



# YOUR LABOUR LAW RIGHTS, PROTECT YOURSELF

WHAT YOU NEED TO KNOW



YOUR ATTORNEY - YOUR TRUSTED ADVISOR

This brochure is aimed at answering the most common questions about the rights which employees have in the workplace and to offer some practical and legal tips when employees are dismissed.

## Great! I got a job!

When you are appointed, the first step is normally to sign an employment contract. You are entitled to receive the terms and conditions upon which you are appointed in writing. You may also receive a copy of the employer's disciplinary code and procedure. The employee has a duty to act in the best interest of the employer and in good faith.

The employer has a duty to act fairly in its dealings with the employee.

The employer must provide the employee, free of charge, with the necessary safety gear and equipment to perform his/her duties.

## How long must I give notice before I can start with my new job?

- If you have worked for less than 6 months you must give 1 week's notice.
- If you have worked for more than 6 months but less than 12 months you must give 2 weeks' notice.
- If you have worked for more than a year you must give 4 weeks' notice.
- If your contract says something different, e.g. that you must give a calendar month's notice, that provision will apply as long as the employer and employee are bound by the same notice period.

## Are you an employee?

Labour law protection is available only to employees and not to independent contractors. An independent contractor is someone who performs work for another but for his/her own account and who does not form part of the organisation or fall under the control of the employer. If, for example, you call a plumber to come and repair a broken pipe, he performs an independent service and is not an employee.

Domestic workers and garden workers who work part time, are employees and fall under labour law protection. In fact, there are special regulations issued for this sector, which are available from the Department of Labour's website.

## Are fixed-term workers employees?

A fixed-term worker is someone who is appointed for a specific duration or project and they qualify as employees. Normally you may not be appointed on a fixed-term for longer than three months. If you are, you are regarded as a permanent employee. This provision applies to employees earning more than a certain salary scale which is determined annually by the Minister of Labour. The threshold in 2016 was about R205 000 per year. There are also a few other exceptions which your attorney would be able to explain to you.

## What about labour brokers?

If you are employed by a labour broker or temporary employment service, you may be provided to the client for a period of three months only. If you are working at the client for longer than this, you will be regarded as an employee of the client. If there is an infringement of any of your rights you may also hold the labour broker and/or client liable.

- A labour broker must be registered with the Department of Labour.
- If a labour broker dismisses an employee just to avoid the Act it will be unfair.

## Help! I think I am working too much

The Basic Conditions of Employment Act 75 of 1997 (BCEA) sets the minimum terms and conditions for employees. If your contract of employment contains more favourable conditions of employment than the BCEA, then your contract provisions will apply. However, if your contract has terms and conditions which are less favourable than the BCEA, then the BCEA conditions will apply.

## What does the BCEA say about leave?

- You are entitled to 15 working days' leave per year. Your leave does not automatically accrue, so if you do not take your leave in a year, you have six months to take it, before you forfeit it.
- If you work five days a week, you are entitled to 30 days' sick leave over a three-year period.
- You are entitled to four months' unpaid maternity leave. You can claim payment during that period from the Unemployment Insurance Fund.
- You are entitled to three days' family responsibility leave per



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year for death in your direct family, when your child is sick or when your child is born. It is three days altogether for these – not three days per event.

### What does the BCEA say about working hours?

An employee may work only 45 hours per week. If an employee works five days a week or less, he/she may not work more than nine hours a day. If an employee works six days or more a week, he/she may not work more than eight hours per day.

Overtime may be worked only in terms of an agreement and then an employee is entitled to be paid at a rate of 1½ times the normal wage per hour worked / time off. If an employee does not normally work on a Sunday or Public Holiday and then works overtime on those days, he/she is entitled to double payment or time off.

The provisions regarding working hours do not apply to employees who earn more than the threshold set by the Minister of Labour, set out above, but which can be changed from time to time.

### Oh no! I have been dismissed

An employer may dismiss an employee if he/she has a fair reason AND follows a fair process. There are only three reasons why an employee may be dismissed –

- misconduct;
- operational reasons; or
- incapacity.

Incapacity can refer to illness, injury or poor work performance. Operational reasons are also often referred to as retrenchment or redundancy.

The employer must comply with its own disciplinary code and procedure. If there is no such procedure in the workplace, the procedure prescribed by the Labour Relations Act 66 of 1995 (LRA) will apply. The LRA determines that there is a very specific process which the employer must follow when he/she wants to dismiss an employee for any one of the above three reasons. Even if the employer should have a valid reason but fails to follow the process prescribed by the LRA, the dismissal will be unfair.

### What is misconduct?

An employee may be dismissed if he/she breached a valid rule, provided that the employee was aware (or should have been aware) of the rule and that the rule was consistently applied in the workplace.

The employer must then hold a disciplinary hearing where the employee must get reasonable notice of the hearing in order to have time to prepare. The employee must get an opportunity to state his/her case at the hearing and also be allowed to call witnesses and cross examine witnesses. An employee is not automatically entitled to bring a legal representative to a hearing, but he/she may use a trade union representative or co-employee.

Even if the employee is found guilty, dismissal as a penalty is not always appropriate. The employer must take the employee's circumstances into account before a decision to dismiss the employee is made.

### What about dismissals for incapacity and operational reasons ('retrenchment / redundancy')?

In order for an employer to act fairly he/she must follow an extensive process of consultation with the employee/employee representative where all information is examined and the employee gets an opportunity to come up with alternatives and get reasons from the employer for the decisions made.

The processes prescribed by the LRA will take time to comply with and entails more than a once off meeting with the employer.

Your attorney will be able to give you more information about these processes.

### What about injuries on duty?

If you have been injured on duty you may claim compensation from the Compensation Commissioner. Your employer must assist you with the necessary documentation to lodge your claim.

When you want to claim for an injury on duty you must remember the following:

1. Report the injury to your supervisor or employer immediately; the employer must report it to the Compensation commissioner and send in the necessary forms.

2. You must get the W.Cl.2 form from your employer and take it to the doctor to be completed. You must then take the form back to the employer.
3. The employer must send the form to the Compensation Commissioner and you must keep the employer up to date with contact details so that any monies received by the employer from the Compensation Commissioner can be sent to you.
4. If the employer did not send in the forms or the claims take long, you must contact the nearest labour centre and report it.

### Am I entitled to unemployment payments?

If you have been dismissed (regardless of the reason for the dismissal) you may claim money from the Unemployment Insurance Fund. Your employer must assist you with the correct forms in order for you to approach the Department of Labour.

### What about the CCMA?

If you feel that you have been dismissed unfairly, you must institute a claim at the CCMA within 30 days of dismissal. The CCMA will then provide you with a date for conarb. At this date the Commissioner will try to conciliate the matter and see if the parties can settle. If not, he/she will continue with the arbitration (which is like a court case).

Legal representation is generally not allowed at the CCMA, but a trade union official or co-employee may represent you.

The CCMA call centre number is: 0861 16 16 16

Forms to commence with a process can be downloaded from the CCMA website at [www.ccma.org.za](http://www.ccma.org.za).

You can also visit the website of the Department of Labour for more information on any of the matters discussed in this brochure at [www.labour.gov.za](http://www.labour.gov.za).

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