EMPLOYMENT LAW

Being Employed

What is a contract of employment and what are the terms and conditions usually contained therein? Learn about contracts of employment and the duties of an employee and employer in an employment relationship in this QuickLaw guide.

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For all your employment answers, simply follow our guide below:

1. What is a contract of employment?
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1. What is a contract of employment?

- An employment relationship comes into existence when one person (“employee”) agrees to assist or place his/her services at the use and *control* of another person (“employer”) who then agrees to pay him/her compensation.
- The terms and conditions of an employment relationship brings a contract of employment into existence.
- A contract of employment may continue for an agreed period of time (fixed-term contract of employment), or until terminated by either the employer or employee (permanent contract of employment).
- A contract of employment does not need to be in writing, but having it in writing will prevent unnecessary disputes.

2. What are the terms and conditions usually contained in a contract of employment?

- A contract of employment contains the terms and conditions specifically agreed to between an employer and employee, those automatically included by law and also general terms and conditions mentioned in a contract, but not necessarily explained in detail.
- A contract of employment usually contains the following terms and conditions:
    - Details of the employee and employer.
    - Position appointed in and details of the work the employee is going to do.
    - Start date, period of employment, probationary period and retirement age.
    - Place or places of work, details about any relocation, transfer and costs.
    - Compensation, for example, the wage amount, method of calculating the amount, payment date, method of payment, rate of overtime, if any, or any other payments (bonusses or payment in kind) and deductions.
    - Period of notice that needs to be given prior to the contract terminating or the date when the contract terminates.
    - Leave.
    - Days and hours the employee is supposed to work.
    - Details of the sectorial determination or council that applies to the business of the employer, if any.
    - List of documents that form part of the contract of employment, for example, any policies and/or procedures, and where to obtain same.
    - Other terms, conditions or specific requirements, for example, providing a valid identity document to the employer, restraint of trade, legal consequences of breaching the contract of employment and so on.

3. What terms and conditions of employment are automatically included by law?

- The Basic Conditions of Employment Act (“BCEA”) provides for the minimum terms and conditions of employment; no contract of employment may be less favourable than these conditions. These minimum terms and conditions include, but are not limited to:

- *Work hours:* an employee may not work more than 45 hours a week or more than 8 hours (if a week is 6 days long) or 9 hours a day (if a week is 5 days long).
- *Overtime:* only by agreement. An employee may not work more than 10 hours' overtime per week and the agreed upon overtime may also not cause the employee to work more than 12 hours per day. An employer must pay an employee 1.5 times his/her daily wage for overtime worked or give him/her time off instead of payment. An employee who usually do not work on a Sunday is entitled to twice his/her daily wage.
- *Lunch:* an employee must be given a 60-minute break after 5 continuous hours of work; however, this may be reduced to a 30-minute break by agreement or be taken away if an employee works less than 6 hours a day.
- *Leave:*
    - Annual – 21 continuous days of leave on full pay or by agreement, 1 day's leave on full pay for every 17 days of work, during a 12-month period or 1 hour's leave for every 17 hours of work. Leave must be taken during or within 6 months after the 12-month period has ended.
    - Sick – for the first 6 months of employment, only 1 day's leave on full pay for every 26 days of work. After the first 6 months of employment, the remainder of 30 days' leave on full pay during a 36-month period. A medical certificate needs to be given after two continuous days of leave (no medical certificate – no pay).
    - Maternity – 4 continuous months' leave without pay (can claim benefits from the Unemployment Insurance Fund). Can only return to work after 6 weeks from giving birth, unless the return is certified by medical practitioner or midwife.
    - Parental leave – 10 consecutive days of leave without pay (can claim benefits from the Unemployment Insurance Fund). This is available to the parent of a child who does not qualify for any other type of leave, for example, a father of the child.
    - Adoption leave – an adoptive parent of a child below the age of 2 is entitled to at least 10 consecutive weeks of leave without pay (can claim benefits from the Unemployment Insurance Fund). If there are 2 adoptive parents, one can apply for adoption leave and the other can apply for parental leave.
    - Commissioning parental leave – a commissioning parent (a parent to a child born through surrogacy) is entitled to at least 10 consecutive weeks of leave without pay (can claim benefits from the Unemployment Insurance Fund). If there are 2 commissioning parents, one can apply for commissioning parental leave and the other can apply for

parental leave.

    - Family – after the first 4 months of employment, 3 days' leave on full pay during a 12-month period (an employee must work more than 4 days a week). Proof of birth, illness or death of a child; or, death of a spouse, life partner, parent, grandparent, grandchild or sibling, may be required.

- *Remuneration:* daily, weekly or monthly payment of compensation in Rand (can be in cash, cheque or by electronic transfer into an employee's bank account) and/or in kind, by no later than 7 days after it becomes due. A pay slip must be given that shows the calculation of an employee's compensation, and all deductions made (deductions must be agreed to by an employee or allowed by law) from it.
- *Termination:* a minimum notice period must be given when employment is terminated, being:
    - One week's notice, if employed for less than 6 months.
    - Two weeks' notice, if employed for more than 6 months, but less than one year.
    - Four weeks' notice, if employed for more than one year.
    - Payment of notice, instead of the employee working his/her notice period.

On termination, an employer must pay an employee his/her outstanding compensation, overtime, annual leave, and so on. An employee must be given a certificate of service.

- *Written particulars of employment:* must be provided when starting with employment.
- The above minimum terms and conditions apply to all employees and employers, except:
    - Members of State Security Agency.
    - Unpaid volunteers working for charity organisations.
    - Independent contractors.

- However, *some* of the above minimum terms and conditions also do not apply to employees earning an income above a certain amount ("threshold"), working less than 24 hours a month, required to work without stop due to circumstances, or in sales travelling and regulating their own hours.

4. Can the terms and conditions of a contract of employment be changed?

- A contract of employment is binding and can only be changed by an employer and employee agreeing to a change/s, a collective agreement, bargaining council agreement, ministerial

determination or sectorial determination.

- An employer may, however, change anything in the workplace that does not form part of their contract of employment, another agreement or determination, for example, work practices.

5. What are the duties of an employee and employer in an employment relationship?

- An employer must:
    - Pay the agreed compensation to an employee for his/her services rendered.
    - Allow an employee to render his/her services and provide him/her with work.
    - Provide an employee with safe working conditions, which also includes safe equipment and clothing.
    - To treat an employee fairly; with respect and dignity.
    - To comply with the requirements set by law.
- An employee must:
    - Be at work and render his/her services.
    - Perform his/her services competently, without negligence (due care and diligence when using the employer's property).
    - Respect and obey all the reasonable and lawful instructions of his/her employer.
    - Act in good faith. In other words, not to use or distribute confidential information of his/her employer or compete with his/her employer, but to act honestly and to promote the business of his/her employer.
    - Not commit misconduct.

6. How can LegalWise assist you?

Should you require an explanation of your rights on this topic, please contact your nearest LegalWise Branch , call, e-mail or WhatsApp us. For more information about our membership options visit our legal services page or visit our join now page.

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