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GOVERNMENT NOTICE

DEPARTMENT OF LABOUR

No. R. 197 **12 March 2010**

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 No. R 1438 of 13 November 1998 and the Amendments to the Regulations as published in Government Notice No 936 of 25 July 2002, as set out in the Schedule.

M M S MDLADLANA MP
MINISTER OF LABOUR

SCHEDULE

REGULATIONS AMENDMENTS

Amendment of BCEA 1A

BCEA 1A is hereby amended by the substitution of the summary by the following summary—

Amendment of BCEA 6 form

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

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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 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 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

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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

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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.

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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;

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(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.

4.6 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;

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(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 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).

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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 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;

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(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)

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BCEA 6

BASIC CONDITIONS OF EMPLOYMENT ACT, 1997
Section 50(1)(b)

READ THIS FIRST

⇓

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 Provincial Executive Manager

INSTRUCTIONS

- The sections of the Act or Sectoral Determination for which variation is sought must be mentioned.
- Proof of any consent to the application by the registered trade union(s) in terms of section 50(7)(a) must be attached to this form.
- If no consent is obtained, proof of service on registered trade union(s) and proof of reasonable steps to bring the application to the notice of employees must be attached.
- Shift roster must be included if applicable.

NOTE

A Department of Labour official may conduct an inspection to verify the information or seek more information in relation to your application.

If there is insufficient space on the form use separate piece of paper.

National applications and applications to vary prescribed minimum wages must be forwarded to the Executive Manager, Employment Standards, P/Bag X117, Pretoria. 0001

DEPARTMENT OF LABOUR

APPLICATION FOR MINISTERIAL DETERMINATION

N.B. ALL APPLICABLE FIELDS MUST BE COMPLETED

A. EMPLOYER PARTICULARS

1. FULL NAME OF EMPLOYER OR COMPANY TRADING NAME

.....

UIF REFERENCE NUMBER :.....

SARS NUMBER :.....

COMPANY REGISTRATION NUMBER :.....

COMPENSATION FUND REGISTRATION NUMBER :.....

2. NATURE OF BUSINESS CONDUCTED

.....

3. CONTACT PERSON(S)

.....

4. POSTAL ADDRESS

.....

.....

.....

POSTAL CODE .....

TEL. NO. (.....) ..... **FAX. NO. (.....)** .....

E-MAIL: .....

PROVINCE: ☐ **Eastern Cape** ☐ **Free State** ☐ **Gauteng**
☐ **KwaZulu-Natal** ☐ **Limpopo** ☐ **Mpumalanga**
☐ **Northern Cape** ☐ **North-West** ☐ **Western Cape**

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5. STREET ADDRESS

.....

.....

TOWN/ SUBURB:.....POSTAL CODE :.....

PROVINCE: ☐ **Eastern Cape** ☐ **Free State** ☐ **Gauteng**

☐ **KwaZulu-Natal** ☐ **Limpopo** ☐ **Mpumalanga**

☐ **Northern Cape** ☐ **North-West** ☐ **Western Cape**

B. DETAILS OF APPLICATION

1. VARIATION IS APPLIED FOR IN RESPECT OF THE FOLLOWING SECTION(S) OF THE ACT OR CLAUSE(S) OF THE FOLLOWING SECTORAL DETERMINATION(S):

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2. AREA AND PROJECT FOR WHICH VARIATION IS SOUGHT: .....

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3. PERIOD FOR WHICH VARIATION IS SOUGHT: .....

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4. TOTAL NUMBER OF EMPLOYEES: .....

5. NUMBER OF EMPLOYEES AFFECTED BY APPLICATION: .....

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6. MOTIVATION AND REASONS WHY THE APPLICATION FOR VARIATION SHOULD BE GRANTED:

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C. PREREQUISITES

1. **IF THIS APPLICATION HAS THE CONSENT OF ALL THE REGISTERED TRADE UNION(S) THAT REPRESENT THE EMPLOYEES IN RESPECT OF WHOM THE DETERMINATION IS TO APPLY, PROOF OF THAT CONSENT SHOULD BE ATTACHED TO THIS FORM.**

2. **IN THE ABSENCE OF THE CONSENT REFERRED TO IN 1. PROOF OF SERVICE OF A COPY OF THIS APPLICATION ON ALL REGISTERED TRADE UNIONS THAT REPRESENTED EMPLOYEES AFFECTED BY THIS APPLICATION MUST BE ATTACHED.**

3. **IN ADDITION, IF THE MAJORITY OF EMPLOYEES ARE NOT REPRESENTED BY A REGISTERED TRADE UNION, PROOF OF REASONABLE STEPS TAKEN TO BRING THIS APPLICATION TO THE NOTICE OF EMPLOYEES MUST BE ATTACHED.**

4. **IF NO AGREEMENT COULD BE REACHED WITH THE PARTIES REFERRED TO IN 1, 2 OR 3 – POINTS OF DISSENSION**

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NAME: ……

SIGNATURE: ……

POSITION: ……

DATE: ……

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ADDRESSES OF PROVINCIAL EXECUTIVE MANAGERS

In the province of KwaZulu/Natal: The Provincial Executive Manager Department of Labour P O Box 940 **DURBAN** 4000 TEL: (031) 336 2022 FAX: (031) 305 9540	In the province of Northern Cape: The Provincial Executive Manager Department of Labour Private Bag X5012 **KIMBERLEY** 8300 TEL: (053) 838 1502 FAX: (053) 832 9386
In the Limpopo Province: The Provincial Executive Manager Department of Labour Private Bag X9368 **POLOKWANE** 0700 TEL: (015) 290 1607 FAX: (015) 290 1608	In the province of North-West: The Provincial Executive Manager Department of Labour Private Bag X2040 **MMABATHO** 2735 TEL: (018) 387 8101 FAX: (018) 384 25975
In the province of Eastern Cape: The Provincial Executive Manager Department of Labour Private Bag X9005 **EAST LONDON** 5200 TEL: (043) 701 3128 FAX: (043) 722 1012	In the Province of the Western Cape: The Provincial Executive Manager Department of Labour P O Box 872 **CAPE TOWN** 8000. TEL: (021) 441 8110/8112 FAX: (021) 441 8111
In the province of Gauteng: **Gauteng-North**: In the Magisterial Districts of: Bronkhorstspruit, Cullinan, Krugersdorp, Pretoria, Randfontein, Soshanguve I, Soshanguve 2, and Wonderboom. The Provincial Executive Manager Department of Labour P O Box 393 **PRETORIA** 0001 TEL: (012) 309 5253 FAX: (012) 320 2367	In the province of Gauteng: **Gauteng-South**: In the Magisterial Districts of: Alberton, Boksburg, Brakpan, Germiston. Heidelberg, Johannesburg, Kempton Park, Oberholza, Randburg, Roodepoort, Nigel, Benoni, Springs, Vanderbijlpark, Vereeniging and Westonaria. The Provincial Executive Manager Department of Labour P O Box 4560 **JOHANNESBURG** 2000 TEL: (011) 497 3000/3047 FAX: (011) 497 3225
In the Province of Mpumalanga: The Provincial Executive Manager Department of Labour Private Bag X7263 **WITBANK** 1035 TEL: (013) 655 8700/8701 FAX: (013) 655 8838	In the Province of the Free State: The Provincial Executive Manager Department of Labour PO Box 522 **BLOEMFONTEIN** 9300 TEL: (051) 505 6200/6203 FAX: (051) 447 5329

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