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BCEA EARNINGS THRESHOLD

NEWS FLASH



We previously placed the notice that appeared in the Government Gazette advising that the earning threshold would increase effective 1 July 2012.

But what does this effectively mean to employers?

Currently, employees who earn below the threshold earnings of R172 000 per annum is excluded from the provisions of the following Sections of the Basic Conditions of Employment Act:

- Section 9: Ordinary hours of work
- Section 10: Overtime
- Section 11: Compressed working week
- Section 12: Averaging of hours of work
- Section 13: Determination of hours of work by Minister
- Section 14: Meal intervals
- Section 15: Daily and weekly rest period
- Section 16: Pay for work on Sundays
- Section 17: Night work -17(2) that deals with transport and night shift allowances
- Section 18: Public holidays – 18(3) that deals with payment for work on a public holiday that falls on a day on which the employee would ordinarily not have worked.

This threshold will increase to R183 008 per annum, effective 1 July 2012.

Employees earning under the threshold amount have the full protection of every section of the Basic Conditions of Employment Act (BCEA) in that:

- Overtime may only be worked by agreement between employer and employee.
- The employee has the **legal right and entitlement** to demand payment for overtime worked at the rate of 1,5 times the normal hourly rate;



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- The employee can also enter into an agreement for paid time off work instead of payment for overtime worked; and
- Generally, the employee can legally refuse to work overtime (except in some circumstances, ie emergency work).

Therefore, employees who were previously exempt from overtime as their earnings were above the threshold values, may now be earning below the threshold so they will now automatically be eligible for overtime payments.

Employees earning over the threshold amount do not have an automatic recourse to the rights conferred in Sections 9, 10, 11, 12, 14, 15, 16, 17(2), and 18(3). These employees' conditions of employment and overtime provisions are normally set out in their individual contracts of employment.

Employers should therefore carefully scrutinise employment contracts to ensure that a blanket right to overtime payments have not been created unintentionally.

Employers should also be mindful that, although the payment of overtime is not enforced by the BCEA, Section 48 of that Act prohibits all forced labour, which effectively means that employees cannot be forced to work overtime, irrespective of their earnings.

Employers should also consider the threshold value when reviewing employee salaries as the indirect cost of overtime payments can play havoc with an employer's payroll budget. In some instances, greater levels of stability can be achieved by paying employees above the threshold amounts.

