

BASIC CONDITIONS OF EMPLOYMENT ACT, 1997

POPULAR SUMMARY

This is a popular summary of the most important sections of the Basic Conditions of Employment Act, 1997. Workers must be able to see a summary at their workplaces in the official languages that are spoken there.

1 WHO IS THIS ACT FOR?

The Act applies to all workers and employers except members of the National Defence Force, National Intelligence Agency, South African Secret Service and unpaid volunteers working for charities.

This Act must be obeyed even if other agreements are different.

2 WORKING TIME

This section does not apply to senior managers (those who can hire, discipline and fire), sales staff who travel and workers who work less than 24 hours a month.

Ordinary hours of work

A worker must NOT work more than:

- 45 hours in any week
- 9 hours a day if a worker works 5 days or less a week, or
- 8 hours a day if a worker works more than 5 days a week.

Overtime

If overtime is needed, workers must agree to do it and they may not work more than 3 hours overtime a day or 10 hours overtime a week.

Overtime must be paid at 1.5 times the workers' normal pay or by agreement get paid time off.

More flexibility of working time can be negotiated if there is a collective agreement with a registered trade union. For example, this can allow more flexible hours for working mother and migrant workers.

- Compressed work week: You may agree to work up to 12 hours in a day and work fewer days in a week. This can help working mothers and migrant workers by having a longer weekend.
- Averaging: A collective agreement may permit the hours of work to be averaged over a period of up to four months. A worker who is bound by such an agreement cannot work more than an average of 45 ordinary hours a week and an average of five hours of overtime a week over the agreed period. A collective agreement for averaging has to be re-negotiated each year.

Meal breaks and rest periods

A worker must have a meal break of 60 minutes after 5 hours work. But a written agreement may lower this to 30 minutes and do away with the meal break if the worker works less than 6 hours a day.

A worker must have a daily rest period of 12 continuous hours and a weekly rest period of 36 continuous hours, which, unless otherwise agreed, must include Sunday.

Sunday work

A worker who sometimes works on a Sunday must get double pay. A worker who normally works on a Sunday must be paid at 1.5 times the normal wage. There may be an agreement for paid time off instead of overtime pay.

Night work

Night work is unhealthy and can lead to accidents. That is workers working between 6:00 at night and 6:00 in the morning must get extra pay or be able to work fewer hours for the same amount of money.

Transport must be available but not necessarily provided by the employer.

Workers who usually work between 11:00 at night and 6:00 in the morning you must be told of the health and safety risks. They are entitled to regular medical check-ups, paid for by the employer. They must be moved to a day shift if night work develops into a health problem. All medical examinations must be kept confidential.

Public holidays

Workers must be paid for any public holiday that falls on a working day. Work on a public holiday is by agreement and paid at double the rate. A public holiday is exchangeable by agreement.

3 LEAVE

Annual leave

A worker can take up to 21 continuous days' annual leave or by agreement, 1 day for every 17 days worked or 1 hour for every 17 hours worked.

Leave must be taken not later than 6 months after the end of the leave cycle.

An employer can only pay a worker instead of giving leave if that worker leaves the job.

Sick leave

A worker can take up to 6 weeks' paid sick leave during a 36 months cycle.

During the first 6 months a worker can take one day's paid sick leave for every 26 days worked.

An employer may want a medical certificate before paying a worker who is sick for more than 2 days at a time or more than twice in 8 weeks.

Maternity leave

A pregnant worker can take up to 4 continuous months of maternity leave. She can start leave any time from 4 weeks before the expected date of birth OR on a date a doctor or midwife says is necessary for her health or that of her unborn child. She also may not work for 6 weeks after the birth of her child unless declared fit to do so by a doctor or midwife.

A pregnant or breastfeeding worker is not allowed to perform work that is dangerous to her or her child.

Family responsibility leave

Full time workers employed longer than 4 months can take 3 days paid family responsibility leave per year on request when the worker's child is born or sick or for the death of the worker's spouse or life partner, parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

An employer may want proof that this leave was needed.

4 JOB INFORMATION AND PAYMENT

Job information

Employers must give new workers information about their job and working conditions in writing. This includes a description of any relevant council or sectoral determination and a list of any other related documents.

Keeping records

Employers must keep a record of at least:

- the worker's name and job
- time worked
- money paid
- date of birth for workers under 18 years old.

Payment

An employer must pay a worker:

- in South African money
- daily, weekly, fortnightly or monthly
- in cash, cheque or direct deposit.

Payslip information

Each payslip must include:

- employer's name and address
- worker's name and job
- period of payment
- worker's pay
- amount and purpose of any deduction made from the pay
- actual amount paid to the worker.

If needed to add up the worker's pay, the payslip must also include:

- ordinary pay rate and overtime pay rate
- number of ordinary and overtime hours worked during that period of payment
- number of hours worked on a Sunday or public holiday during that period
- total number of ordinary and overtime hour worked in the period of averaging, if there is an averaging agreement.

Approved deductions

An employer may not deduct any money from a worker's pay unless:

- that worker agrees in writing
- the deduction is required by law or permitted in terms of a law, collective agreement, court order or arbitration award.

Adding up wages

- Wages are based on the number of hours normally worked.
- Monthly pay is 4 and 1/3 times the weekly wage.

5 TERMINATION OF EMPLOYMENT

Notice

A worker or employer must give notice to end an employment contract of not less than:

- 1 week, if employed for four weeks or less
- 2 weeks, if employed for more than four weeks but not more than one year;
- 4 weeks, if employed for one year or more.

Notice must be in writing except from a worker who cannot write.

Workers who stay in employer's accommodation must be given 1 month's notice of termination of the contract or be given alternative accommodation until the contract is lawfully terminated.

An employer giving notice does not stop a worker from challenging the dismissal in terms of the Labour Relations Act or any other law.

Severance pay

An employer must pay a worker who is dismissed due to the employer's operational requirement pay equal to at least 1 week's severance pay for every year of continuous with that employer.

Certificate of service

When a job ends, a worker must be given a certificate of service.

6 CHILD LABOUR AND FORCED LABOUR

- It is against the law to employ a child under 15 years old.
- Children under 18 may not do dangerous work or work meant for an adult.
- It is against the law to force someone to work.

7 VARIATION OF BASIC CONDITIONS OF EMPLOYMENT

Bargaining council

A collective agreement concluded by a bargaining council can be different from this law as long it does not:

- lower protection of workers in terms of health and safety and family responsibilities
- lower annual leave to less than two weeks
- lower maternity leave in any way
- lower sick leave in any way
- lower protection of night workers
- allow for any child labour or forced labour.

Other agreements

Collective agreements and individual agreements must follow the Act.

The Minister

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.

8 SECTORAL DETERMINATIONS

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

9 EMPLOYMENT CONDITIONS COMMISSION

This Act makes provision for the Employment Conditions Commission to advise the Minister of Labour.

10 MONITORING, ENFORCEMENT AND LEGAL PROCEEDINGS

Labour inspectors must advise workers and employers on their labour rights and obligations. They inspect, investigate complaints, question people and inspect, copy and remove records.

An inspector may serve a compliance order to a compliance order by writing to the Director General of the Department of Labour, who will then look at the facts and agree, change or cancel the order.

This decision can be challenged in the Labour Court.

Workers may not be treated unfairly for demanding their rights in terms of this Act.

10 GENERAL

It is a crime to:

- hinder, block or try to wrongly influence a labour inspector or any other person obeying this Act
- get or try to get a document by stealing, lying or showing a false or forged document
- pretend to be a labour inspector or any other person obeying this Act
- refuse or fail to answer fully any lawful question asked by a labour inspector or any other person obeying this Act
- refuse or fail to obey a labour inspector or any other person obeying this Act.