - d) reduce entitlement to maternity leave (S 25);
 - e) reduce entitlement to sick leave to the extent permitted (S. 22-24); and
 - f) prohibition of child and forced labour (S.48).
- 7.2) Collective agreements and individual agreements may only replace or exclude basic conditions of employment to the extent permitted by the Act or a sectoral determination (S.49).
- 7.3) The Minister of Labour may make a determination to vary or exclude a basic condition of employment. This can also be done on application by an employer or employer organisation (S. 50).
- 7.4) A determination may not be granted unless a trade union representing the employees has consented to the variation or has had the opportunity to make representations to the Minister. A copy of any determination must be displayed by the employer at the work place and must be made available to employee's (S.50).

8) Sectoral Determinations : Section 51

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

9) Monitoring, Enforcement and Legal Proceedings : Sections 63 – 81

- 9.1) Labour inspectors must advise employees and employers on their rights and obligations in terms of employment laws. They conduct inspections, investigate complaints and may question persons and inspect, copy and remove records and other relevant documents (S. 64 - 66).
- 9.2) An inspector may serve a compliance order on an employer who is not complying with a provision of the Act. The employer may object against the order to the Director-General: Labour, who after receiving representations, may confirm, modify or set aside an order. This decision is subject to appeal to the Labour Court (S. 68 - 73).
- 9.3) Employees may not be discriminated against for exercising their rights in terms of the Act (S. 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 -
- a) his or her manner or hours of work are subject to control or direction;
 - b) he or she forms part of the employer's organisation;
 - c) he or she has worked for the other person for at least 40 hours per month over the previous three months;
 - d) he or she is economically dependant on the other person;
 - e) he or she is provided with his or her tools or work equipment;
or
 - f) he or she only works for, or renders service to, one person.
- 10.2) If one of these factors is present, the person is presumed to be an employee until the employer proves that he or she is not.

11) General

It is an offence to-

- a) obstruct or attempt to influence improperly a person who 's performing a function in terms of the 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;
- f) hinder or obstruct a labour inspector or any other person performing a function in terms the Act; (S. 92)

Basic Conditions of Employment Act, 1997
General Administrative Regulations
Form BCEA 2
Wages register

(Section 31)

What is the purpose of this form?

This form is a record of the calculation of remuneration.

Who fills in this form?

The employer.

Where does this form go?

Must be kept in employer's possession.

The form can be downloaded from the Dept of Labour site at <http://www.labour.gov.za/docs/legislation/bcea/forms/index.html>

Basic Conditions of Employment Act, 1997
General Administrative Regulations
Form BCEA 3
Attendance register

(Section 31)

What is the purpose of this form?

This form is a record of attendance.

Who fills in this form?

The employee or if the employee is unable the employer.

Where does this form go?

Must be kept in employer's possession.

The form can be downloaded from the Dept of Labour site at <http://www.labour.gov.za/docs/legislation/bcea/forms/index.html>

Basic Conditions of Employment Act, 1997
General Administrative Regulations
Form BCEA 4
Payslip

([Section 33](#))

What is the purpose of this form?

This form is a record of information about remuneration.

Who fills in this form?

The employer.

Where does this form go?

To the employee.

The form can be downloaded from the Dept of Labour site at
<http://www.labour.gov.za/docs/legislation/bcea/forms/index.html>

Basic Conditions of Employment Act, 1997
General Administrative Regulations
Form BCEA 4
Payslip

([Section 33](#))

What is the purpose of this form?

This form is a record of information about remuneration.

Who fills in this form?

The employer.

Where does this form go?

To the employee.

The form can be downloaded from the Dept of Labour site at
<http://www.labour.gov.za/docs/legislation/bcea/forms/index.html>

**Basic Conditions of Employment Act, 1997
General Administrative Regulations
Form BCEA 6
Application for Ministerial Determination**

(Section 50(1)(b))

What is the purpose of this form?

This form is an application for a Ministerial Determination to replace or exclude certain provisions of the Act or a Sectoral Determination.

Who fills in this form?

The employer.

Where does this form go?

The relevant Provincial Executive Manager of the Department of Labour. Refer to page 4 of this form for the applicable address.

The form can be downloaded from the Dept of Labour site at <http://www.labour.gov.za/docs/legislation/bcea/forms/index.html>

**Basic Conditions of Employment Act, 1997
General Administrative Regulations
Form BCEA 7
Determination in terms of Section 50**

(Section 50(8)(c))

What is the purpose of this form?

To record a determination to replace or exclude any basic condition of employment.

Who fills in this form?

The Minister.

The form can be downloaded from the Dept of Labour site at <http://www.labour.gov.za/docs/legislation/bcea/forms/index.html>

Basic Conditions of Employment Act, 1997
General Administrative Regulations
Form BCEA 8
Subpoena

([Section 66\(1\)](#))

What is the purpose of this form?

To subpoena information or a person who has such information to make it available to the Director-General or a duly authorised representative.

Who fills in this form?

The Department of Labour.

Where does this form go?

To the person who has the information.

The form can be downloaded from the Dept of Labour site at <http://www.labour.gov.za/docs/legislation/bcea/forms/index.html>

Basic Conditions of Employment Act, 1997
General Administrative Regulations
Form BCEA 9
Undertaking

([Section 68](#))

What is the purpose of this form?

To record an undertaking by the employer to comply with a provision of the Act.

Who fills in this form?

The inspector.

Where does this form go?

The employer.

The form can be downloaded from the Dept of Labour site at <http://www.labour.gov.za/docs/legislation/bcea/forms/index.html>

Basic Conditions of Employment Act, 1997
General Administrative Regulations
Form BCEA 10
Receipt

(Section 68(2)(d))

What is the purpose of this form?

Proof of monies received.

Who fills in this form?

The inspector.

Where does this form go?

The employer.

The form can be downloaded from the Dept of Labour site at
<http://www.labour.gov.za/docs/legislation/bcea/forms/index.html>

Basic Conditions of Employment Act, 1997
General Administrative Regulations
Form BCEA 12
Compliance order

(Section 69)

What is the purpose of this form?

This form is to enforce compliance with a provision of the Act.

Who fills in this form?

The inspector.

Where does this form go?

Order must be delivered to employer named in it, and to employee affected by it or, if this is impractical, to a representative of the employees including a registered trade union.

The form can be downloaded from the Dept of Labour site at
<http://www.labour.gov.za/docs/legislation/bcea/forms/index.html>

Basic Conditions of Employment Act, 1997
General Administrative Regulations
Form BCEA 13
Notice of objection

(Section 71)

What is the purpose of this form?

For an employer to object against a compliance order.

Who fills in this form?

The employer.

Where does this form go?

To the office of the Department from which the compliance order was issued.

The form can be downloaded from the Dept of Labour site at
<http://www.labour.gov.za/docs/legislation/bcea/forms/index.html>

Basic Conditions of Employment Act, 1997
Code of Good Practice on the Arrangement of Working Time

Notice is hereby given in terms of section 87(2) of the Basic Conditions of Employment Act, 1997, that the Minister of Labour, after consulting NEDLAC, has issued under section 87(1)(a) of that Act, a Code of Good Practice on the Arrangement of Working Time as set out in the Schedule.

Basic Conditions of Employment Act, 1997
Code of Good Practice on the Arrangement of Working Time
1. Objectives

The objective of this code is to provide information and guidelines to employers and employees concerning the arrangement of working time and the impact of working time on the health, safety and family responsibilities of employees.

Basic Conditions of Employment Act, 1997
Code of Good Practice on the Arrangement of Working Time
2. Application

- 2.1 This code is issued in terms of section 87(1)(a) of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), (BCEA) and must be read in conjunction with the BCEA, particularly Chapter Two which governs the regulation of working time.

- 2.2 Section 7 of the BCEA requires employers to regulate the working time of each employee -
 - 2.2.1 in accordance with the provisions of any Act governing occupational health and safety;
 - 2.2.2 with due regard to the health and safety of employees;
 - 2.2.3 with due regard to this Code of Good Practice;
 - 2.2.4 with due regard to the family responsibilities of employees.
- 2.3 This code applies to all employers and employees covered by the BCEA. This Code of Good Practice is of particular significance for employees who perform shift work or regular night work and to their employers.
- 2.4 The norms established by this Code are general and may not be appropriate for all workplaces. A departure from the Code may be justified in proper circumstances. For example, the number of employees employed in an establishment may warrant a different approach.

Basic Conditions of Employment Act, 1997
Code of Good Practice on the Arrangement of Working Time
3. Relationship to Health and Safety Laws

- 3.1 The regulation of working time is closely connected to the protection and promotion of the health and safety of employees and, in some cases, members of the public.
- 3.2 Employers may be required to take working-time schedules into account in complying with their general duties to provide and maintain a working environment that is safe and without risk to the health of employees in terms of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), (OHSA) 85 of 1993 and the Mine Health and Safety Act, 1996 (Act No. 19 of 1996), (MHSA).

Basic Conditions of Employment Act, 1997
Code of Good Practice on the Arrangement of Working Time
4. Design and Evaluation of Shift Systems

- 4.1 The design of shift rosters must be sensitive to the impact of these rosters on employees and their families. This information can be obtained during consultations, negotiations or by circulating individual questionnaires to employees.
- 4.2 The information that an employer may require on the effect of shift rosters includes -

- 4.2.1 the ranked preferences of employees for different shift systems (this should include factors such as rate of rotation, length of shift, extension of operating time, starting and finishing times of shifts, weekends off, off-duty periods);
 - 4.2.2 the employee's views of the advantages and disadvantages of the existing or proposed shift system;
 - 4.2.3 aspects of the employee's work that could affect the determination of a suitable shift length;
 - 4.2.4 how an existing or proposed shift schedule affects or might affect the health and safety of employees;
 - 4.2.5 means, costs and availability of transport to and from the place of residence and the personal security of the employee while commuting;
 - 4.2.6 the childcare needs of the employees.
- 4.3 The information that will be required will depend on whether an employer is introducing a shift system for the first time or is re-evaluating or redesigning a shift system.

Basic Conditions of Employment Act, 1997
Code of Good Practice on the Arrangement of Working Time
5. Arrangement of Shifts

The following recommendations apply to the arrangement of shift work:

- 5.1 Overtime should be avoided, especially in occupations involving special hazards or heavy physical or mental strain.
- 5.2 The changeover from one shift to another during the working day should, where appropriate, include a brief period of overlap of the two crews in order to pass on any information that is needed by the subsequent crew.
- 5.3 If appropriate and if it is possible within legal requirements, workers whose skills are interchangeable should be allowed to exchange a shift with another worker.
- 5.4 The shift schedule should be displayed or distributed for easy access by all workers, and should be presented in a readily understandable form.
- 5.5 Workers should receive reasonable notice in advance of scheduled hours of work and of any foreseeable changes to the schedule.
- 5.6 Arrangements should be considered to accommodate the special needs of workers such as pregnant and breast-feeding workers, workers with family responsibilities, older workers, disabled workers or workers with health problems, and also workers' personal preferences for the scheduling of their own free time.

Basic Conditions of Employment Act, 1997
Code of Good Practice on the Arrangement of Working Time
6. Design of Shift Rosters

The following factors should be taken into account in the design of rosters for semi-continuous and continuous shift work:

- 6.1 The frequency of night work, weekend work and work on public holidays should be limited as much as possible for each worker.
- 6.2 The frequency of shift rotation should take account of the difficulties workers may have in adapting to night work.
- 6.3 It is preferable that shifts be rotated in a forward direction (morning to afternoon to night), bearing in mind workers' preferences, local conditions and difficulties in scheduling a long period of rest after spells of night shifts.
- 6.4 Night shifts should be no longer than morning and afternoon shifts. Where long night shifts are used they should be carefully reviewed to find ways to avoid excessive fatigue. Successive long night shifts should be avoided to the extent practicable.
- 6.5 Rest periods for shift workers should be scheduled to fall on weekends-a certain minimum number of times during a given period.

Basic Conditions of Employment Act, 1997
Code of Good Practice on the Arrangement of Working Time
7. Performance of Safety-Critical Tasks

- 7.1 Employers should take particular care in the timing of safety-critical tasks in shift cycles and during individual shifts.
- 7.2 These should, to the greatest extent possible, not be undertaken at a time when the employees involved may be fatigued or have low levels of alertness.
- 7.3 This is of particular importance to employers, such as operators of major hazard installations whose activities have a direct impact upon the public, and operators of services such as mass transportation or goods transportation.

Basic Conditions of Employment Act, 1997
Code of Good Practice on the Arrangement of Working Time
8. Health Assessment and Counselling

- 8.1 In terms of section 17(3)(b) of BCEA an employer, if requested by an employee who is performing regular night work, must make arrangements for the employee to undergo a medical examination. An employee is entitled to have such an examination at the time of commencing regular night work and thereafter at regular intervals while he or she continues to work regularly at night.
- 8.2 The examination should be performed by a medical practitioner or by a health professional who could refer employees to a medical practitioner in appropriate cases. This could include qualified staff employed in a workplace clinic. The cost of the examination is for the account of the employer although arrangements could be made for the cost to be covered through medical aid.
- 8.3 The timing of these examinations should be determined by individual or collective agreement in the light of the employee's health status, the nature of the work the employee performs and the employee's working hours.
- 8.4 The examination should cover
- 8.4.1 any difficulties the employee may be having in adapting to night-work routines;
 - 8.4.2 any health problems that the employee is manifesting;'
 - 8.4.3 any psychological, emotional and social stresses experienced by the employee, strategies that may help the employee cope with night work and educational input on the risks of shift work;
 - 8.4.4 insomnia and symptoms of sleep deprivation such as irritability and chronic fatigue;
 - 8.4.5 use of medication, the effectiveness of which depends upon circadian (daily body) rhythms;
 - 8.4.6 diet and use of caffeinated drinks, alcohol, sleeping pills, and cigarettes.
- 8.5 In certain circumstances, it may be appropriate to advise certain individuals against shift work. These circumstances include where the effectiveness of medication is fundamentally affected by circadian (daily body) rhythms, workers with gastro-intestinal or cardiovascular disorders, and epileptics.
- 8.6 The examination should also include educational input on the health risks that may be associated with the employee's work schedule and as coping strategies that may assist the employee.

Basic Conditions of Employment Act, 1997
Code of Good Practice on the Arrangement of Working Time
9. Working Environment

Employers should regularly assess whether the work environment, in particular the lighting and heating, are adequate for the health, safety and physical comfort of employees, particularly night workers.

Basic Conditions of Employment Act, 1997
Code of Good Practice on the Arrangement of Working Time
10. Management Services

- 10.1 Employers should provide appropriate management services to employees working outside of ordinary hours. Depending on the nature of the business, some aspects of management services should be available at all times to nightshift employees.
- 10.2 Services that should be available at night include:
- 10.2.1 first aid services;
 - 10.2.2 qualified safety supervision;
 - 10.2.3 occupational health services, in particular counselling on nutrition and fatigue related-problems;
 - 10.2.4 emergency services in case of accidents, including transportation to hospitals.
- 10.3 Employers who engage employees on night work should ensure that
- 10.3.1 there is adequate security for employees at the workplace;
 - 10.3.2 employees are able to obtain safe, affordable transportation between their places of residence and their workplace;
 - 10.3.3 there are adequate eating facilities;
 - 10.3.4 there are adequate rest rooms and change-rooms.
- 10.4 Administrative services should be sufficient, so that employees working nights do not have to use their off-duty time to have contact with services such as the wages or personnel department. This could be achieved by making these services available at the start or end of shifts by introducing rosters that permit employees working at night to have contact during this time.
- 10.5 The need for and extent of administrative services will depend on the type of shift patterns. The need will be greatest if employees are working at night for long periods or permanently; there will be less of a need if employees change rapidly from day shift to night shift.
- 10.6 Employees working at night should not be disadvantaged in having access to education and training.

- 10.7 Collective bargaining, trade union activities and the activities of participative bodies such as workplace forums or health and safety committees should be arranged so as to allow employees who work at night to participate.
- 10.8 An agreement to reduce employees' meal intervals to 30 minutes in terms of section 14(5)(a) of the BCEA should not be concluded if it may have the effect of endangering the health and safety of employees.
- 10.9 Employers must ensure that employees receive adequate rest periods.
- 10.10 The number and duration of rest pauses during the shift and rotation should be adapted to the workload. Particular attention must be given to the scheduling of rest periods for employees who are engaged in-
- 10.10.1 physically and mentally strenuous work;
 - 10.10.2 work involving manual lifting;
 - 10.10.3 work involving repetitive movement;
 - 10.10.4 monotonous work;
 - 10.10.5 shifts of longer than eight hours.

Basic Conditions of Employment Act, 1997
Code of Good Practice on the Arrangement of Working Time
11. Coping Strategies

Employers should provide appropriate and up-to-date information to employees about coping strategies, both in the workplace and at home. Strategies that will assist employees to cope with shift work and night work include -

- 11.1 Maintaining a regular sleeping routine;
- 11.2 Taking steps to block out noise and light for employees who have to sleep in the day;
- 11.3 Maintaining a healthy diet;
- 11.4 Exercise and relaxation.

Basic Conditions of Employment Act, 1997

Code of Good Practice on the Arrangement of Working Time

Glossary

Continuous shift work

the employer operates 24 hours a day, seven days a week, all year round.

Semi-continuous shift work

the employer operates 24 hours a day without a daily break, but with a break at the weekend.

Discontinuous shift work

the employer operates less than 24 hours a day with at least one daily break. A "two-shift" system is the most common discontinuous shift system.

Short or part-time shifts

daily scheduled working hours that are substantially shorter than eight hours.

Long shifts

daily scheduled working hours that are substantially longer than eight hours.

Rotating (or alternating) shifts

workers alternate between different shifts. There are three key elements to rotation:

- i) *The direction of rotation* - rotation can either be forward (clockwise, for instance, morning to afternoon to night) or backward (or counter-clockwise). In forward or advancing shifts, the starting time of one shift in a shift worker's schedule is always later on the 24-hour clock than the previous shift. In a continuous shift system workers will work a morning shift. In backward or delaying rosters, one shift always begins at an earlier time than the previous shift;
- ii) *The frequency* - employees may change shifts every week or at shorter or longer intervals;
- iii) *The length of the cycle* - the period required for a complete schedule of rotation, after which the cycle is repeated.

Fixed (or permanent) shifts

employees work permanently on a single shift.

Basic Conditions of Employment Act, 1997 Code of Good Practice on the Protection of Employees during Pregnancy and after the Birth of a Child

Notice is hereby given in terms of section 87(2) of the Basic Conditions of Employment Act, 1997, that the Minister of Labour, after consulting NEDLAC, has issued under section 87(1)(b) of that Act, a Code of Good Practice on the Protection of Employees during pregnancy and after the Birth of a Child as set out in the Schedule.

Basic Conditions of Employment Act, 1997 Code of Good Practice on the Protection of Employees during Pregnancy and after the Birth of a Child

1. Introduction

- 1.1 Many women work during pregnancy and many return to work while they are still breast-feeding.
- 1.2 The objective of this code is to provide guidelines for employers and employees concerning the protection of the health of women against potential hazards in their work environment during pregnancy, after the birth of a child and while breast-feeding.

Basic Conditions of Employment Act, 1997 Code of Good Practice on the Protection of Employees during Pregnancy and after the Birth of a Child

2. Application of the Code

- 2.1 This code is issued in terms of section 87(1)(b) of the Basic Conditions of Employment Act (BCEA) 75 of 1997.
- 2.2 It is intended to guide all employers and employees concerning the application of section 26(1) of the BCEA which prohibits employers from requiring or permitting pregnant or breast-feeding employees to perform work that is hazardous to the health of the employee or that of her child.
- 2.3 Workplaces may be affected differently depending upon the type of business and sector they are engaged in and the physical, chemical and biological hazards to which employees may be exposed in the workplace.
- 2.4 The norms established by this code are general and may not be appropriate for all workplaces. A departure from the code may be justified in the proper circumstances. For example, the number of employees employed in an establishment may warrant a different approach.

Basic Conditions of Employment Act, 1997
Code of Good Practice on the Protection of Employees during
Pregnancy and after the Birth of a Child
3. Contents

This code -

- 3.1 sets out the legal requirements relevant to the protection of the health and safety of pregnant and breast-feeding employees;
- 3.2 sets out a method for assessing and controlling the risks to the health and safety of pregnant and breast-feeding employees;
- 3.3 lists the principal physical, ergonomic, chemical and biological hazards to the health and safety of pregnant and breast-feeding employees and recommends steps to prevent or control these risks. These are listed in Schedules One to Four, which are included for guidance and are not exhaustive.

Basic Conditions of Employment Act, 1997
Code of Good Practice on the Protection of Employees during
Pregnancy and after the Birth of a Child
4. Legal Requirements

- 4.1 The Constitution protects the right to bodily and psychological integrity, which includes the right to make decisions concerning reproduction [section 12(2)] and gives every person the right to health services, including reproductive health care [section 27(1)(a)].
- 4.2 No person may be discriminated against or dismissed on account of pregnancy.
- 4.3 Employers are required to provide and maintain a work environment that is safe and without risk to the health of employees. This includes risks to the reproductive health of employees. These duties are established in terms of both the Occupational Health and Safety Act (OHSA) 85 of 1993 and the Mine Health and Safety Act (MHSA) 27 of 1996. Key aspects of these Acts are -
 - 4.3.1 employers must conduct a risk assessment, which involves identifying hazards, assessing the risk that they pose to the health and safety of employees. and recording the results of the risk assessment.
 - 4.3.2 employers must implement appropriate measures to eliminate or control hazards identified in the risk assessment;
 - 4.3.3 employers must supply employees with information about and train them in the risks to their health and safety and the measures taken to eliminate or minimise them;
 - 4.3.4 elected worker health and safety representatives and committees are entitled to participate in the risk assessment and control of hazards;
 - 4.3.5 employees have a duty to take reasonable steps to protect their own health and safety and that of other employees.

Basic Conditions of Employment Act, 1997
Code of Good Practice on the Protection of Employees during
Pregnancy and after the Birth of a Child
5. Protecting the Health of Pregnant and Breast-Feeding
Employees

- 5.1 Section 26(1) of the BCEA prohibits employers from requiring or permitting a pregnant employee or an employee who is breast-feeding to perform work that is hazardous to the health of the employee or the health of her child. This requires employers who employ women of childbearing age to assess and control risks to the health of pregnant or breast-feeding employees and that of the foetus or child.
- 5.2 Employers should identify, record and regularly review -
 - 5.2.1 potential risks to pregnant or breast-feeding employees within the workplace;
 - 5.2.2 protective measures and adjustments to working arrangements for pregnant or breast-feeding employees.
- 5.3 Where appropriate, employers should also maintain a list of employment positions not involving risk to which pregnant or breast-feeding employees could be transferred.
- 5.4 Employers should inform employees about hazards to pregnant and breast feeding employees and of the importance of immediate notification of pregnancy.
- 5.5 Workplace policies should encourage women employees to inform employers of their pregnancy as early as possible to ensure that the employer is able to identify and assess risks and take appropriate preventive measures.
- 5.6 The employer should keep a record of every notification of pregnancy.
- 5.7 When an employee notifies an employer that she is pregnant her situation in the workplace should be evaluated. The evaluation should include -
 - 5.7.1 an examination of the employee's physical condition by a qualified medical professional;
 - 5.7.2 the employee's job;
 - 5.7.3 workplace practices and potential workplace exposures that may affect the employee.
- 5.8 If the evaluation reveals that there is a risk to the health or safety of the pregnant employee or the foetus, the employer must -
 - 5.8.1 inform the employee of the risk;
 - 5.8.2 after consulting the employee and her representative, if any, determine what steps should be taken to prevent the exposure of the employee to the risk by adjusting the employee's working conditions.

- 5.9 The employee should be given appropriate training in the hazards and the preventive measures taken.
- 5.10 If there is any uncertainty or concern about whether an employee's workstation or working conditions should be adjusted, it may be appropriate in certain circumstances to consult an occupational health practitioner. If appropriate adjustments cannot be made, the employee should be transferred to an alternative position in accordance with section 26(2) of the BCEA.
- 5.11 Employers must keep the risk assessment for expectant or new mothers under regular review. The possibility of damage to the health of the foetus may vary during the different stages of pregnancy. There are also different risks to consider for workers who are breast-feeding.
- 5.12 Arrangements should be made for pregnant and breast-feeding employees to be able to attend antenatal and postnatal clinics as required during pregnancy and after birth.
- 5.13 Arrangements should be made for employees who are breast-feeding to have breaks of 30 minutes twice per day for breast-feeding or expressing milk each working day for the first six months of the child's life.
- 5.14 Where there is an occupational health service at a workplace, appropriate records should be kept of pregnancies and the outcome of pregnancies, including any complications in the condition of the employee or child.

Basic Conditions of Employment Act, 1997
Code of Good Practice on the Protection of Employees during
Pregnancy and after the Birth of a Child
6. The Identification and Assessment of Hazards

6.1 Physical hazards

The control of physical hazards in the workplace includes the recognition, evaluation and control of-

- 6.1.1 exposure to noise, vibration, radiation, electric and electromagnetic fields and radioactive substances;
- 6.1.2 work in extreme environments;
- 6.1.3 control of the thermal environment (heating and air conditioning).

Schedule One describes the extent to which certain of these physical agents may constitute a hazard to the health and safety of pregnant and breast-feeding employees and suggests methods to prevent or control these hazards.

6.2 Ergonomic hazards

The application of ergonomics involves ensuring that work systems are designed to meet the employee's needs for health, safety and comfort. A range of ergonomic risk factors may pose hazards to the health and safety of pregnant and breast-feeding employees and should be identified and assessed as part of the risk assessment programme. These include -

6.2.1 heavy physical work;

6.2.2 static work posture;

6.2.3 frequent bending and twisting;

6.2.4 lifting heavy objects and movements requiring force;

6.2.5 repetitive work;

6.2.6 awkward postures;

6.2.7 no rest;

6.2.8 standing for long periods;

6.2.9 sitting for long periods.

Schedule Two describes the extent to which some of these factors may constitute a hazard to the health and safety of pregnant and breast-feeding employees and suggests methods to prevent or control these hazards.

6.3 Chemical hazards

Contact with harmful chemical substances may cause infertility and foetal abnormalities. Some chemicals can be passed to the baby during breast-feeding and could possibly impair the health and the development of the child.

The Hazardous Chemical Substances Regulations, 1995, issued under OHSA apply to all employers who carry out activities, which may expose people to hazardous chemical substances. These employers must assess the potential exposure of employees to any hazardous chemical substance and take appropriate preventive steps. The Regulations set maximum exposure levels for some 700 hazardous chemical substances.

The Hazardous Chemical Substances Regulations require employers to inform and train employees about, and in any substance to which they are or may be exposed. This must include information on any potential detrimental effect on the reproductive ability of male or female employees.

Regulation 7(1) of the General Administrative Regulations, 1996, under OHSA requires manufacturers, importers, sellers and suppliers of hazardous chemical substances used at work to supply a Material Safety Data Sheet (MSDS) which must include information on any reproductive hazards. Every employer who uses a hazardous chemical substance must be in possession of the relevant MSDS and must make it available on request to affected persons.

With the exception of the Lead Regulations, there are no regulations, which set maximum exposure levels of specific applications for women of childbearing age or pregnant women.¹ In view of the absence of occupational health standards for the exposure of pregnant or breast-feeding women to chemical substances, care should be taken to minimise exposure to chemicals, which can be inhaled, swallowed or absorbed through the skin. Where this cannot be achieved, employees should be transferred to other work in accordance with section 26(2) of the BCEA.

Chemical substances that are known or suspected to constitute a hazard to pregnant or breast-feeding women and to the foetus or child are listed in Schedule Three below.

6.4 Biological hazards

Many biological agents, such as bacteria and viruses, can affect the unborn child if the mother is infected during pregnancy. Biological agents may also be transferred through breast-feeding or by direct physical contact between mother and baby. Health workers, including service workers in health-care facilities and workers looking after animals or dealing with animal products are more likely to be exposed to infection than other workers. Employees who have close contact with young children, such as teachers and edu-care workers, are at increased risk of exposure to rubella (German measles) and varicella (chicken pox).

Universal hygiene precautions are required to prevent disease. These include high standards of personal hygiene, surveillance of staff in high-risk areas, appropriate sterilisation and disinfecting procedures, designation of person to be responsible for health and safety, the use of protective clothing and gloves and the avoidance of eating or smoking in laboratories or other risk areas.

Some of the biological agents that are known to constitute a hazard to the health of breast-feeding or pregnant women are listed in Schedule Four.

Basic Conditions of Employment Act, 1997 Code of Good Practice on the Protection of Employees during Pregnancy and after the Birth of a Child 7. Aspects of Pregnancy that may Affect Work

Employers and employees should be aware of the following common aspects of pregnancy that may affect work:

- 7.1 As a result of morning sickness employees may be unable to perform early shift work. Exposure to nauseating smells may also aggravate morning sickness.
- 7.2 Backache and varicose veins may result from work involving prolonged standing or sitting. Backache may also result from work involving manual handling.
- 7.3 More frequent visits to the toilet will require reasonable access to toilet facilities and consideration of the employee's position if leaving the work she performs unattended poses difficulties.

- 7.4 The employee's increasing size and discomfort may require changes of protective clothing, changes to work in confined spaces and changes to her work where manual handling is involved. Her increasing size may also impair dexterity, agility, co-ordination, speed of movement and reach.
- 7.5 The employee's balance may be affected making work on slippery or wet surfaces difficult.
- 7.6 Tiredness associated with pregnancy may affect the employee's ability to work overtime and to perform evening work. The employer may have to consider granting rest periods.

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Code of Good Practice on the Protection of Employees during
Pregnancy and after the Birth of a Child
Schedule 1 Physical Hazards

Hazard	What is the Risk	How to avoid the Risk
Vibration and mechanical shocks	Long-term exposure to vibrations may increase the risk of miscarriage and stillbirth. Exposure to shocks or whole body vibrations in the later stages of pregnancy can result in premature labour.	<i>It is advised that pregnant workers and those that have recently given birth avoid work that is likely to involve uncomfortable, whole body vibrations, especially at low frequencies, or where the abdomen is exposed to shocks or jolts.</i>
Extreme heat	The exposure of pregnant and breast-feeding employees to extreme heat may lead to dizziness and faintness, particularly in the case of women performing standing work. Lactation may be impaired by heat dehydration.	<i>Employers should limit the exposure of pregnant and breast-feeding workers to extreme heat. Arrangements for access to rest facilities and refreshments should be made in conditions of extreme heat.</i>
Extreme cold	Work in extremely cold conditions such as cold storage rooms has been associated with problems in pregnancy.	<i>Employees must be supplied with thermal protective clothing and their exposure to cold limited in terms of regulation 2 of the Environmental Regulations for Workplaces, made under the Occupational Health and Safety Act (OHS Act).</i>
Noise	Prolonged exposure to noise can elevate the blood pressure of pregnant women and lead to tiredness.	<i>Employers should ensure compliance with regulation 7 of the Environmental Regulations for Workplaces, OHS Act.</i>

Ionising radiation	Significant exposure to ionising radiation is known to be harmful to the foetus. Working with radioactive liquids or dusts can result in exposure of the foetus (through ingestion or via contamination of the mother's skin) or a breast-fed baby to ionising radiation.	<p><i>Work procedures should be designed to keep exposure of pregnant women as low as reasonably practicable and below the statutory dose limit for a pregnant woman.</i></p> <p><i>pregnant women or breast-feeding mothers should not work where there is a risk of radioactive contamination.</i></p> <p><i>Employers of registered radiation workers, including radiographers, must comply with the regulations controlling the use of electronic products issued under the Nuclear Energy Act 131 of 1993.</i></p>
Non-ionising (electromagnetic) radiation	It has not been established that the levels of non-ionising electromagnetic radiation likely to be generated by video display units (VDU's) or other office equipment constitutes a risk to human reproductive health.	<p><i>Women who are pregnant or who are planning children and are worried about working with VDU's should discuss their concerns with an occupational health practitioner.</i></p> <p><i>The following practical measures can be adopted to limit exposure to electromagnetic fields in offices (emfs):</i></p> <ul style="list-style-type: none"> <i>• Workers should sit at arm's length from the computer (70 cm) and about 120 cm from the backs and sides of co-workers' monitors.</i> <i>• Workers should have regular breaks from VDU work, as this reduces exposure time.</i> <i>• Radiation-reducing glare screens (or shields) can reduce the electrical component of the emfs. However, shields that distort the image on the monitor should not be used.</i>
Work in compressed air and diving	People who work in compressed air are at risk of developing the bends. It is not clear whether pregnant women are more at risk of getting the bends but potentially the foetus could be seriously harmed by :as bubbles.	<p><i>Pregnant workers should not work in compressed air because of potential harm to the foetus from gas bubbles. For those who have recently given birth there is a small increase in the risk of the bends. The Diving Regulations, 1991, under OHS, must be complied with.</i></p>

Basic Conditions of Employment Act, 1997
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Schedule 2 Ergonomic Hazards

Hazard	What is the Risk	How to avoid the Risk
Physical and mental strain	Excessive physical or mental pressure may cause stress and give rise to anxiety and raised blood pressure during pregnancy.	<i>Employees should ensure that hours of work and the volume and pacing of work are not excessive and that, where practical, employees have some measure of control over how their work is organised. Seating should be available where appropriate. Longer or more frequent rest breaks will help to avoid or reduce fatigue.</i>
Physically strenuous work	Employees whose work is physically strenuous should be considered to be at increased risk of injury when pregnant or after the birth of a <u>child</u> .	<i>Heavy physical exertion, including the lifting or handling of heavy loads, should be avoided from early pregnancy onwards.</i>
Prolonged sitting or standing	Sitting or standing for long periods during pregnancy can have serious health consequences. Standing for long unbroken periods can result in complications during pregnancy such as deep vein thrombosis, varicose veins, premature labour and even miscarriage.	<i>Workstations should be adjustable to allow for necessary changes in posture. Pregnant employees who sit for long periods should be provided with a proper chair with lumbar support rest to prevent lower back pain. A footrest could alleviate pain and discomfort in the case of both sitting and standing workers. Pregnant employees who work in a stationary position should be given frequent rest breaks. Mobility during breaks should be encouraged to help prevent swelling of the ankles and improve blood circulation. Where work organisation permits task rotation, this should be done to allow the worker to do tasks that involve standing, sitting and moving.</i>

Basic Conditions of Employment Act, 1997
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Schedule 3 Chemical Hazards

Hazard	What is the Risk	How to avoid the Risk
Anaesthetic gases	Exposure to anaesthetic gases during pregnancy can lead to miscarriage.	<i>Exposure to high concentrations of anaesthetic gases should be avoided during pregnancy.</i>
Carbon Monoxide	Risks arise when engines or appliances using petrol, diesel and liquefied petroleum gas are operated in enclosed <u>areas</u> . Carbon monoxide can result in the foetus being starved of oxygen.	<i>Occupational exposure to carbon monoxide should be avoided during pregnancy and breast-feeding.</i>
Antimitotic (Cytotoxic) drugs	Exposure to antimitotic drugs, which are used for treating cancer, damages genetic information in human sperm and egg cells. Some of these drugs can cause cancer. Absorption is by inhalation or through the skin.	<i>Workers involved in the preparation and administration of antimitotic drugs should be afforded maximum protection. Direct skin contact can be avoided by wearing suitable gloves and gowns. Pregnant employees potentially exposed to cancer drugs should be offered the option of transfer to other duties.</i>
Ethylene oxide	Ethylene oxide is used mainly in sterilising procedures in hospital. Exposure may occur when sterilised goods are transferred to the aerator after the cycle is complete and when changing the gas tanks.	<i>Health risks can be minimised by reducing worker exposure during transfer when the steriliser door is opened. Pregnant employees exposed to ethylene oxide above the acceptable level should be transferred to other duties.</i>
Lead	Exposure of pregnant and breast-feeding <u>employees</u> to lead affects the nervous system of young children and is detrimental to child development.	<i>Contact with lead should be avoided during pregnancy and breast-feeding. The Lead Regulations issued under OHSA must be complied with. These Regulations specify, levels at which employees must be withdrawn from exposure to lead.</i>
Mercury and mercury derivatives	Organic and inorganic mercury compounds can have adverse effects on the mother and foetus.	<i>Women of childbearing age should not be exposed to mercury compounds.</i>

Polychlorinated Biphenyls (PCBs)	PCBs can cause deformities in the child. Maternal exposure before conception can also affect foetal development as PCBs can be passed on to the foetus through the mother's blood.	<i>No pregnant women should be exposed to PCBs at work.</i>
Organic solvents	Exposure to organic solvents including aliphatic hydrocarbons, toluene and tetrachloroethylene can lead to miscarriage and have a detrimental effect on the foetus.	<i>Pregnant women should be protected to exposure against these organic solvents.</i>
Pesticides and herbicides	Exposure to certain pesticides and herbicides is associated with an increased risk of miscarriage and can adversely affect the development of the <u>child</u> .	<i>Exposure to pesticides and herbicides should be avoided or minimised.</i>
Alcohol	Foetal alcohol syndrome can lead to physical and mental abnormalities in children. Workers in the beverage, catering and associated industries, including wine farming, are particularly at risk.	<i>Where appropriate, employees should be informed of and counselled in the hazards associated with foetal alcohol syndrome.</i>
Tobacco smoke	Tobacco smoke contains carbon monoxide and carcinogenic and other harmful substances. Smoking and the inhalation of environmental smoke affects foetal blood supply and can lead to retarded growth and development and more early childhood diseases. Smoking carries an increased risk of cancer and cardiovascular disease.	<i>Care should be taken to ensure that women employees are able to work without being exposed to tobacco smoke.</i>

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Schedule 4 Biological Hazards

Hazard	How to avoid the Risk
Cytomegalovirus	Employees should be required to maintain high standards of personal hygiene, wash their hands after each patient contact and use gloves when handling potentially contaminated wastes in order to minimise the risk of infection.
Hepatitis	General precautions must be taken for all forms of hepatitis. Vaccination is the most effective means available of preventing hepatitis B. Workers must take particular care to avoid mucous membranes and skin coming into contact with potentially contaminated blood or other secretions.
HIV	Universal precaution is important for workers potentially exposed to HIV. Health care workers should take precautions to prevent needle-stick injuries and exercise care when handling the blood, tissues or mucosal areas of all patients.
Rubella (German measles)	Rubella vaccine is the most effective means of preventing the disease, and susceptible <u>employees</u> should be immunised. Pregnancy should be avoided for 3 <u>months</u> after vaccination.
Varicella (Chicken pox)	It is advisable to identify employees who have not previously had chicken pox. Pregnant employees who are known not to be immune to chicken pox and who are exposed to an active case should report to a physician.
Toxoplasmosis gondii	Control measures against toxoplasmosis gondii for women of reproductive age include high standards of personal and environmental hygiene; the sanitary disposal of cat faeces and avoiding contamination by cat faeces of soil to be tilled for agriculture.

Basic Conditions of Employment Act, 1997
Ministerial Determination 1: Small Business
1. Application

- 1) This determination applies to employers who conduct businesses employing less than ten employees.
- 2) To the extent provided for in this determination, this determination varies the application of the Basic Conditions of Employment Act, No. 75 of 1997, to such employers and their employees.
- 3) This determination must be read in conjunction with the Basic Conditions of Employment Act.

- 4) Unless otherwise indicated, any word used in this determination has the same meaning as in the Basic Conditions of Employment Act, No. 75 of 1997.
- 5) A bargaining council agreement or sectoral determination takes precedence over this determination, unless the agreement or determination provides otherwise.
- 6) This determination does not apply to-
 - a) the employment of domestic workers;
 - b) the public service;
 - c) any employer who conducts more than one business;
 - d) any business formed by the division or dissolution of an existing business

Basic Conditions of Employment Act, 1997
Ministerial Determination 1: Small Business
2. Overtime

- 1) Despite section 10(1)(b)(ii), an employer may not require or permit an employee to work more than fifteen hours overtime a week.
- 2) Despite section 10(2), an employer must pay an employee-
 - a) at least one and one third times the employee's wage for the first ten hours of overtime worked in any week;
 - b) at least one and one half times the employee's wage for any overtime in excess of ten hours worked in a week.

Basic Conditions of Employment Act, 1997
Ministerial Determination 1: Small Business
3. Averaging of Hours

- 1) Despite sections 9(1) and (2) and 10(1)(b) of the Basic Conditions of Employment Act, No. 75 of 1997, and clause 2 of this determination, the ordinary hours of work and overtime of an employee may be averaged over a period of up to four months in terms of a written agreement concluded by an employer and employee.
- 2) An employer may not require or permit an employee who is bound by an agreement in terms of subclause 1 to work more than-
 - a) an average of forty-five ordinary hours of work in a week over the agreed period;
 - b) an average of ten hours overtime in a week over the agreed period.
- 3) An agreement in terms of subclause 1 lapses after twelve (12) months.

Basic Conditions of Employment Act, 1997
Ministerial Determination 1: Small Business
4. Family Responsibility Leave

- 1) An employer and an employee may conclude a written agreement in terms of which an employer may reduce an employee's entitlement to annual leave in terms of section 20 of the Basic Conditions of Employment Act, No. 75 of 1997, by the number of days of family responsibility leave on full remuneration granted to the employee at the employee's request in terms of section 27 of the Basic Conditions of Employment Act, No. 75 of 1997.