

## DEPARTMENT OF LABOUR

NO. 1402

19 DECEMBER 2018

## 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 Government Notice R936 of 25 July 2002, Government Notice 197 of 12 March 2010 and Government Notice 655 of 29 August 2014, as set out in the Schedule.

  
 .....

M N OLIPHANT, MP  
 MINISTER OF LABOUR

DATE: 12/12/2018 .....

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SCHEDULE
**Amendment of BCEA 1A**

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

**Amendment of BCEA 9**

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

**Amendment of BCEA 12**

BCEA 12 is hereby amended by the substitution of that form with the following 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 and 9A**

2.2.1 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.

2.2.2 Employees earning less than the threshold, who works for less than four hours on any day must be paid for four hours on that day

**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**

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;
  - (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;
- (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).

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 National Minimum Wage Act, 2018, the Unemployment Insurance Act or the Unemployment Insurance Contributions Act. . The order may be made an Arbitration Award. (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;
- (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)

BCEA 9

**BASIC CONDITIONS OF EMPLOYMENT ACT, 1997**

Section 68

**READ THIS FIRST**



**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 labour inspector.

**WHERE DOES THIS FORM GO?**

The employer.

**INSTRUCTIONS**

May be issued when:

- An agreement is concluded on amounts owed to employee.
- An employer undertakes to perform or cease acts agreed to.
- Failure to comply with the written undertaking will result in a in the written undertaking being made an arbitration award.

**DEPARTMENT OF LABOUR**

**WRITTEN UNDERTAKING**

Enquiries: .....  
 Tel. no: .....  
 Cell no: .....  
 Fax no: .....  
 E-mail: .....  
 Ref no: .....

1. I / We .....

(name of employer/ representative(s))

2. ID No.....

a duly authorised representative (s) of

.....

( tradename of business) situated at

.....

.....

(physical address)

Tel no: .....Fax no: ..... Cell no: .....

3. undertake to comply with the following—

.....  
 .....  
 .....  
 .....  
 .....

I hereby undertake to rectify these acts or omissions by:

.....  
 .....  
 .....  
 .....  
 .....

4. Payment undertaking (specify)

.....  
 .....  
 .....

5. I further undertake to provide the Department of Labour with proof of compliance of the above requirements of this written undertaking not later than ..... (date)
  
6. I furthermore understand fully that failure to comply with the requirements of this undertaking and to provide proof of compliance thereof within the prescribed time to the Department of Labour, the Director General: Labour may request the CCMA to make this undertaking arbitration award in terms of section 73 of the Act, directing the employer to comply with the undertaking.
  
7. I acknowledge the contents of this written undertaking, I signed it voluntarily and free from any form of duress. The consequences of non-compliance with its contents have been explained to me and I fully understand and abide by them.
  
8. I acknowledge that costs as a result of non-compliance with this written undertaking will be incurred by me.

SIGNED AT ..... (PLACE) ON THIS ..... DAY OF  
 ..... 20.....

.....  
 EMPLOYER

.....  
 SIGNED: LABOUR INSPECTOR

BCEA 12

**BASIC CONDITIONS OF EMPLOYMENT ACT, 1997**

**Section 69**

**READ THIS FIRST**



**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.

**INSTRUCTIONS**

- The employer must display a copy of this order prominently at a place accessible to the affected employees at each workplace named in it.
- An employer must comply within time period stated unless the employer objects in terms of section 71.

**Failure to comply could result in a fine.**

**DEPARTMENT OF LABOUR  
COMPLIANCE ORDER ISSUED IN TERMS OF SECTION 69(1) OF THE ACT**

Enquiries: .....  
Tel. no: .....  
E-mail: .....  
Ref no: .....

- Employers details:**
  - Trade Name/Name of employer: .....
  - Physical address: .....
  - Postal address: .....
  - E-mail address: .....
  - Tel number: .....
- You have failed to comply with the following sections/clauses of the following Act/s:**

Sections/clauses	Act
	Basic Conditions of Employment Act, 1997
	National Minimum Wage Act, 2018
	Occupational Health and Safety Act
	Employment Equity Act
	Unemployment Insurance Act
	Compensation for Occupational Injuries and Diseases Act.

- You have not complied with requirements of the above to the following extent:**
  - .....
  - .....
  - .....
- You are hereby ordered to comply with paragraph 4.1 to 4.3 and provide proof of compliance not later than ..... (date)**
- Non-compliance**

Failure to comply with paragraph 4.1 to 4.3 of this Compliance Order and to provide proof of compliance thereof within the prescribed time frame the Director General: Labour through its representative will apply to the CCMA in terms of section 73 (1) to make this Compliance Order an Arbitration award.

## Fines

Despite compliance with this Compliance the Director General: Labour may recommend to CCMA to impose a fine of R300 per employee in accordance with table one of Schedule 2 of the Act.

Fine for not complying with National Minimum Wage:

- a) Twice the value of the underpayment; or
- b) Twice the employee's monthly wage.
- c) Repeat offender- Trice the employee's monthly wage.

**TABLE ONE:**

Maximum permissible fine not involving an underpayment

No previous failure to comply	R300 per employee in respect of whom the failure to comply occurs
A previous failure to comply in respect of the same provision	R600 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	R900 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	R1200 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	R1500 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 provisions 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 or more 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

GIVEN UNDER MY HAND ON THIS ..... DAY OF ..... 20... AT ..... (PLACE)

.....  
DIRECTOR-GENERAL: LABOUR



**LABOUR DEPARTMENT** **BCEA 14 A**

**CERTIFICATE OF APPOINTMENT IN TERMS OF SECTION 63 OF  
BASIC CONDITIONS OF EMPLOYMENT ACT.**

Discrete Serial Number:

**THIS IS TO CERTIFY THAT:-**

- 1. Name :
- 2. Identity Number :

*has been appointed, in terms of section 63 (3) of the Basic Conditions of Employment Act, 75 of 1997, as amended, as a labour inspector to monitor and enforce the following laws-*

- 1. Basic Conditions of Employment Act, 75 of 1997;
- 2. Compensation for Occupational Injury and Diseases Act, No. 61 of 1993;
- 3. Employment Equity Act, 55 of 1998;
- 4. Occupational Health and Safety Act, 85 of 1993;
- 5. Unemployment Insurance Act, 30 of 1966
- 6. National Minimum Wage Act, 2018

*and may perform the following functions -*

- a) Promote, monitor and enforce compliance with the above laws in terms of section 64 of the Basic Conditions of Employment Act;
- b) Carry out the functions of an inspector in terms of section 29 of the Occupational Health and Safety Act;
- c) Enforce the Employment Equity Act in terms of sections 35 to 38 of that Act;
- d) Exercise the powers of an inspector in term of section 55 of the Unemployment Insurance Act;
- e) Exercise any power delegated or perform any duty assigned by the Director-General: Labour in terms of section 3(1) of the Compensation for Occupational Injuries and Diseases Act.

3. Inspector's signature

- 3.1 Place :
- 3.2 Date :

Inspector's Name:

Signature:.....  
(Labour Inspector)

4. Authorising Signature

- 4.1 Place.....
- 4.2 Date.....

Name:  
(Chief Director: Provincial Office)

Signature: \_\_\_\_\_  
(Chief Director: Provincial Office)

Basic Conditions of  
Employment Act, 75 of 1997

Please read the information  
before completing this form

**WHAT IS THE PURPOSE  
OF THIS FORM ?**

To provide a certificate of  
appointment to inspectors in  
terms of Section 63 of BCEA.


**WHO AUTHORISE THIS  
FORM?**

A Provincial Executive  
Manager who has been  
delegated this power by the  
Minister in terms of section  
85(1) of the BCEA

**INSTRUCTIONS**

- The Provincial Executive Manager, must sign this form.
- The inspector card (Annexure 14B) must contain an inspector's photo, signature of the inspector, signature of the Provincial Executive Manager, office from which the inspector is based.
- Inspector card must bear a serial number allocated by Head Office and issued by the respective Provincial Office

**BCEA 14 B**

<b>PHOTO</b>	<b>DEPARTMENT OF LABOUR</b>	
<b>NAME:</b>		
<b>PROVINCIAL OFFICE:</b>		
<b>IDENTIFICATION NUMBER:</b>		
<b>SIGNATURE: .....</b> <b>(INSPECTOR)</b>		

<b>THIS IS TO CERTIFY THAT</b>
.....
Has in terms of section 63 (3) of the Basic Conditions of Employment Act, 75 of 1997, as amended, been appointed as a labour inspector to monitor and enforce the following legislation:
<ol style="list-style-type: none"><li>1. Basic Conditions of Employment Act, 75 of 1997;</li><li>2. National Minimum Wage Act, 2018;</li><li>3. Compensation for Occupational Injury and Diseases Act, No. 61 of 1993;</li><li>4. Employment Equity Act, 55 of 1998;</li><li>5. Occupational Health and Safety Act, 85 of 1993;</li><li>6. Unemployment Insurance Act, 30 of 1966.</li></ol>
<b>PROVINCIAL EXECUTIVE MANAGER</b>