

BASIC CONDITIONS OF EMPLOYMENT ACT 75 OF 1997

DETERMINATION: EARNINGS THRESHOLD

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I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, in terms of Section 6(3) of the Basic Conditions of Employment Act No 75 1997 (the Act), determine that all employees earning in excess of R149 736 (one hundred and forty nine thousand seven hundred and thirty six rand) per annum be excluded from sections 9, 10, 11, 12, 15, 16, 17(2) and 18(3) of the with effect from 1 March 2008.

For the purpose of this notice:

“Earnings” means the regular annual remuneration before deductions, i.e. income tax, pension, medical and similar payments but excluding similar payments (contributions) made by the employer in respect of the employee: Provided that subsistence and transport allowance received or achievement awards, intermittent payments for occasional overtime shall not be regarded as remuneration for the purpose of this notice. similar payments (contributions) made by the employer in respect of the employee.

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Section 9: - Ordinary hours of work.

Section 10: - Overtime.

Section 11: - Compressed working week.

Section 12: - Averaging of hours of work.

Not excluded Section 13: - Determination of hours of work by Minister.

Not excluded Section 14: - Meal intervals.

Section 15: - Dailey and weekly rest periods.

Section 16: - Pay for work on Sundays.

Change, only (2) Section 17 (2): - Night work.

Section 18 (3): - Public holiday (pay for work on day employee does not ordinarily Work only).

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THRESHOLD

Per Annum	Per Month	Per Week	Per Hour	W.e.f.
149 736	12 478	2 879.54	63.99	01/03/2008
115 572	9 631	2 222,54	49.34	14/03/2003

Hours of Work and Overtime:

Chapter 2 of the BCEA regulates working Time, including all hours and overtime.

The following is applicable to employees earning *less* than the determined threshold.

The maximum normal working time allowed (section 9 BCEA) is 45 hours weekly. This is 9 hours per day (excluding lunch break) if the employee works a five-day week, and 8 hours per day (excluding lunch break) if the employee works more than 5 days per week.

This does not mean that the employee **must work** 45 hours per week normal time.

The amount of normal time worked is a matter of contractual agreement between employer and employee. Some employers work a 40 hour week, and so on.

The statutory limitation of 45 hours per week means that the employee **may not work more than** 45 hours per week normal time.

Lunch break is unpaid time and is the employee's own time - he/she and read a book, go shopping, etc because they are not paid for lunch breaks.

Therefore an employee who works a 5 day week and who receives a lunch break of one hour daily will actually be at the workplace for 50 hours weekly (45 hours normal working time plus 5 hours daily lunch breaks.)

The lunch break is to be provided after five hours continuous working time. Tea breaks do not qualify as a break in working time.

The statutory lunch break is 1 hour, but by agreement between the employee and employer this may be reduced to 30 minutes.

Employees who earn above the determined threshold amount must negotiate the normal amount of working hours per day or per week with the employer. The employee is under no obligation to work more than 45 hours per week.

Overtime

All overtime is voluntary and may only be worked by agreement between employer and employee.

Maximum permissible overtime is 3 hours on anyone day or 10 hours in any 1 week. Remuneration must be at 1, 5 times the normal wage rate except for Sunday work and work on public holidays, which must be remunerated at twice the normal wage rate.

Time off, calculated on the same formula, may be granted instead of payment, but only by agreement with the employee.

Employees who earn in excess of the present threshold amount are not subject to the provisions of section 10 (overtime) of The Basic Conditions of Employment Act.

This means that such employees **cannot demand** to be paid for overtime worked, nor can they **demand** to be granted paid time off in view of payment.

However, contrary to popular belief, the employer also **cannot force** such employees to work overtime and cannot demand that they work overtime without compensation.

All forced labour is prohibited in terms of section 48 of the BCEA, and should the employer require such employees to work overtime then the hours to be worked and the basis of compensation must be negotiated with the employee.

Should the employer refuse to compensate for overtime worked in the case of an "over the threshold" employee, then the employee is entitled to refuse to work the overtime.

What is "overtime worked"?

All hours worked in excess of the employee's normal hours of work will be regarded as overtime hours.

Therefore, if your employee is contracted to work 45 hours per week normal time, then any hours in excess of that is overtime worked.

Similarly, if your employee is contracted to work 40 hours per week normal time, then any hours in excess of the 40 hours is overtime worked.

Overtime on short notice

Overtime is not compulsory, and employees can refuse to work overtime on short notice.

However, an employee cannot refuse to work overtime if the work which is required to be done must be done without delay owing to circumstances for which the employer could not reasonably have been expected to make provision, such as the sudden breakdown of equipment, and which cannot be performed by employees during the ordinary hours of work. (Section 6 (2) BCEA):

Remuneration for Sunday and public holiday work.

Should any employee work on a Sunday, he must be remunerated at double his normal wage rate for each hour worked, unless he ordinarily works on a Sunday, in which case he must be remunerated at 1, 5 times his normal wage rate for each hour worked.

Should any employee work on a public holiday, it must be noted that no employer may require any employee to work on a public holiday except in accordance with an agreement with the employee to do so.

If the public holiday falls on a day on which the employee would normally work, the employee is entitled to that day off on full pay, or if he does not work on that day then he is entitled to be paid his ordinarily daily wage plus the amount earned by him for the work performed on that day.

Should the public holiday fall on a day on which the employee would ordinarily work then if he works on that public holiday he is entitled to be paid at least double his normal wage rate for the day, or if he does not work, he is entitled to have the day off and be paid his normal wage rate for the day.