GOVERNMENT NOTICES

DEPARTMENT OF LABOUR

No. 655 **29 August 2014**

BASIC CONDITIONS OF EMPLOYMENT ACT, 1997

The Minister of Labour has under section 86(1) of the Basic Conditions of Employment Act (No. 75 of 1997), after consulting the Employment Conditions Commission, amended the Regulations in terms of the Basic Conditions of Employment Act, 1997 published in Government Notice 1438 of 13 November 1998 and the Amendments to the Regulations as published in 25 July 2002 and Government Notice 197 of 12 March 2010, as set out in the Schedule.

M N OLIPHANT MP
MINISTER OF LABOUR
04/06/2014

Amendment to A. Index of General Administration Regulations

The index is hereby amended by the deletion of the following—

[Objections to Compliance Order]

Amendment to B. Index of forms annexed to regulations

The index is hereby amended by the deletion of the following —

[BCEA 8A Request to comply with a written undertaking (Section 68(1A)(b)]

[BCEA 13 Notice of objection (Section 71)]

SCHEDULE

REGULATIONS AMENDED

Clause 1(2) of the regulations is hereby amended by the substitution of the clause by the following clause—

Whenever the expression "Department of Labour" or "Chief Director Provincial Operations" appears in the Act or in these regulations, it means—

(a) In the province of Eastern Cape, the Chief Director Provincial Operations, Department of Labour, Private Bag X9005, East London. 5200;
(b) In the province of Free State, the Chief Director Provincial Operations, Department of Labour, P O Box 522, Bloemfontein. 9300;
(c) In the province of Gauteng, the Chief Director Provincial Operations, Department of Labour, P O Box 4560, Johannesburg. 2000;
(d) In the province of KwaZulu Natal, the Chief Director Provincial Operations, Department of Labour, P O Box 940, Durban. 4000;
(e) In the province of Limpopo, the Chief Director Provincial Operations, Department of Labour, Private Bag X9368, Polokwane. 0700
(f) In the province of Mpumalanga, the Chief Director Provincial Operations, Department of Labour, Private Bag X7263, Witbank. 1035
(g) In the province of Northern Cape, the Chief Director Provincial Operations, Department of Labour, Private Bag X5012, Kimberley. 8300
(h) In the province of North West, the Chief Director Provincial Operations, Department of Labour, Private Bag X2040, Mmabatho.2735
(i) In the province of Western Cape, the Chief Director Provincial Operations, Department of Labour, P O B0x 872, Cape Town. 8000

Clause 9 of the principal regulations is amended by the substitution of the following clause for 9—

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] (1) 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] (2) 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.

[4] (3) A receipt for any record, document, article, substance or machinery removed in terms of section 66(3)(b) must be in the form of BCEA 11 or contain the information required by that form.

Clause 11 of the principal regulations is amended by the deletion of the following clause—

[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)]

Amendment of BCEA 1A to BCEA 1K

BCEA 1A to K is hereby amended by the substitutions of the summaries by the following summaries—

Amendment of BCEA 6 form

BCEA 6 is hereby amended by the substitution of that form by the following form—

Amendment of BCEA 8A form

BCEA 8A is hereby amended by the deletion of that form—

Amendment of BCEA 8 form

BCEA8 is hereby amended by the substitution of that form by the following form—

Amendment of BCEA 9 form

BCEA 9 is hereby amended by the substitution of that form by the following form—

Amendment of BCEA12 form

BCEA 12 is hereby amended by the substitution of that form by the following form—

Amendment of BCEA 13 form

BCEA 13 is hereby amended by the deletion of that form—

BCEA 1A

(Regulation 2)

BASIC CONDITIONS OF EMPLOYMENT ACT, 1997

SUMMARY TO BE KEPT BY AN EMPLOYER IN TERMS OF SECTION 30

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

1. APPLICATION OF THE ACT : SECTION 3

The Act applies to all employees and employers except members of the State Security Agency 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 employment 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 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 and 33A

4.5.1The 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;
(i) number of hours worked on a Sunday or public holiday during that period; and
(ii) if an agreement to average working time has been concluded, the total number of ordinary and overtime hours worked in the period of averaging.

4.5.2 An employer may not:
(a) require or accept any payment by or on behalf of an employee or potential employee in respect of the employment of, or the allocation of work to, any employee.
(b) require an employee or potential employee to purchase any goods, products or services from the employer or from any business or person nominated by the employer.

4.6 Deductions and other acts concerning remuneration : Sections 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
(c) 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 Act 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 require or permit a child to work under 15 years of age.

6.2 Children under 18 may not be required or permitted to perform work or provide services that are inappropriate for their age or that place 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).

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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 order may be made an order of the Labour Court. S68 – 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 is 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 of the Act.
(S. 92)