

QUICKLAW

ANSWERS YOUR QUESTIONS

EMPLOYEE RIGHTS

Most employees are protected by the Basic Conditions of Employment Act.

Do I fall under the protection of this Act?

Yes, unless you are one of the following:-

- A member of the National Defence Force.
- A member of the National Intelligence Agency
- A member of the South African Secret Service.
- An independent contractor
- An unpaid volunteer working for a charity

Working hours

HOW MANY HOURS SHOULD I WORK IN A WEEK?

You may not work more than:

- 45 hours in any week.
- 9 hours a day if you work 5 days or less a week or
- 8 hours a day if you work more than 5 days a week.

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

AM I ENTITLED TO MEAL BREAKS AND REST PERIODS?

- You must have a meal break of 60 minutes after 5 hours of work.
- A written agreement between you and your employer may lower this break to 30 minutes.
- If you work less than 6 hours a day you are not entitled to a lunch break
- You must have a weekly rest period of 12 continuous hours.

WHAT ARE MY RIGHTS IF I WORK AT NIGHT?

- If you work between 6:00 pm at night and 6:00 am in the morning, you must get an allowance. The amount of the allowance is usually 20% of your normal pay.
- Although transport should be available to you, your employer does not have to provide it.
- If you work between 11:00 pm at night and 6:00 am in the morning you should be told of the health and safety risks. For example, you should know what to do in the event of a fire.
- You are entitled to regular medical check-ups paid for by your employer. If you develop any health problems as a result of your working hours your employer should consider alternative shift options.

Pay

SHOULD I BE PAID OVERTIME?

- Overtime must be paid at 1.5 times your normal pay or you may receive paid time-off instead of overtime pay if agreed

to by both you and your employer.

- An employer may not allow you to work overtime unless agreed by both you and your employer.
- You may not work for more than 10 hours overtime a week.
- You may not work more than 12 hours on any day even if it has been agreed by both you and your employer.

HOW MUCH SHOULD I BE PAID IF I WORK ON A SUNDAY?

- If you normally work on a Sunday you must be paid at 1.5 times your normal pay.
- If you only work on a Sunday now and then, you should receive double pay.

HOW MUCH SHOULD I BE PAID IF I WORK ON A PUBLIC HOLIDAY?

- You should receive double pay if you agree to work on a public holiday.
- You must be paid for any public holiday that falls on a working day.

HOW SHOULD I BE PAID?

An employer must pay you:-

- In South African currency.
- Daily, weekly, fortnightly or monthly.
- In cash, by cheque or direct deposit.

SHOULD I RECEIVE A PAY SLIP?

Yes, each pay slip must include:-

- Employer's name and address.
- Your name and job description.
- Period of payment (daily, weekly, fortnightly or monthly.)
- Amount and purpose of any deduction made from the pay.
- Actual amount paid to you.
- Details of payment for ordinary working hours and overtime.

CAN MY EMPLOYER DEDUCT MONEY FROM MY SALARY/WAGES?

No, unless:-

- You agree to the deduction in writing.
- The deduction is required by law or permitted in terms of a law, collective agreement, court order or arbitration award. For example, if a company has obtained a garnishee order on your pay for outstanding debt, then the instalments in the garnishee order will be deducted from your pay.
- The deduction is no more than one-quarter of the employee's remuneration.

WHAT ARE MY RIGHTS IF MY EMPLOYER PAYS ME LATE?

If your employer fails to pay you within seven days from the date you are supposed to be paid, you should report your employer to the Department of Labour. The seven-day deadline also applies if you have resigned.

Leave

HOW MUCH ANNUAL LEAVE AM I ENTITLED TO?

- You 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 should be taken no later than 6 months after the end of the leave cycle.
- If you resign or if your employment ends, your employer

can pay you instead of giving you leave.

HOW MUCH SICK LEAVE AM I ENTITLED TO?

- You can take up to 6 weeks' paid sick leave during a 36 months cycle.
- During the first 6 months of employment you can take one day's paid sick leave for every 26 days worked.
- An employer may want a medical certificate before paying you if you are sick for more than 2 days at a time or more than twice in 8 weeks.

WHAT IS FAMILY RESPONSIBILITY LEAVE AND AM I ENTITLED TO IT?

Family Responsibility Leave is leave that you may, by law, take, if:

- Your child is born or sick.
- Your spouse, life partner, parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling dies.

You are entitled to Family Responsibility Leave if you are employed full time and have worked for longer than 4 months at your employer, you can take a maximum of 3 days paid Family Responsibility Leave per year.

Job information and termination of employment

DO I HAVE TO SIGN AN EMPLOYMENT CONTRACT?

No, but your employer must give you information about your job and working conditions in writing.

HOW MUCH NOTICE MUST I GIVE MY EMPLOYER IF I RESIGN?

The notice period should not be less than:-

- 1 week, if employed for four weeks or less.
- 2 weeks, if employed for more than six months but not more than one year.
- 4 weeks, if employed for one year or more.
- Notice must be in writing except from a person who cannot write. Illiterate employees must tell the employer that they are giving them their notice period.

SHOULD I RECEIVE A CERTIFICATE OF SERVICE?

When a job ends your employer is required by law to give you a certificate of service. It does not matter how your employment was terminated (i.e. dismissal, retrenchment or resignation).

How can LegalWise help you?

If your employer does not comply with the Basic Conditions of Employment Act or if you do not understand the contents of this brochure speak to one of our Legal Counsellors for assistance.

KEY:

1. EMPLOYEE - a person who works for another in return for wages
2. EMPLOYER - a person or firm that employs people
3. EMPLOYMENT - having a job
4. DISMISSED - to be fired from a job
5. RETRENCHMENT - when an employer reduces staff
6. RESIGNATION - to give up a job

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