

EXCLUSIONS FROM THE BASIC CONDITIONS OF EMPLOYMENT ACT 75 of 1997 (BCEA)

Certain categories of employees are entirely excluded from the BCEA while other categories of employees are excluded from some sections of the Act.

Complete exclusion from the application of the Act

The entire BCEA does not apply to the following persons:

- Independent contractors (Definition of employee in section 1).
- Members of the State Security Agency (section 3(1) (a)).
- Unpaid volunteers working for an organisation serving a charitable purpose (section 3(1) (b)).

The Minister may, on the advice of the National Minimum Wage Commission¹ and by publishing a notice, deem any category of persons to be employees for the purposes of the whole or any part of the BCEA, any other employment law (excluding the Unemployment Insurance Act) or any sectoral determination (section 83(1)).

Exclusion from the application of the entire Act except for Section 41, section 62A and chapters 3, 4, 5 and 6

- Persons employed on vessels at sea in respect of which the Merchant Shipping Act applies are excluded from the application of the BCEA except for section 41, section 62A and chapters 3, 4, 5 and 6 of the BCEA.

The following sections are not excluded:

- Section 41 provides for the entitlement to severance pay where an employee's services have been terminated based on operational requirements (retrenchment).
- Section 62A: Chapter 10 of the BCEA concerns monitoring, enforcement and legal proceedings. All reference to "employees" in this chapter should be read to include "workers". This means that workers should also be subject to the protection offered by labour inspectors who serve to promote, monitor and enforce compliance by employers with employment law.
- Chapter 3 regulates an employee's entitlement to leave, including, but not limited to, annual leave, sick leave, maternity leave, parental leave, adoption leave, commissioning parental leave, family responsibility leave, etc.
- Chapter 4 sets out the legal requirements concerning particulars of employment and remuneration.
- Chapter 5 regulates an employee's rights when his or her services are terminated, or when he or she wishes to resign.
- Chapter 6 sets out the law governing the prohibition of the employment of children and forced labour.
- However, in terms of a sectoral determination covering such persons, the whole or part of the BCEA may be made applicable (section 3(3)).

¹ Established by section 8 of the National Minimum Wages Act 9 of 2018

Exclusion from Chapter Two – Regulation of Working Time

Chapter Two (sections 6, 9, 10, 11, 12, 14, 15, 17(2) and 18(3)) regulates all aspects of working hours, including ordinary hours of work, overtime, averaging hours of work, meal intervals, rest periods, pay for work on Sundays and night work. With the exception of section 7 (regulation of working time), Chapter Two does not apply to:

- Senior managerial employees;
- Employees engaged as sales staff who travel to the premises of customers and who regulate their own hours of work;
- Employees who work less than 24 hours a month for an employer.

Sections 9, 10(1), 14(1), 15(10), 17(2) and 18(1) do not apply to work which is required to be done without delay owing to circumstances for which the employer could not reasonably have been expected to have made provision and which cannot be performed by employees during their ordinary hours of work (effectively work that needs to be done in sudden emergency situations).

Sections 9, 10, 11, 12, 14, 15, 16, 17(2) and 18(3) do not apply to employees earning more than the statutory minimum established in terms of section 6(3). This was established at R241 110,59, with effect from 1 March 2023.

Note that section 7 applies to all the above-mentioned employees who are otherwise excluded from the application of Chapter Two. Section 7 sets out what employers must take into account when regulating working time i.e. the requirements of occupational health and safety legislation, the health and safety of the individual employees, the Code of Good Practice on the Regulation of Working Time, and the family responsibilities of employees.

Exclusion from Chapter Three – Leave

Chapter Three does not apply to:

- An employee who works fewer than 24 hours per month for an employer,
- Unless agreed otherwise, leave granted in excess of that provided for in the BCEA.

In addition, section 27 of Chapter Three, regulating Family Responsibility leave, does not apply to the following employees:

- Employees who have worked for an employer for less than four months.
- Employees who work for less than four days a week for that employer.

Exclusion of Chapter Four – Particulars of Employment and Remuneration

Chapter Four regulates the information that an employer is required to provide to employees. The entire Chapter Four (sections 29 to 35) does not apply to:

- Employees who work less than 24 hours per month for an employer.



Section 29 requires an employer to provide to each employee at the commencement of employment various particulars of employment in writing. These particulars are set out in section 29(1) and include the full name and address of the employer, the name and occupation of the employee, description of the work, the place of work, hours of work, remuneration, overtime, deduction, leave, notice periods, etc.

See Checklist: Compulsory employment details

See CCMA Information Sheet: Written particulars of employment

The following written particulars of employment do not have to be provided in the case of employers who employ fewer than five employees-

- Section 29(1) (n) – a description of any council or sectoral determination that covers the employer's business;
- Section 29(1) (o) – any period of employment with a previous employer that counts towards that employee's employment;
- Section 29(1) (p) – a list of any other documents that form part of the contract of employment, indicating a place that is reasonably accessible to the employee where a copy of each may be obtained.

Although domestic workers are no longer excluded from the application of section 29, it will be unlikely that an employer will employ five or more domestic workers. Therefore, sub-sections (1) (n), (o) and (p) will rarely apply to domestic workers.

Exclusion from Chapter Five of the Act – Termination of Employment

Chapter Five (sections 36 to 42) deals with the termination of employment and does not apply to employees working less than 24 hours in a month for an employer (section 36).

Such employees are therefore excluded from the following rights/protections:

- Statutory notice periods of termination of employment provided in section 37.
- Payment instead of notice (section 38).
- The entitlement to temporarily remain in accommodation provided by the employer after termination of employment (section 39).
- Entitlement to payment by the employer for any paid time off or any accrued leave pay (section 40).
- Entitlement to severance pay (section 41).
- Entitlement to a certificate of service (section 42).