



## Tax & Legislative Information Series...

... about BCEA.



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# Basic Conditions of Employment Act

- **Brief Introduction**

- The **Basic Conditions of Employment Act (BCEA)**, 1997 (Act No. 75 of 1997) was introduced in 1997 in South Africa.
- Its purpose was to **regulate employment conditions** and ensure **fair labour practices**.
- The BCEA establishes **minimum standards** for working hours, wages, leave entitlements, and termination procedures.
- The aim of the BCEA is to **protect vulnerable workers** and **promote workplace equity**.
- It supports economic development and social justice by creating a balanced framework for Employer-Employee relations.
- It applies to **all Employers** and Employees **except**:
  - Military and security services (e.g., National Defense Force, Intelligence Agencies).
  - Volunteers for charitable organizations.
  - Certain maritime workers covered under the Merchant Shipping Act.



- **Purpose and Relevance**

- The BCEA is central to **protecting Employee rights** by:
  - Setting **minimum standards** for working conditions, wages, and leave.
  - **Ensuring fairness** across employment sectors.
  - Providing **mechanisms for monitoring and enforcement** of labour rights.
- For **Employees**, this Act:
  - **Guarantees a safety net** of entitlements (e.g., leave, working hours).
  - **Protects vulnerable workers** (e.g., low-income earners, part-time staff).
  - **Regulates workplace standards** to prevent exploitation.
- For **Employers**, compliance ensures:
  - **Clear guidelines** to manage labour relations.
  - **Legal protection** against disputes regarding working conditions.

# Basic Conditions of Employment Act - Terminology

- **Meaning of the terminology used**
  - **Employee:** Any person who works for another person or for the State, and who receives, or who is entitled to receive, **remuneration**.
    - **Includes:** those who assist in conducting the business of an Employer.
    - **Excludes:** Independent contractors.
  - **Basic Conditions of Employment:** The minimum standards of employment defined under the BCEA, including working hours, leave, remuneration, and termination requirements. These ensure fair treatment and protection of Employee rights.
  - **Sectoral Determination:** A legal instrument used to set employment terms for Employees **in a specific sector or area where collective bargaining is not effective**. Includes provisions for wages, working hours, leave, and other conditions.

# Basic Conditions of Employment Act - Terminology

- **Meaning of the terminology used**
  - **Earnings Threshold:** A remuneration cap set by the Minister of Employment and Labour, beyond which certain BCEA protections (e.g., working hour limitations) **do not apply**.
    - **Excludes contributions** to benefits like pension schemes or medical aid.
    - Updated periodically via a Government Gazette.
  - **Immediate family:** While not explicitly defined in the BCEA, "immediate family" generally includes close family members such as spouses, parents, children, or siblings.
  - **Collective agreements:** Written agreements between a registered trade union and Employer(s) or Employer organizations. Regulates workplace relations, covering wages, benefits, and conditions of employment.
  - **Child:** Any individual under the age of 18.
  - **Minors:** Adolescents aged 15-18 who are permitted to work under strict conditions:
    - **Cannot perform hazardous tasks** or work that may harm their development, health, or well-being.
    - Must **comply with school attendance requirements**.

- **Working Hours**

- **Ordinary Hours:**

- Maximum of **45 hours per week**.
    - Daily limits depend on working days per week (8-9 hours).
      - **9 hours per day** if working  $\leq 5$  days per week.
      - **8 hours per day** if working  $> 5$  days per week.
    - **45 hours per week** (typically 8-9 hours per day).
    - Employees earning above the threshold **may negotiate different schedules**.

- **Compressed Workweek**

- Allows up to 12 hours per day (including breaks) by written agreement.
  - Total weekly hours remain capped at 45 hours and 10 overtime hours.

# Basic Conditions of Employment Act – Core Provisions

- **Overtime**

- Employees are allowed to work a **maximum of 10 hours per week**.
- Overtime **must be paid at 1.5 times regular pay** or with equivalent paid time off.
- Collective agreements **may extend weekly limits to 15 hours** for up to 2 months annually.
- Overtime work **requires prior agreement** between Employer and Employee.

- **Night Work**

- Applies to work between 18:00-06:00.
- Requires allowances or reduced hours and transportation provision.

- **Rest Periods**

- 12 consecutive hours daily and 36 hours weekly, which must include Sunday unless agreed otherwise.



- **Leave Entitlements**

- Annual leave entitlement is calculated **based on a 12-month cycle**.
- Leave during termination is **pro-rated based** on completed cycles.
- **Special categories** like parental leave (10 days) and adoption leave (10 weeks for primary caregivers) cater for family responsibilities.





# Basic Conditions of Employment Act – Leave Entitlements

- **Annual Leave**

- Employees are **entitled to 21 consecutive days** of annual leave (equivalent to **15 working days**) for each **12-month leave** cycle.
- Alternatively, leave accrues at **1 day for every 17 days** worked, or **1 hour for every 17 hours** worked.
- Must be **taken within six months** after the cycle ends.
- Leave pay is **based on the Employee's regular remuneration** before leave.

- **Sick Leave**

- **Six weeks' paid leave** in a 36-month cycle
- **Requires a medical certificate** if absent for more than two consecutive days.
- During the **first six months**, 1 day of paid sick leave for every 26 days worked.

- **Maternity Leave**

- **Four consecutive months**
- **Hazardous work is prohibited** for pregnant or nursing Employees.

- **Parental Leave**

- **Ten consecutive days** for new parents (birth, adoption, or surrogacy).

- **Adoption Leave**

- **Ten weeks** for the primary adoptive parent of children under two.
- Secondary adoptive parents qualify for **ten days**.

- **Leave Pay**

- Employers must calculate leave pay based on:
  - The Employee's **regular remuneration immediately before the leave period.**
  - Calculation methods specified in Section 35 for **fluctuating wages** (variable wage calculations).
- On termination, an Employee must be compensated for:
  - Any **outstanding leave accumulated** in the current annual leave cycle.
  - Leave for an **incomplete annual leave cycle**:
    - One day's pay for every 17 days worked or entitled to pay, or
    - An agreed-upon basis equivalent or more favorable to the Employee.

- **Variable Wage Calculations**

- **When wages fluctuate significantly**, payments (including leave pay) must be calculated based on:
  - **Average remuneration** during the preceding 13 weeks, or
  - The shorter period if the Employee has not been employed for 13 weeks.
- Applicable in roles **where compensation depends on measurable outcomes** (e.g., sales targets or production quotas).

- **Definition**

- Variable remuneration refers to **pay components that fluctuate** based on an Employee's performance, hours worked, or company results.
- Examples include commissions, bonuses, and overtime pay.

- **Key Provisions in the BCEA**

- Variable components **must be included** in the calculation of:
  - Overtime pay.
  - Leave pay (annual, sick, and maternity leave).
  - Severance pay and termination benefits.
- Sick Leave Example:
  - If a salesperson with fluctuating earnings takes sick leave, pay is averaged over 13 weeks preceding the leave. The **commission previously earned will be included** in the variable wage for each preceding week.
- Severance Pay Example:
  - A technician with variable overtime earnings will have severance pay **calculated using the average wage** over 13 weeks prior to termination. The variable wage will be inclusive of the overtime earnings

- **Payment**

- Employers must pay in cash unless otherwise agreed.
- **Minimum payment of 4 hours per day** for Employees working less than 4 hours.

- **Information on Payment**

- Details like the period, amount, deductions, and overtime must accompany payments.



- **Deductions**

- Permissible only with **written consent or legal mandate** (e.g., court orders, benefit fund contributions).
- Deductions for damages or losses **must follow a fair process** and require a written agreement.

- **Minimum Wage**

- Integrated into the Act through the 2018 amendments, ensuring fair pay for all Employees.
- With effect from **1 March 2025 the National Minimum Wage is R28,79 per hour**

- **Work on Public Holidays**

- Employees **must receive regular pay** if the holiday falls on a normal working day and they do not work.
- Work on public holidays is **voluntary unless stated in a contract**.
- Employees **must receive double pay or equivalent time off**.



- **Rest Periods**

- These provisions aim to **prevent overwork, promote recovery, and maintain a healthy work-life balance** and include:
  - **Daily:** Employees are entitled to a **minimum of 12 consecutive hours** of rest between the end of one workday and the start of the next.
  - **Weekly:** Employees must have at least **36 consecutive hours of rest each week**. This rest period should ideally include a Sunday unless agreed otherwise
  - **Work Interruptions for Rest:** For every **5 hours of continuous work**, Employees are entitled to a **1-hour meal break** (unless the Employer and Employee agree to reduce this to 30 minutes).
  - **Exceptions** can apply if outlined in **collective agreements** or specific sectors.

- **Employer Obligations**

- **Maintain records** of employment details, including working hours, wages, and leave as well as variable and fixed remuneration components,
- **Display summaries of the Act** in the workplace in applicable languages.

- **Labour Inspectors**

- Monitor adherence to the BCEA and **issue compliance orders and resolve disputes.**
- Inspectors are **empowered** to:
  - Inspect workplaces.
  - Issue compliance orders.
  - Address disputes and enforce regulations.

# Basic Conditions of Employment Act – Prohibitions

- **Child Employment**

- Employing **children under 15**
- Minors in **hazardous roles** are illegal
- Restrictions apply to those under 18.

- **Forced Labor**

- Strictly prohibited and **considered a criminal offence.**



- **Notice Periods**

- **1 week** if employed for 6 months or less.
- **2 weeks** if an Employee has been employed for 6 months to 1 year.
- **4 weeks** if an Employee has been employed for more than 1 year
- Farm or domestic workers employed for more than 6 months then 4 weeks will apply.

- **Severance Pay**

- Employees dismissed for operational reasons are **entitled to severance pay of one week per completed year of service.**

- **Certificate of Service:**

- **Must be issued upon termination**, detailing employment dates and roles.

- **Exemptions for High-Earning Employees**

- Employees earning above the remuneration threshold set by the Minister of Employment and Labour are **exempt from certain provisions** of the BCEA, including:
  - Regulation of Working Hours:
    - **No limit on maximum ordinary hours or overtime** and payment thereof.
    - Exemption from rules on compressed workweeks and averaging hours.
  - Rest Periods:
    - Exclusions from requirements for daily/weekly rest and meal intervals.
- These Employees **often have greater negotiating power** and individualised contracts.
- Current Threshold:
  - As of the most recent updates, the BCEA threshold is reviewed periodically and published in the Government Gazette. **Employers must ensure compliance** with the latest threshold.
  - As of **April 1, 2025**, the Basic Conditions of Employment Act earnings threshold in South Africa is **R 261 748,45 per year**.

# Basic Conditions of Employment Act

- **In Summary**

- What this Act means for **Employees**:

- **Protection:** Promotes fair treatment for all workers, especially in vulnerable sectors.
- **Entitlements:** Secures rights to minimum wage, leave benefits, and regulated working hours.
- **Recourse:** Empowers Employees to address workplace disputes through labour inspectors or the Labour Court.
- **For High Earners:** While some protections (e.g., overtime rules and payments) may not apply, key rights like leave, fair dismissal processes, and severance pay remain safeguarded.



- **Important Payroll Takeaways from the BCEA**

- **BCEA Remuneration:**

- BCEA remuneration is the total pay an Employee receives for work, including basic salary and certain benefits, but excludes contributions like retirement funds or reimbursements. It also includes variable remuneration (averaged over 13 weeks).
- It determines compliance with earnings thresholds, affects calculations for leave, overtime, and severance, and ensures accurate statutory deductions like tax and UIF.

- **Earnings Threshold:**

- Employees earning above the earnings threshold are excluded from certain provisions, such as overtime, night work compensation, and limits on ordinary hours of work.
- Payroll systems must account for this by correctly categorizing Employees and adjusting applicable benefits.



- **Important Payroll Takeaways from the BCEA**

- **Annual Leave:**

- Employers must calculate and pay full remuneration in advance for leave taken.
- Payroll should ensure leave days are tracked accurately and exclude public holidays from annual leave calculations.

- **Variable Remuneration:**

- Payments such as bonuses, commissions, and overtime must be paid within 7 days of the end of the period in which they were earned.
- Payroll needs mechanisms to comply with this timeline and ensure accurate calculations.

- **Rest Periods and Overtime:**

- Payroll must monitor and compensate for overtime according to BCEA provisions (1.5x regular pay) and ensure compliance with meal break and rest period requirements.

- **Severance Pay:**

- Employees dismissed for operational reasons are entitled to 1 week of severance pay per completed year of service, which must be correctly calculated in payroll.

- **Important Payroll Takeaways from the BCEA**

- **Deductions:**

- Only lawful deductions can be made (e.g., tax, UIF, benefits).
- Payroll must ensure deductions align with BCEA rules.

- **Sick Leave:**

- Employees are entitled to paid sick leave equal to the number of days they work in a 6-week period, calculated over a 36-month cycle. Payroll must validate and calculate this correctly.

- **Public Holidays:**

- If Employees work on public holidays, they are entitled to double pay or an alternative day off. Payroll must track and apply this accurately.
- By aligning payroll processes with these BCEA provisions, Employers ensure compliance while protecting Employee rights.

- Some **payroll systems**, particularly SA-developed systems will have these rules pre-coded into the system and are generally automatically updated by the payroll provider as and when legislation changes. Where an international system is being used these rules may have to be set up and maintained by using the rules engine / configuration tools that these systems provide.



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