



37 Church Street  
Wynberg  
Cape Town, Western Cape  
South Africa

*This guide outlines the provisions of the Basic Conditions of Employment Act (1997), which establishes the labour rights of employees and the duties and responsibilities of employers. If you feel that you have been subjected to violations of these rights by your employer, or are experiencing discrimination in the work place, contact PASSOP on: **021 762 0322***

#### Ordinary Work Hours (Section 9.)

- An employer may not require or permit an employee to work more than:
  - 45 hours in any week
  - Nine hours in any day if the employee works five days or fewer a week
  - Eight hours in any day if the employee works more than five days per week

#### Overtime (Section 10.)

- An employer may not permit or require an employee
  - To work overtime except in accordance with an agreement
  - To work more than
    - Three hours overtime a day OR
    - Ten hours overtime in a week
  - An employer must pay an employee at least one and a half times the employee's wage for overtime worked

#### Compressed working week (Section 11.)

- An agreement in writing may require or permit an employee to work up to twelve hours in a day inclusive of meal intervals without receiving overtime, but this agreement cannot require or permit an employee to work more than:
  - 45 ordinary hours in a week
  - Ten hours overtime in a week
  - On more than five days in a week

#### Meal Intervals (Section 14. )

- An employer must give an employee a meal interval of at least one full hour for every five full hours worked continuously
  - An employee must be remunerated for any meal interval in which the employee is required to work or be available for work
  - An agreement in writing may reduce the meal interval to no less than 30 minutes

#### Daily and Weekly Rest Periods (Section 15.)

- An employer must allow an employee:
  - A daily rest period of 12 consecutive hours between ending and recommencing work
  - A weekly rest period of 36 consecutive hours which, unless otherwise agreed, must include a Sunday

### Night Work (Section 17)

- Night work refers to work that commences after 18:00 and finishes before 06:00 the next day
  - An employer may only require or permit an employee to undertake night work if so agreed, informing the employee of any health and safety hazards associated with night work, enable the employee to undertake a medical examination, and to transfer the employee to day work in reasonable time if the employee suffers from a health condition as a result of working night work

### Public Holidays (Section 18)

- An employer must not require an employee to work on a public holiday except in accordance with an agreement
  - If the public holiday falls on a day that an employee would ordinarily work, the employer must pay the employee;
    - At least the wage that would have been earned by the employee if they do not work on the public holiday
    - At least double what would have been earned on a normal working day if they work on a public holiday

### Annual Leave (Section 20)

- N.B 'Annual Leave Cycle' means the period of 12 months employment with the same employer.
  - An employer must grant an employee at least 21 consecutive days annual leave on full remuneration OR by agreement, one day of annual leave on full remuneration for every seventeen days worked OR by agreement one hour of annual leave for every seventeen hours the employee worked
  - An employer may NOT require or permit an employee to work at any time during any period of annual leave, nor may an employer pay an employee instead of granting annual leave
  - Section 21: Pay for annual leave must be equal to at least equivalent to what the employee would have earned had they worked

### Sick Leave (Section 22)

- A worker may take up to six weeks paid sick leave in a thirty six month cycle
  - During the first six months of employment, an employee may take one paid day's sick leave for every twenty six days worked
  - The remuneration an employee receives must be equal to the wage the employee would usually have received and must be paid on the normal pay day of the employee

### Proof of Incapacity (Section 23)

- An employer is not required to pay an employee under Section 22 if the employee has been away on two consecutive days or two separate occasions during an eight week period if, on the request of the employer, the employee cannot produce a medical certificate, signed by a medical practitioner, that accounts for the duration of the period of absence due to sickness or injury

### Maternity Leave (Section 25)

- An employee is entitled to at least four months of maternity leave
  - No employee may work for six weeks after the birth of her child unless a medical practitioner declares her fit to do so

- In the event of a miscarriage after the third trimester of pregnancy, the employee is entitled to six weeks paid maternity leave
- An employee must declare in writing to the employer, at least four weeks in advance, the date on which the employee intends to (a) commence maternity leave and (b) return to work after maternity leave

#### Protection of employees before and after the birth of a child (Section 26)

- No employer may require or permit an employee who is pregnant, or one who is nursing a child, to perform work that may be hazardous to her health or that of her child, and must provide alternative employment in terms and conditions no less favourable than her normal employment, during the pregnancy and for six months after the birth of her child

#### Family Responsibility Leave (Section 27)

- N.B applies to an employee that has worked for an employer for more than four months and who works at least four days a week for that employer
  - Three days paid leave at the normal wage rate during each annual leave cycle may be taken, at the request of the employee when: the child is born, the child is sick, or in the event of the death of the employees spouse or life partner, parent, adoptive parent, grandparent, child, adoptive child, grandchild or sibling

#### Written Particulars of Employment (Section 28)

- When an employee commences employment, the employer must supply the employee with these particulars, in writing, and must resubmit them if any particulars change
  - (a) the full name and address of the employer;
  - (b) the name and occupation of the employee, or a brief description of the work for which the employee is employed;
  - (c) the place of work, and, where the employee is required or permitted to work at various places, an indication of this;
  - (d) the date on which the employment began;
  - (e) the employee's ordinary hours of work and days of work;
  - (f) the employee's wage or the rate and method of calculating wages;
  - (g) the rate of pay for overtime work;
  - (h) any other cash payments that the employee is entitled to;
  - (i) any payment in kind that the employee is entitled to and the value of the payment in kind;
  - (j) how frequently remuneration will be paid;
  - (k) any deductions to be made from the employee's remuneration;
  - (l) the leave to which the employee is entitled;
  - (m) the period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate;
  - (n) a description of any council or sectoral determination which covers the employer's business;
  - (o) any period of employment with a previous employer that counts towards the employee's period of employment;
  - (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.

#### Payment of Remuneration (Section 32)

- An employer must pay an employee:
  - In South African Currency

- Daily, Weekly, Fortnightly or Monthly
- In cash, cheque or direct deposit

#### Deductions and other acts concerning remuneration (Section 34)

- An employer may not deduct money from an employee's pay unless:
  - The worker agrees in writing
  - The deduction is required by law or permitted in terms of a law, collective agreement, court order or arbitration award

#### Calculation of remuneration and wages (Section 35)

- Wages are calculated by the number of hours worked by an employee

#### Termination of Employment (Section 37)

- An employee or employer must give the following notice if an employment is to be terminated
  - One week if the employee has been employed for four weeks or less
  - Two weeks if the employee has been employed for more than four weeks but less than a year
  - Four weeks if the employee has been employed for more than a year or is a farm or domestic worker who has been employed for more than four weeks
  - Notice must be given in writing except by an employee who is unable to write
  - Section 39: If the employee lives in employers accommodation, a period of one month's notice must be given or the employee must be given alternative accommodation until the contract is lawfully terminated
  - An employer giving notice does not stop an employee challenging the dismissal in a court of law

#### Payment instead of notice (Section 38)

- An employer may, instead of giving notice, pay the employee the equivalent remuneration based on what the employee would have earned during the notice period

#### Payments on termination (Section 40)

- Upon termination, an employer must pay an employee for any paid time off that the employee is entitled to but has not taken, including annual leave

#### Severance Pay (Section 41)

- An employer must pay a worker who is dismissed due to the employer's operational requirement pay equal to at least one week's severance pay for every year of continuous service with that employer.

#### Certificate of Service (Section 42)

- Upon the termination of employment, an employee must be given a certificate of service

#### Prohibition of the employment of children (Section 43)

- No employer may employ a child under the age of fifteen, or who is under the minimum school leaving age in terms of any law if this is fifteen or older
  - No person may employ a child in employment that is inappropriate for a person of that age or that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.

#### Prohibition of Forced Labour (Section 48)

Subject to Article 13 of the constitution, all forced labour is prohibited

