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by **deel.**

The Employment Contract



An employment contract is a legally binding agreement between an employer and an employee, which states the conditions of employment.



While an employment contract can be either written or verbal, it's best to have clear, well-drafted contracts as they help you manage your people effectively and protect you and your people's interests if issues arise. If documented, the contract provides evidence for both you as the employer and your people.

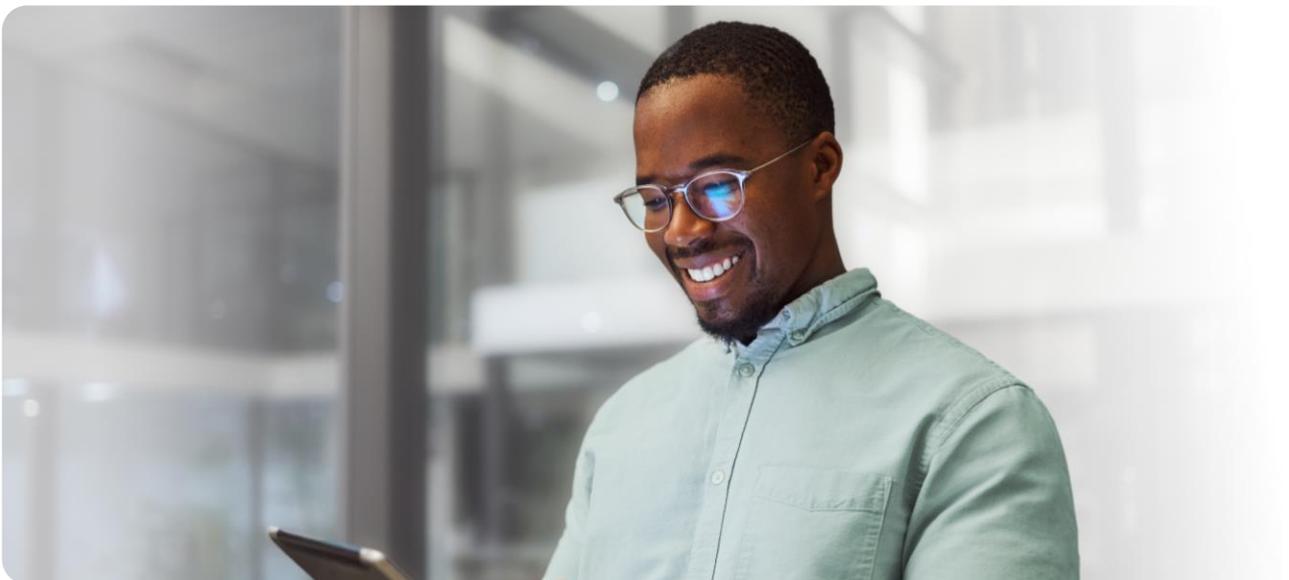
Section 29 of the Basic Conditions of Employment Act provides for certain written particulars of employment to be provided as a minimum, and every employer is legally obliged to provide all employees with these minimum particulars no later than the first day of employment.

An employer must supply an employee with the following particulars in writing:

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|  | Full name and address of the employer. |  | Any payment in kind and the value thereof (benefits). |
|  | Name and occupation of the employee, or a brief description of the work. |  | Frequency of remuneration. |
|  | Various places of work. |  | Any deductions. |
|  | Date of employment. |  | Period of notice or period of contract. |
|  | Ordinary hours of work and days of work. |  | Description of any council or sectoral determination which covers the employer's business. |
|  | Wage or the rate and method of calculating. |  | List of any other documents that form part of the contract, indicating a place where a copy of each may be obtained, e.g., Disciplinary code and procedures, Company rules and regulations. These are generally included in the onboarding pack and should be agreed to, and the employer should obtain signed acceptance reflecting agreement to the contents. |
|  | Rate for overtime work. | | |
|  | Any other cash payments. |  | Leave provisions for annual leave, sick leave, family responsibility leave, maternity leave, and any other types of leave that the employer provides for, such as study leave. |

Although not stipulated by the BCEA, it would be wise to include the following information in the employment contract:

- 1.** Terms and Conditions applicable to bonuses or other incentive schemes paid by the employer.
- 2.** Terms and Conditions applicable to Performance Reviews.
- 3.** Terms and Conditions applicable to salary reviews – here, it should be mentioned that a review is not a guarantee of an increase. It simply means that the salary will be looked at in terms of the employee’s performance or other criteria that the employer decides on but may not necessarily result in a salary increase. Unfortunately, many employees incorrectly interpret the salary review as a guaranteed increase, and it must be made clear to employees that this is not so.
- 4.** Restraint of Trade Agreement if applicable. If so, seek legal guidance on enforcement.
- 5.** Confidentiality Agreement.
- 6.** Conflict of Interest Agreement. This would be to prevent undesirable conflicts of interest within the workplace.
- 7.** Details pertaining to pension, provident and medical aid contributions. Although not a legislative requirement, it would be wise to include it in the contract if your company does provide such benefits. If not, it’s advisable to state that such benefits are not offered.



Very important to remember - everything contained in and mutually agreed upon in the contract prior to employment is legally binding. An employer may not unilaterally change the terms of the agreement as and when they desire. Terms may be changed, but a consultation process needs to be followed. If unilaterally changed without the employees' consent, the employer will find themselves in hot water, so please be sure to seek legal advice if such a need arises.

Employers may include non-legislated terms in an employment contract. These would need to be mutually agreed upon between both parties. What is of utmost importance to remember is that the Basic Conditions of Employment will always take precedence over any agreement. The employment contract may never be less favourable than the terms stipulated by the Basic Conditions of Employment. If such terms are more favourable, the employer cannot at a later date change their mind and revert to the Basic Conditions of Employment. In short, terms of employment must always be the same as or better than what the Basic Conditions of Employment prescribe. Whatever is contracted is legally binding unless what is contracted is less favourable than the Basic Conditions of Employment.

Not all contracts are equal. There is much confusion among employers regarding employee status. For example, who is deemed

an employee and who is not? Who is protected under the Basic Conditions of Employment and the Labour Relations Act, and who is not?

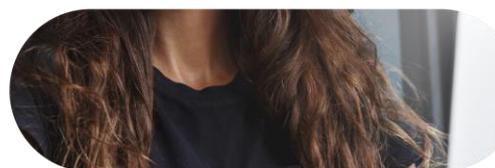
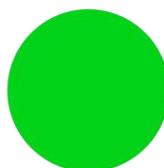
There are different categories, namely:

- Permanently employed employees
- Fixed term contractors
- Independent contractors
- Temporary employees

There are tests such as the dominant impression test and other methods that can be applied to determine whether a person of that category is an employee or not. We won't address this in this article. Still, please be aware that there are different categories and please ensure you seek advice when formulating your contracts.

If employers and employees correctly apply the BCEA, there will be fewer problems, and both parties to the agreement will be protected. Always ensure that you have met the requirements of **The Basic Conditions of Employment Act** as a bare minimum. If unsure, seek a specialist's advice before concluding.

Sample contracts can be viewed on the Department of labour website **Department of Labour Documents Centre**.





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