

Basic Conditions of Employment Act

January 2019

The Basic Conditions of Employment Act 75 of 1997 (BCEA) was amended to cater for:

- the extension of the jurisdiction of the Commission for Conciliation, Mediation and Arbitration (CCMA);
- extension of the provisions for monitoring and enforcement by labour inspectors; and
- incorporation of the enforcement of the provisions of the National Minimum Wage Act 9 of 2018 (NMW Act), the Unemployment Insurance Act 63 of 2001 and the Unemployment Insurance Contributions Act 4 of 2002.

The amendments also provide for claims for underpayment of the minimum wage.

The definition of "basic conditions of employment" has been amended to include the national minimum wage, which is set at ZAR20 per hour worked. The definition of "employment law" now also includes the NMW Act.

In terms of the amendments, if any sectoral determination at the date of the promulgation of the NMW Act prescribes wages that are higher than the national minimum wage, the wages in that sectoral determination, the remuneration and associated benefits based on those wages must be increased proportionally to any adjustment of the national minimum wage in terms of the NMW Act.

Section 68 allows a labour inspector to "endeavour to secure a written undertaking by the employer to comply" with any provision of the BCEA, NMW Act, Unemployment Insurance Act or the Unemployment Insurance Contributions Act. Where the employer fails to comply with such undertaking, the Director-General may request the CCMA to make the undertaking an arbitration award. Section 69 permits a labour inspector to issue a compliance order in respect of non-compliance with these Acts.

An employer must comply with the compliance order within the time period stated in the order, unless the employer refers a dispute concerning the compliance order to the CCMA within that period. Section 73 empowers the CCMA to make a compliance order an arbitration award.

The newly introduced section 73A confers jurisdiction on the CCMA to conciliate a dispute

related to the failure to pay an employee/worker (earning within the earnings threshold) any amount owing in terms of the NMW Act, BCEA, employment contract, sectoral determination or collective agreement. The CCMA must commence arbitration immediately after conciliation. Employees earning above the earnings threshold may institute their claims out of the Labour Court, High Court, Magistrates' Court or Small Claims Court.

If an employee institutes proceedings for unfair dismissal, the Labour Court or arbitrator hearing the matter may also determine any claim for an amount that is owing to that employee in terms of this Act or the National Minimum Wage Act, 2018. Similarly, a dispute concerning any amount that is owing to an employee as a result of a contravention of the BCEA or the NMW Act, may be initiated jointly with a dispute instituted by that employee over the entitlement to severance pay.

An employer shall be liable to pay interest on any amount owing in terms of the BCEA or NMW Act. In terms of section 76A, an employer who pays an employee less than the minimum wage shall be liable to a fine, which shall be an amount greater of twice the value of the underpayment or twice the employee's monthly wage. For second or further non-compliances, the fine shall be equivalent to an amount that is greater of thrice the value of the underpayment, or thrice the employee's monthly wage.

Section 78 sets out the rights of employees, which include discussing conditions of employment with colleagues, the employer or any other person, refusal to comply with an instruction contrary to the BCEA, NMW Act or any sectoral determination, and refusal to agree to any term or condition of employment that is contrary to the BCEA, NMW Act or sectoral determination.

Section 80 confers jurisdiction on the CCMA to conciliate and arbitrate disputes on the interpretation or application of Part C: Protection of employees against discrimination, in relation to the exercise of their rights conferred by the BCEA.

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