



Employment Law in South Africa

Insights

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South Africa, a country with over 50 million people, has the largest economy in Africa. Among its major sources of business are tourism, agriculture and mineral resources. Many U. S. and multi-national companies have locations in South Africa. This article will provide some basic information about employment law in South Africa for companies who already employ workers in South Africa or who are considering hiring employees in that country.

The Basic Conditions of Employment Act, 1997 (“the Act”) is South Africa’s current employment law governing an employer’s duties and obligations to most workers in the country. This law applies to all employees and employers except members of the National Defence Force, National Intelligence Agency, South African Secret Service and unpaid volunteers working for an organization with a charitable purpose. The basic conditions of employment as set forth in the Act form part of the contract of employment with each covered employee. However, some of the employment conditions enumerated in the Act may be revised by individual or collective agreement.

Employment contracts

In South Africa, employment agreements must be in writing. The employer is required to provide workers the following information in writing when employment begins: the employer’s full name and address; the employee’s name and occupation or a brief description of the work; the various locations of work; date of employment; ordinary hours of work and days of work; wage or the rate and method of calculating compensation; rate for overtime work; any other cash payments; any payment in kind and the value of such payment; frequency of remuneration; any deductions; leave entitlement; period of notice or period of the employment agreement; description of any council or sectoral determination which covers the employer’s business; period of employment with a previous employer that counts towards the period of employment; and a list of any other documents that form part of the contract, indicating a place where a copy of each may be obtained.

Affirmative action requirements

South Africa’s Employment Equity Act requires employers with more than 50 employees, as well employers in certain other categories, to develop employment equity plans. The purpose of these plans is for employers to show reasonable progress in the workforce pertaining to certain “designated groups”, defined by the Act as “black people” and “women and people with disabilities”, and to identify barriers adversely affecting individuals who are members of these “designated groups”.

Regulation of working time

South Africa's laws regulate working time for both ordinary hours of work and overtime. This section of the Act, however, does not pertain to senior management employees, employees engaged as sales staff who travel and employees who work fewer than 24 hours a month. For ordinary hours of work, employers may not require or permit an employee to work more than 45 hours in any week; nine hours in any day if an employee works for five days or less in a week; or eight hours in any day if an employee works on more than five days in a week. An employer may not require or permit an employee to work overtime except by an agreement, or require permit an employee to work more than ten hours' overtime a week. An agreement may not require or permit an employee to work more than twelve hours on any day. However, a collective agreement may increase overtime to fifteen hours per week for up to two months in any period of up to twelve months. Overtime must be paid at 1.5 times the employee's normal wage or an employee may agree to receive time off. The Act also provides rules for a compressed work week, averaging of hours of work, meal intervals, daily and weekly rest periods, pay for work on Sundays, night work and public holidays.

Leave Entitlement

South Africa's law on leave entitlement does not apply to employees working fewer than 24 hours a month for an employer, or to leave granted in excess of the leave entitlement under the statute. For all other employees, the law guarantees annual leave (21 consecutive days' annual leave or by agreement, one day for every seventeen days worked or one hour for every seventeen hours worked); sick leave (six weeks' paid sick leave in a period of 36 months); maternity leave (four consecutive months' maternity leave); and family responsibility leave (full-time employees are entitled to three days paid family responsibility leave per year, on request, when the employee's child is born or sick, or in the event of death of the employee's spouse or life partner, or the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling).

Collective Bargaining Agreements

A collective bargaining agreement negotiated by a bargaining council replaces or excludes the basic conditions of employment as set forth in the Act except for the following employer obligations: a) the duty to arrange working time with regard to the health and safety and family responsibility of employees; b) protection afforded to employees who perform night work; c) annual leave entitlement of at least two weeks; d) maternity leave entitlement; e) sick leave entitlement; and f) the prohibition of child and forced labor. The Minister of Labour may make a determination to vary or exclude a basic condition of employment upon application by an employer or employer organization.

Separation of Employment

The section of South Africa's law governing termination of employment does not apply to an employee who works fewer than 24 hours in a month for an employer. For all other employees, a contract of employment may be terminated on notice of not less than: a) one week, if the employee has been employed for more than six months or less; b) two weeks, if the employee has been employed for more than six months but not more than one year; and c) four weeks, if the employee has been employed for one year or more, or if a farm worker or domestic worker has been employed

for more than six months. A collective agreement may shorten the four weeks' notice period no less than two weeks, and notice must be given in writing, unless such notice is provided to an illiterate employee. The fact that an employer has provided the notice of employment termination does not prevent the employee from challenging the fairness or lawfulness of the dismissal in terms of any applicable law.

Severance Pay

An employee dismissed for operational requirements or whose employment agreement contract is terminated is entitled to one week's severance pay for every year of service under the terms and conditions of the Act.