

Decent Work and Contracts





INTRODUCTION

Decisions For Life for young women

When leaving school and looking for jobs, when entering the workplace, and when deciding on a career, young women face important issues such as:

- Handling challenges in the workplace
- Knowing their rights in the workplace
- Getting a work/life balance
- Keeping healthy
- Planning for the future

The Decisions for Life Campaign empowers young women as they make choices at work and at home. Decisions for Life is about women helping women be the best they can be.

This Decisions for Life booklet features examples of work contracts as well as basic workplace rights, to inform young women who are entering or who are in the workforce of their right to decent work.

You can also visit the website www.mywage.co.za for more information on labour laws, wages and decent work.

To find out more about the Decisions for Life campaign telephone Anilla at the Labour Research Service on 021 447 1677.

DECENT WORK AND CONTRACTS

CONTRACTS

What is a contract?

Every employer is required by law (the Basic Conditions of Employment Act/BCEA – section 29) to provide an employee with a written contract of employment not later than the first day of commencement of employment.

This vital document regulates the terms and conditions of employment between the employer and the employee.

What is in the contract?

The contract will state what the employee is entitled to receive in terms of company policy, company benefits, and labour legislation, and what the employer will provide in terms of benefits and labour legislation.

It also regulates the behaviour of the employee in the workplace - because all company policies and procedures, as well as the disciplinary code, form a part of the employment contract.

Keeping up to date

The employment document must be updated when:

- The law changes
- The employee and employer agree to changes in the terms and conditions
- The employee's pay or benefits increase

Contracts for all

Even part-time staff must have a contract. The law applies if employees are temporary or part-time, whether they:

- Have a fixed employment period
- Only work one day a week
- Only work every weekend
- Only work half-day

In other words, anyone who qualifies as an “employee” should have a contract.

No Contract, no grievance

Remember - if there is no contract, it is not only illegal but it is extremely difficult to take action if either an employee or an employer has a grievance, or wants to query a situation in the workplace.

EXAMPLE OF AN EMPLOYMENT CONTRACT

A comprehensive contract which states such details as salary, hours of work, disciplinary codes and other employment details has the benefit of being signed by both parties and is therefore legally binding. Below we provide an example of what an employment contract could look like and what items should be included in every employment contract.

Take note: Details will obviously change according to one’s place of employment.

Name and Address of employer: _____
(herein after referred to as “the employer”)

and Name and Address of employee: _____
(herein after referred to as “the employee”)

1. Commencement

This contract will begin on _____ and continue until terminated as set out in clause 4.

2. Place of work: _____

3. Job description

Job Title _____
(e.g. Call Centre worker, Domestic worker etc)

Duties: _____

4. Termination of employment

Either party can terminate this agreement with four weeks written notice. In the case where an employee is illiterate notice may be given by that employee verbally.

5. Wage

5.1 The employee/s wage shall be paid in cash on the last working day of every week/month and shall be:

5.2.1 A weekly/monthly transport allowance of:

5.3 The total value of the above remuneration shall be:

5.4 The employer shall review the employee's salary/wage once a year.

6. Hours of work

6.1 Normal working hours will be from _____ to _____ on weekdays.

6.2 Overtime will only be worked if agreed upon between the parties from time to time.

6.3 The employee will be paid for overtime at the rate of one and a half times his/her total wage as set out in clause 5.3.

7. Meal Intervals

The employee agrees to a lunch break of 30 minutes/one hour (delete the one that is that not applicable). Lunchtime will be taken from 13h00 to 13h30 or 14h00 daily.

8. Sunday work

Any work on Sundays will be by agreement between the parties from time to time. If the employee works on a Sunday he/she shall be paid double the wage for each hour worked.

9. Public Holidays

The employee will be entitled to all official public holidays on full pay. If an employee does not work on a public holiday, he/she shall receive normal payment for that day. If the employee works on a public holiday he/she shall be paid double.

10. Annual Leave

10.1 The employee is entitled to 21 consecutive days paid leave after every 12 months of continuous service. Such leave is to be taken at times convenient to the employer and the employer may require the employee to take his/her leave at such times as coincide with that of the employer.

11. Sick Leave

11.1 During every sick leave cycle of 36 months the employee will be entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.

11.2 During the first six months of employment the employee will be entitled to one day's paid sick leave for every 26 days worked.

11.3 The employee is to notify the employer as soon as possible in case of his/her absence from work through illness.

12. Maternity Leave

(Tick the applicable clauses in the space provided).

2.1 The employee will be entitled to 30 days maternity leave without pay.

13. Family Responsibility Leave

The employee will be entitled to three days family responsibility leave during each leave cycle.

14. Deductions from Remuneration

The employer may not deduct any monies from the employee's wage unless the employee has agreed to this in writing on each occasion.

15. Other conditions of employment or benefits:

General

Any changes to this agreement will only be valid if they are in writing and have been agreed and signed by both parties.

THIS DONE AND SIGNED AT ON THIS _____ DAY OF

EMPLOYER

EMPLOYEE

Witnesses:

DIFFERENT TYPES OF CONTRACTS

Fixed Term Contract

A fixed term contract of employment is similar to a contract of permanent employment. The difference is that the fixed term contract will stipulate a starting date and an ending date. The duration of the contract is clearly specified between employer and employee.

The contract will state that: "Upon the attainment of (state ending date) this contract of employment will terminate, and the employment relationship between the employee and the employer will cease." The contract could also end: "Upon the happening of a particular event or until a particular task has been completed."

What about benefits?

In the fixed term contract the employer will state where benefits such as pension, medical aid, provident fund, any group life assurance facility, etc are applicable or not applicable.

Unfortunately, some employers use the fixed term contract as a means to save money by denying an employee the opportunity of pension/provident fund benefits and medical aid benefits.

Moreover, if a fixed term employee is retrenched, he or she can be denied their severance pay.

"Rolling Over" Fixed Term Contracts

Some employers continue to renew fixed term contracts every time they expire. This is known as "rolling over" the contract.

It is not forbidden for an employer to roll over a fixed term contract. Once or at the most twice is acceptable. However, if a contract has been rolled over for the third or fourth time, the employee now has what is known as "the right of expectation."

This means that the employee now has the right to expect that such a situation will continue, and their contract will be renewed. If it is not, and the employee

is dismissed, there are strong grounds to take the employer to the CCMA on the grounds of unfair dismissal.

Project Contract

The project contract of employment is very similar to a fixed term or temporary contract of employment.

In this case, instead of listing a starting date and an ending date, the project contract of employment is a contract where an employee is employed to complete a certain project.

In other words, the date of completion of the project is unknown - it may be six months, it may be 12 months or even longer. The employee is thus bound by the project, and not by dates.

The contract will have wording something like:

“The employment shall commence on (stipulate starting date) and shall end upon completion of the project.”

Termination of an Employment Contract

A contract of employment can be terminated on the following grounds:

- On expiration of the agreed period of employment
- On completion of the specified task
- By notice duly given by either party
- By summary termination in the event of a material breach on the part of either party
- By repudiation (to reject the value or authority of the employer or employee)
- By mutual agreement
- By death of either party
- By the insolvency of the employer
- By the supervening impossibility of performance, where either party becomes permanently unable to perform his/her obligations in terms of a contract

Note: A contract may not be terminated in the absence of a justified reason.

The following are grounds for termination of the employment contract:

- Misconduct on the part of the employee
- An employee's poor work performance and/or incapacity
- The operational requirements of the employer

DECENT WORK AND THE LAW

It is important to know the laws concerning employment before you sign a contract. Here we list some of the more important conditions of employment.

Annual Leave

The following are the ground rules:

- Employees who work for 24 hours or more a month for the same employer may take annual leave
- Every employee is entitled to 21 consecutive days annual leave on full pay in every leave cycle. This equates to 15 working days per annum if the employee works a five-day week, and 18 working days per annum if the employee works a six-day week
- A "leave cycle" means a period of 12 months commencing from the first day of employment or commencing from the end of the previous leave cycle
- Whatever number of normal working days falls within that, 21 consecutive days is the number of working days that the employee must be paid for
- Employers may not pay workers instead of granting leave, except on termination of employment
- Public holidays are not counted as leave
- Annual leave is accrued - meaning that the number of days to which the employee is entitled starts at zero and increases with the passage of time as the leave cycle progresses. Therefore, at the start of the leave cycle the employee would have zero days leave due to him/her
- There are two methods of calculating the accrual of annual leave as the leave cycle progresses. The first may only be applied with the prior agreement of the employee: On the 17th day of the leave cycle, the employee would have accrued one day leave. It should be noted that this method of accrual may only be applied by agreement with the employee. On the passage of every 17 days after that, another one-day annual leave accrues to the employee's benefit
- If there is no other agreement with the employee, then the accrual is allowed at 1, 25 days per month in the case of a five-day week worker, or 1, 5 days per month for a six-day week worker and so on. No employee agreement is required to apply this method of accrual

- Annual leave may only be taken by agreement between the employer and employee
- In the absence of any such agreement, annual leave must be taken at a time to suit the employer. This means that the employer is entitled to have a policy stating that a certain period will be regarded as a shutdown period, and employees are required to take annual leave for the period of closure

Annual Leave and shutdown

Many employers have a shutdown period over December. If this is the case, the employer is entitled to stipulate that annual leave must be taken to coincide with the shutdown period. Should an employee take their annual leave at another time during the year, then the shutdown period will be treated as unpaid leave.

Annual Leave and pay

An employee must be paid in full during leave. Leave pay should be paid before the leave starts or on an employee's normal payday. If an employee leaves the job he/she must be paid for any leave accrued but not taken at a rate of one day's pay for every 17 days worked.

Maternity Leave

Female employees have a right to four months maternity leave. By law your employer is not obliged to give you paid maternity leave, but you are entitled to four consecutive months of maternity leave. The maternity leave may begin at anytime from at least four weeks before the birth of the baby. The maternity leave may also be taken earlier if the woman's medical condition does not allow her to work.

Know Your Maternity Benefits

If you have been contributing to the Unemployment Insurance Fund (UIF), you can claim from the Maternity Benefit Fund.

Your maternity leave can start any time from four weeks before the expected date of birth or on a date a doctor or midwife says is necessary for her health or that of her unborn child. She also may not work for six weeks after the birth of her child unless declared fit to do so by a doctor or midwife.

Breaking the news about your pregnancy to your employer might be a challenge. Don't rush into it. Your employer's response may not be what you expect and you need to be well prepared for any possible scenario.

Claiming from the Unemployment Insurance Fund (UIF)

Women who want to claim from the UIF need to go to the nearest labour centre with these documents: an ID book or passport, banking details and a medical certificate. If the woman is too ill to go to the centre, she can send someone on her behalf.

Job security after Maternity Leave

There have been cases where women find themselves unemployed after maternity leave. This is illegal and goes against the South African Labour Relations Act (Basic Conditions of Employment Act). Women are entitled to their jobs when returning from maternity leave and should not be discriminated against.

Adoption Leave

The Unemployment Insurance Act 2001 provides for adoption benefits at the same rate and duration as maternity benefits. But whilst the BCEA makes provision for maternity leave, it makes no provision for adoption leave.

If your employer provides adoption leave as an entitlement, you are one of the privileged few in South Africa to get that. For example: Parliament provides four months paid leave; Stellenbosch University now also gives four months adoption leave.

At this point, negotiating for adoption leave is between individual employees and employers, usually through the HR department of a company.

Family Responsibility Leave

Employees employed for longer than four months and for at least four days a week are entitled to take three days paid family responsibility leave during each leave cycle.

This can happen under certain circumstances:

- When the employee's child is born
- When the employee's child is sick

- In the event of the death of the employee's spouse or life partner or parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling

Employers may require reasonable proof of the birth, illness or death for which a worker requests leave.

The provisions for family responsibility leave do not apply to workers who work less than four months for their employer, or four days a week for one employer or 24 hours a month.

Family responsibility leave expires at the end of the annual cycle.

Sick Leave

Sick leave works in a three-year cycle. An employee may take one day's sick leave for every 26 days worked during the first six months of employment and thereafter an employee may take the number of days he/she normally works in six weeks during every three year cycle.

Basically, an employee is entitled to 30 (if he/she works five days a week) or 36 (if he or she works six days a week) days' paid sick leave for every three-year sick leave cycle.

The provisions for sick leave do not apply to workers who work less than 24 hours a month, or workers who receive compensation for an occupational injury or disease.

Medical certificates and sick notes

An employee may be requested to produce a valid medical certificate if he/she has been absent from work for more than two days in a row or more than twice in eight weeks. If the employee does not have a valid medical certificate, the employer does not have to pay the employee. The medical certificate must be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament.

Although this is not covered in the Labour Legislation, the Ethical and Professional Rules of the Medical and Dental Professions Board of the Health

Professions Council of South Africa provides the following instructions on the issuing of medical certificates or sick notes:

Rule 15:

(1) A practitioner shall only grant a certificate of illness if such certificate contains the following information, namely:

- The name, address and qualification of the practitioner
- The name of the patient
- The employment number of the patient (if applicable)
- The date and time of the examination
- Whether the certificate is being issued as a result of personal observations by the practitioner during an examination, or as the result of information received from the patient and which is based on acceptable medical grounds
- A description of the illness, disorder or malady in layman's terminology, with the informed consent of the patient; provided that if the patient is not prepared to give such consent, the medical practitioner or dentist shall merely specify that, in his or her opinion based on an examination of the patient, the patient is unfit to work
- Whether the patient is totally indisposed for duty or whether the patient is able to perform less strenuous duties in the work situation
- The exact period of recommended sick leave
- The date of issuing of the certificate of illness
- A clear indication of the identity of the practitioner who issued the certificate which shall be personally and originally signed by him or her next to his or her initials and surname in printed or block letters

(2) If preprinted stationery is used, a practitioner shall delete words which are irrelevant.

(3) A practitioner shall issue a brief factual report to a patient where such a patient requires information concerning himself or herself.

Public holidays and work

Work on a public holiday is entirely voluntary and a worker (including domestic workers) may not be forced to work on such public holiday.

- The official South African public holidays are: New Years Day, Youth Day, Human Rights Day, National Woman's Day, Good Friday, Heritage Day, Family Day, Day of Reconciliation, Freedom Day, Christmas Day, Workers Day, Day of Goodwill
- A public holiday can be exchanged with another day by agreement

- A public holiday cannot be counted as annual leave

Pay for work on public holidays

- Workers must get paid time off for any public holiday that falls on a working day
- Working on a public holiday is by agreement only
- Workers must be paid extra for working on a public holiday, usually double the normal daily rate

The provisions for Public Holidays do not apply to:

- Senior management.
- Sales staff who travel.
- Workers who work less than 24 hours a month.

Sexual Harassment

What is Sexual Harassment?

Sexual harassment is any unwanted attention of a sexual nature that takes place in the workplace.

This is any kind of sexual behaviour that makes you feel uncomfortable, including:

- Touching
- Unwelcome sexual jokes
- Unwanted questions about your sex life
- Whistling
- Rude gestures
- Requests for sex
- Staring at your body in an offensive way

The Labour Relations Act is the main act that deals with sexual harassment in the workplace. It has a Code of Good Practice on Sexual Harassment that sets out the best ways to deal with complaints about sexual harassment.

Labour Rights

Sexual harassment is an unfair labour practice and if it happens to you, you can ask your employer to deal with it.

You have the right to:

- A workplace that is free from sexual harassment
- Be treated with dignity and respect at work
- Be treated equally, and not to be discriminated against because of race, gender and your HIV status
- To report sexual harassment without fear of victimisation (ill-treatment)
- Have your complaint treated seriously and confidentially

What can you do if you are sexually harassed?

You can deal with sexual harassment in an informal or formal way.

Informal Way

This is when you try to sort out the problem without taking up a grievance (formal workplace complaint) against the abuser.

Ways of taking informal action:

- Talk to the abuser and ask him to stop the behaviour that makes you feel uncomfortable
- If you feel uncomfortable about being alone with the abuser, you can ask someone that you trust to come with you when you talk to the abuser
- Write to the abuser and tell him that his behaviour makes you uncomfortable and ask him to stop. In your letter, write down the things that the abuser does that make you feel uncomfortable
- Keep a copy of the letter
- Send the letter by registered mail so that you can prove that you sent it
- Ask someone else to speak to the abuser. You can ask your shop steward or a work colleague to do this for you

Formal Way

Where a formal procedure has been chosen by the aggrieved, a formal procedure for resolving the grievance should be available and should:

- Specify to whom the employee should lodge the grievance
- Make reference to timeframes which allow the grievance to be dealt with expeditiously
- Provide that if the case is not resolved satisfactorily, the issue can be dealt with in terms of the dispute procedures contained in item 7(7) of this code.

Investigation and disciplinary action

Care should be taken during any investigation of a grievance of sexual harassment that the aggrieved person is not disadvantaged, and that the position of other parties is not prejudiced if the grievance is found to be unwarranted.

The Code of Good Practice regulating dismissal contained in Schedule 8 of this Act, reinforces the provisions of Chapter VIII of this Act and provides that an employee may be dismissed for serious misconduct or repeated offences. Serious incidents of sexual harassment or continued harassment after warnings are dismissable offences.

In cases of persistent harassment or single incidents of serious misconduct, employers ought to follow the procedures set out in the Code of Practice contained in Schedule 8 of this Act.

The range of disciplinary sanctions to which employees will be liable should be clearly stated, and it should also be made clear that it will be a disciplinary offence to victimise or retaliate against an employee who in good faith lodges a grievance of sexual harassment.

Criminal and civil charges

A victim of sexual assault has the right to press separate criminal and/or civil charges against an alleged perpetrator, and the legal rights of the victim are in no way limited by this code.

Dispute Resolution

Should a complaint of alleged sexual harassment not be satisfactorily resolved by the internal procedures set out above, either party may within 30 days of the dispute having arisen, refer the matter to the CCMA for conciliation in accordance with the provisions of section 135 of this Act. Should the dispute remain unresolved, either party may refer the dispute to the Labour Court within 30 days of receipt of the certificate issued by the commissioner in terms of section 135(5).



DECISIONS FOR LIFE CAMPAIGN

www.mywage.co.za or Labour Research Service on 021 447 1677