

What is the nature and purpose of severance pay?

- Retrenchment is a “no-fault” type of dismissal arising from the economic, technological, structural, or other similar needs of the employer rather than the conduct or performance of the employee.
- Severance pay can be described as “bridging finance” to assist a retrenched employee while seeking alternative work.
- Severance pay is linked to an employee's rate of remuneration and length of service as at the time of the retrenchment.
- Section 41 of the Basic Conditions of Employment Act 75 of 1997 (BCEA) prescribes that the minimum amount of severance pay that an employer is obliged to pay is the equivalent of one week’s remuneration for each completed year of continuous service.
- An employer may agree to increase it to a higher, but not lower amount. Such an agreement is often found in a collective agreement, contract of employment, or may be agreed between the consulting parties during the retrenchment consultation process.

Entitlement to severance pay

- Every retrenched employee has a right to be paid severance pay by the employer if s/he has completed at least one year of continuous service with the employer prior to retrenchment unless s/he has been offered alternative employment with that employer or any other employer.
- An employee who unreasonably refuses an offer of alternative work by the employer instead of retrenchment, loses his/her entitlement to claim severance pay.
- The BCEA also permits an employee who had a break in service of less than 12 months with the same employer, to claim severance pay for the period of service, including the years of service before the break. The claim is good as long as the break was not longer than 12 months and provided the employee has not already received severance pay for the period of service before the break.
- Employees cannot insist that they be retrenched to claim severance pay if the employer offers them reasonable alternative jobs to avoid their retrenchment. Similarly, employees who accept alternative employment cannot claim severance pay on the basis that the new position is less favourable than the previous one.

Entitlement to payment on the expiry of a fixed-term contract contemplated by section 198B(4)(d) of the Labour Relations Act exceeding 24 months where the employer employs 10 or more employees

- Section 198B of the Labour Relations Act 66 of 1996 (the LRA) provides that an employee that earns below the threshold as set out in section 6 of the BCEA, employed on a fixed-term contract on a specific project for a period exceeding 24 months, depending on the terms of any applicable collective agreement, will be entitled to payment in an amount equal to at least 1 week’s remuneration for each completed year of continuous service on expiry of the fixed-term contract.
- An employee will not be entitled to this payment should the employer offer or secure reasonable alternative employment with a different employer, before the expiry date of the fixed-term contract if that new employment commences at the expiry date of the contract and is on the same or similar terms.

- Should a collective agreement provide that employees employed on fixed-term contracts for more than 24 months will not be entitled to such payment, such clause will supersede the provisions of section 198B of the LRA.

What is remuneration?

- The BCEA uses the word “remuneration”, not pay, wage or salary because the payment is more than simply the normal take-home wage of an employee.
- The Minister of Employment and Labour has defined the word “remuneration” for the purpose of calculating leave pay, notice pay and severance pay.
- The definition includes the value of any benefits the employee received, such as accommodation, payments in kind – e.g. free canteen lunches, the employer’s contribution to any medical aid, pension, provident fund, death or funeral benefit schemes or similar schemes, shift allowances, car allowances, but excludes any payment to enable the employee to travel to and from work, relocation allowances, tips, gifts, entertainment allowances or education/schooling allowances, *etc.*

How is severance pay calculated?

- The one week’s severance pay per completed year of continuous service is the minimum amount the employer must pay by law. This is based on the gross (before tax) remuneration of the employee.
- To calculate one week’s remuneration, the following formula is applied: monthly remuneration divided by 4.33 equals the weekly remuneration.
- Where an employee’s remuneration or wage changes significantly from time to time, such as when an employee earns commission, payment to that employee must be calculated by reference to the remuneration received during the preceding 13 weeks (section 35(4)(a) of the BCEA).
- Special tax rates apply to severance benefits (see sars.gov.za). To qualify for this, the employer must apply to the South African Revenue Services (SARS) for a tax directive before the severance benefit is paid to the employee.

