

Department of Employment and Labour – Labour Inspections

- The Basic Conditions of Employment Act 75 of 1997 (BCEA), Chapter 10, addresses the issue of Monitoring and Enforcement Proceedings.
- It makes provision for the appointment of Labour Inspectors by the Department of Employment and Labour, and sets out the functions that they may perform, being:
 - To advise Employees and Employers of their rights and obligations as defined by employment law;
 - To conduct inspections (to ensure compliance with employment law);
 - To investigate complaints;
 - To ensure compliance by means of obtaining written undertakings or issuing compliance orders;
 - To refer disputes to the CCMA where they have found non-compliance with the Basic Conditions of Employment Act, National Minimum Wage Act and the Unemployment Insurance Act and the Unemployment Insurance Contributions Act.
- Inspectors are afforded **powers of entry to a workplace**, without notice or a warrant, to carry out an inspection, except for private residence, for which they need the consent of the owner or person occupying the home.
- They have **powers to questions and inspect records or documents** to which employment laws relate, make copies of such record, and question a person in such regard.
- A Labour Inspector must produce, on request, his/her signed **certificate of appointment** indicating his/her appointment as an Inspector and list the applicable legislation he/she is allowed to monitor and enforce.

See Template: BCEA14A Certificate of Appointment [3.15D]

See Template: BCEA 14B Labour Inspector Appointment Certificate [3.15E]

- Employers are required to assist Labour Inspectors to perform their functions.
- If an Inspector believes that an employer does not comply with the employment legislation mentioned above, the Inspector may endeavour to obtain a **WRITTEN UNDERTAKING** from the employer to comply within the period allowed for in the undertaking. This includes an undertaking to pay an amount due and to provide proof of such payment to the Inspector by the date reflected on the undertaking.
- If an employer fails to comply with the undertaking, the Director General may request the CCMA to make the undertaking an arbitration award (which is capable of enforcement).

See Template: BCEA 9 Written Undertaking [3.15B]

- If an Inspector believes that an employer does not comply with the employment legislation mentioned above, the Inspector may issue a **COMPLIANCE ORDER**. The employer must comply with this order, within the specified time frame, unless the employer refers a dispute, within the time stipulated in the order, to the CCMA (section 69(5) of the BCEA) challenging the order.

- If an employer fails to comply with the Compliance Order, the Director General may request the CCMA to make the order an arbitration award (which is capable of enforcement).

See Template: BCEA 12 Compliance Order [3.15C]

Exclusions

- A compliance order to pay an amount due may not be issued in the event of the employee earning above the BCEA Earning Threshold as published annually.
- Proceedings have been instituted at the CCMA or a court, to recover the amount;
- The amount has been due for longer than 36 months.