

EMPLOYMENT LAW

Domestic Worker Employment

The Sectoral Determination 7: Domestic Worker Sector, falls under the Basic Conditions of Employment Act 75 of 1997 (“BCEA”) and provides guidance on aspects relating to the employment relationship, such as leave, remuneration and so on. This QuickLaw will provide some guidance on the general aspects around domestic worker employment.

Domestic worker employment relationships are governed by the Labour laws in South Africa. There is a document known as the Sectoral Determination 7: Domestic Worker Sector, South Africa (“Sectoral Determination”) that applies to domestic worker employment relationships. The Sectoral Determination falls under the Basic Conditions of Employment Act 75 of 1997 (“BCEA”) and provides guidance on aspects relating to the **employment relationship**, such as leave, remuneration and so on. This article will provide some guidance on the general aspects around domestic worker employment.

Who can qualify as a domestic worker?

- The Sectoral Determination gives a definition of the term domestic worker.
- A domestic worker includes anyone who performs domestic work in a private household in return for remuneration and includes the following:
 - someone who provides cleaning services;
 - a gardener; and/or
 - someone who takes care of children, the elderly, or the sick, frail and disabled.
- The Sectoral Determination will be applicable to domestic workers who are either working independently (independent contractors) or who are employed or supplied by employment services.

Are domestic workers entitled to a minimum wage?

- Yes, domestic workers also fall under the provisions of the National Minimum Wage Act 9 of 2018 and are entitled to a minimum of R23.19 per hour (subject to change from time to time).

- For example, if a domestic worker works seven hours per day, the **minimum wage** s/he would be entitled to is R162.33.
- However, the minimum wage prescribed by legislation is just the minimum and employers and domestic workers can negotiate a more favorable wage based on numerous factors, such as experience, qualifications and so on.

Can an employer withhold payment or make deductions from the domestic worker's wages?

- An employer may not withhold payment or receive payment from the domestic worker in respect of the following:
 - provision of job-related training to the domestic worker;
 - supply of work clothes, equipment or tools; or
 - supply of any food to the domestic worker while the domestic worker is working or is at the workplace.
- The employer is allowed to make some deductions from a domestic worker's wages, for example, deductions for days that the domestic worker was absent without authorisation, rentals or loans of not more than 10% of the wage, and deductions required by law such as UIF, tax or by court order.

Are there limitations on hours of work and is a domestic worker entitled to be paid for overtime?

- The Sectoral Determination limits the working hours of domestic workers in the following manner:
 - *Work hours:* a domestic worker may not work more than 45 hours a week, or more than 8 hours a day (if a week is 6 days long) or 9 hours a day (if a week is 5 days long).
 - *Overtime:* An employer may not require or permit a domestic worker, to work overtime unless agreed upon between both parties; to work more than 15 hours of overtime a week; or to work more than 12 hours, including overtime, on any day.
 - *Lunch:* an employer must give a domestic worker who works continuously for more than five hours a meal interval of at least one continuous hour.

To what types of leave are domestic workers entitled to?

- The Sectoral Determination provides for minimum leave periods to which a domestic worker is entitled to. These are just minimum periods and the domestic worker and employer can negotiate more favorable leave periods.
- Annual leave:
 - A domestic worker is entitled to at least three weeks paid annual leave per year (this amounts to at least 15 working days for every 12 months worked);
 - at least one day paid annual leave for every 17 days the domestic worker worked or was entitled to get paid for; or
 - at least one hour for every 17 hours the domestic worker worked or was entitled to get paid for.
- Maternity leave:
 - A domestic worker may take maternity leave for four consecutive months, unpaid, where a domestic worker can claim benefits from the Unemployment Insurance Fund.
- Family responsibility leave:
 - Can be taken when a child is born, gets sick or passes away; or in the event of death of a spouse or partner, parent, grandparent, grandchild or sibling.
 - A domestic worker employed longer than 4 months and who works at least four days a week is allowed five days paid leave per year.
- Sick leave:
 - A domestic worker is entitled to at least six weeks paid leave during a 36-month sick leave cycle; or
 - one day paid sick leave for every 26 days worked during the first six months of employment.
- If a domestic worker is sick for more than two consecutive days or twice during an eight-week period, a medical certificate should be produced, or else it may be considered as unpaid leave.

How can a domestic worker employment relationship be terminated?

- A domestic worker employment agreement can be terminated by either party to that agreement on written notice:
 - one week's notice if the domestic worker worked for less than six months; or

- four weeks' notice if the domestic worker worked for more than six months.
- A domestic worker employment agreement can also come to an end upon reaching its expiry date (for example, if it was agreed that the domestic worker will only work for a period of three months).
- An employer can also terminate the agreement through dismissal. However, the employer must ensure that the dismissal complies with legal requirements. An employer can lawfully dismiss a domestic worker provided that there is a valid reason for the dismissal and that a fair procedure was followed leading up to the dismissal. A domestic worker who feels that s/he was unfairly dismissed can refer the dispute to the CCMA within 30 days of the dismissal.

Is a domestic worker entitled to claim from the Unemployment Insurance Fund and for injuries incurred at work?

- Domestic workers are entitled to claim for unemployment benefits under the provisions of the **Unemployment Insurance Fund** ("UIF"), as well as for workplace injuries under the provisions of the Compensation for **Occupational Injuries** and Diseases Act ("COIDA").
- A domestic worker employer must register themselves and their employees with the various institutions and make the necessary contribution, where applicable.