



# SOUTH AFRICA

## Decent Work Check 2019

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## WageIndicator Foundation - [www.wageindicator.org](http://www.wageindicator.org)

WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, thereby serving as an online library for wage information, labour law, and career advice, both for workers/employees and employers. The WageIndicator websites and related communication activities reach out to millions of people on a monthly basis. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

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### Bibliographical information

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# INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental principles and Rights at Work and Core ILO Conventions, are practiced, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects, which are deemed important in attaining "decent work". The work makes the rather abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and gives a score to the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Workers can compare their own score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

Decent Work Check is useful both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also useful for researchers, labour rights organizations conducting surveys on the situation of rights at work and general public wanting to know more about the world of work. WageIndicator teams, around the world, have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed - being a workers, self-employed, employee, employer, policy maker, labour inspector - there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer) and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work especially the effective enforcement of legislation in financially constrained states, rise of precarious employment and measuring the impact of regulatory regimes.

Currently, there are more than 100 countries for which a Decent Work Check is available here: [www.decentworkcheck.org](http://www.decentworkcheck.org) During 2019, the team aims to include at least 10 more countries, thus taking the number of countries with a Decent Work Check to 115!

## Major Legislation on Employment and Labour

1. Constitution of the Republic of South Africa, 1996, last amended in 2012
2. Basic Conditions of Employment Act, 1997 (last amended in 2018)
3. Occupational Health & Safety Act, 1993
4. Unemployment Insurance Act, 2001 (last amended in 2017)
5. Compensation for Occupational Injuries Act, 1993
6. Social Assistance Act 13 of 2004 (last amended in 2010)
7. Employment Equity Act, 1998, last amended in 2015
8. Regulations on Hazardous Work by Children in South Africa, No. 32862
9. Labour Relations Act No. 66 of 1995 (last amended in 2014)

# 01/13 WORK & WAGES

## **ILO Conventions**

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

**South Africa has not ratified the Convention 95, 117 & 131.**

## *Summary of Provisions under ILO Conventions*

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

## Regulations on work and wages:

- Basic Conditions of Employment Act, 1997 (last amended in 2018)

## Minimum Wage

In accordance with the Basic Condition of Employment Act (BECA), Minister of Labour may set minimum terms and conditions of employment including minimum wages. There is no single national minimum wage in South Africa. Minimum Wage is set at the sectoral level and area level. Minimum wages are set for vulnerable sectors; the sectors, which have low union density or where market wages are quite low. Sectoral determination for setting minimum wage is done in consultation with Employment Conditions Commission.

Minimum wage is set for the following sectors: domestic work, contract cleaning, private security, wholesale & retail, farm work, forestry, taxi, learnership, hospitality, civil engineering and work of children in the performance of advertising, artistic and cultural activities. The Employment Conditions Commission advises the Minister of Labour on various issues including sectoral determinations regarding minimum wages. The Basic Conditions of Employment Act requires that while advising the Minister on publication of a sectoral determination, the Commission must consider in respect of the sector and area concerned the ability of the employer to carry on their business successfully; operation of small, medium or micro enterprises and new enterprises; the cost of living; the alleviation of poverty; conditions of employment; wage differentials and inequality; the likely impact of any proposed condition of employment on current employment or the creation of employment; the possible impact of any proposed conditions of employment on the health, safety or welfare of workers; and any other relevant factor.

After considering the report and recommendations of the Commission, the Minister may make a sectoral determination for one or more sector and area and provide for the adjustment of remuneration by way of minimum remuneration or minimum increases.

The Department of Labour monitors minimum wages that fall under the departmental regulations. Inspectors from the Department of Labour make investigations about the implementation of labour laws, rules and regulations. Simultaneously, Trade Unions monitor minimum wages that are regulated through Bargaining Councils. Employers (and employees) and trade unions monitor Minimum Wages that are included in centralized and decentralized bargaining at company (single employer) and plant level.

Individuals can complain to the Department of Labour if they think they are earning less than the Minimum Wage. Trade Union members can also complain to their union representatives. If a complaint is lodged with the Department of Labour and an employer is found to be guilty of paying below the stated minimum wage, the employer can be fined or the employer can come to an arrangement with the employee to pay arrears. A worker has the right to make a complaint to a trade union representative, a trade union official or a labour inspector concerning any alleged failure or refusal by an

employer to comply with BCEA or the National Minimum Wage Act, 2018.

In the event of contravention (paying a worker less than the minimum wage), a fine that may be imposed on an employer is an amount which is greater of twice the value of the underpayment or twice the employee's monthly wage.

For second or further non-compliances, a fine that may be imposed on the employer is an amount that is greater of thrice the value of the underpayment or thrice the employee's monthly wage.

The Parliament of South Africa has passed the Minimum Wage Act 2018 (Presidential assent still in progress). The new law aims to improve the wages of lowest paid workers; protect workers from unreasonably low wages; preserve the value of the national minimum wage; promote collective bargaining; and support the economic policy. The new law sets the national level minimum wage to which every worker is entitled to. Employers are required to pay no less than the minimum wage. The minimum wage is adjusted on the recommendation of National Minimum Wage Commission which conducts an annual review of national minimum wage and recommend adjustments. The Commission is tripartite-plus in nature and is composed of three members each from organized community, organized business, organized labour and three independent experts. While recommending adjustments in the minimum wage, the Commission has to consider the following factors: inflation, the cost of living and the need to retain the value of the minimum wage; wage levels and collective bargaining outcomes; gross domestic product; productivity; ability of employers to carry on their businesses successfully; the operation of small, medium or micro-enterprises and new enterprises; the likely impact of the recommended adjustment on employment or the creation of employment; and any other relevant factor

Source: § 54-55, 76-A, and 78 of the Basic Conditions of Employment Act, 1997 (last amended in 2018); Minimum Wage Act, 2018

Current minimum wage rates can be found in the Minimum Wage section.

In accordance with the Basic Conditions of Employment Act, wage means the amount of money paid or payable to a worker in respect of ordinary hours of work or, if they are shorter, the hours a worker ordinarily works in a day or week.

The BCEA regulates the payment of wages to all classes of workers. According to this Act, wages can be calculated on hourly, daily, weekly or monthly basis. An employer is under the obligation to pay the worker wages in South African Currency (Rand) within seven (7) days after the completion of wage period for which wages are payable.

Employers are obliged to pay the worker his/her wages during the working hours or within 15 minutes of the commencement or conclusion of those hours at the place of work on agreed pay day in a sealed envelope, if payment is made in cash (legal tender)



or through cheque. Wage may be deposit directly into an account designated by the worker in writing. Employer must not compel a worker to purchase any goods, products or services from the employer or from any business or person nominated by the employer.

A worker's wage is calculated by reference to the number of hours the employee ordinarily works. In order to calculate the wage rate by time, it must be known that (in order to be entitled to full wage) a worker is required to work 45 hours a week and nine hours a day (seven and a half hours for those working 6 days a week). An employee's monthly remuneration is four and one-third times the employee's weekly wage.

Generally, employer is not allowed to deduct wages unless required or permitted under a written law, collective agreement, court order or arbitration award. Deduction may also be made if a worker agrees in writing to the deduction in respect of a debt or to reimburse the employer for loss or damage caused by the worker.

An employer should provide pay slips to all workers at workplace during working hours or within 15 minutes of the commencement or conclusion of those hours. It must include following information: the employer's name and address; the worker's name and occupation; the period for which the payment is made; the worker's remuneration in money; the amount and purpose of any deduction made from the remuneration; and the actual amount paid to the worker. Relevant to the calculation of that worker's remuneration, the slip must also contain information about the worker's rate of remuneration and overtime rate; the number of ordinary and overtime hours worked by the worker during the period for which the payment is made; the number of hours worked by the worker on a Sunday or public holiday during that period; and if an agreement to average working time has been concluded, the total number of ordinary and overtime hours worked by the worker in the period of averaging.

In line with section 9-A of the BCEA, a worker who works for less than 4 hours a day must be paid for 4 hours work on that day.

Source: § 1 & 32-35 of the Basic Conditions of Employment Act, 1997 (last amended in 2018)

# 02/13 COMPENSATION

## **ILO Conventions**

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

**South Africa has not ratified the Convention 01 & 171.**

### *Summary of Provisions under ILO Conventions*

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter times (125%) the regular rate.

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

If a worker has to work on a national/religious holiday or a weekly rest day, he/she should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

If a worker has to work during the weekend, he/she should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if a worker has to work on a public holiday, he/she must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take away the right to a holiday/ rest.

## Regulations on compensation:

- Basic Conditions of Employment Act, 1997 (last amended in 2018)

## Overtime Compensation

In accordance with the BCEA, maximum working hours in a week are 45 hours. Normal daily working hours are 9 hours for the workers working less than or equal to 5 days a week and 8 hours for the workers working more than 5 days in a week. Normal working hours may be extended up to 15 minutes a day or 60 minutes a week for the workers serving the public to continue performing those duties after completion of normal hours of work. Workers may agree to work up to 12 hours a day without getting overtime pay however maximum working hours in a week can't be greater than 45 hours.

A written agreement may require or permit a worker to work up to twelve hours in a day. However, overtime hours must not exceed 10 hours in a week. The compensation for overtime work is at least 150% of the normal hourly wage rate.

A worker may also agree to paid time off or a combination of both pay & time off. A collective agreement may increase the maximum permitted overtime to 15 hours a week however such agreement may not be in force for more than two months in any period of 12 months.

Despite restrictions on normal working hours and overtime hours, the ordinary hours of work and overtime of a worker may be averaged over a period of up to four months in terms of a collective agreement. In such a case, an employer may not require or permit a worker to work more than an average of 45 hours of work in a week over the agreed period and an average of five hours overtime in a week over the agreed period.

Source: §9-12 of the Basic Conditions of Employment Act, 1997 (last amended in 2018); §10-11 of the Compressed Work Week

## Night Work Compensation

In accordance with the BCEA, night work is the work done between 06 p.m. and 06 a.m. An employer must inform the worker in writing or orally about the health and safety hazards associated with the night work, if an employer requires a worker to perform work on regular basis between 11 pm to 06 am. Night workers must also undergo medical examination before commencement of employment and after reasonable time intervals while the worker continues to perform such work. If a worker suffers from health condition associated with the performance of night work, the employer must transfer him/her to the day work if it is practical for the employer to do so.

Workers working during night hours should either get monetary compensation or work reduced number of hours and have transport available between the workplace and worker's residence. However, the Act does not specify some specific rate for monetary compensation.

Source: §17 of the Basic Conditions of Employment Act, 1997 (last amended in 2018)

## **Compensatory Holidays / Rest Days**

A worker is entitled to the compensatory rest day when he/she has to perform work on a weekly rest day. Instead of getting higher wages for working on weekly rest day, workers may agree to get paid time-off for working on a weekly rest day, i.e., Sunday. Workers get higher wages at the following rates for working on Sundays:

- 150% of the normal hourly wage for workers usually working on Sundays;
- 200% of the normal hourly wage for workers not usually working on Sundays; and
- Normal daily wage if a worker works less than usual shift and he/she is entitled to compensation less than his usual normal wage rate.

There is no provision for compensatory holiday for workers working on a public holiday. An employer must grant paid time off within one month of the worker becoming entitled to it. A written agreement may increase this period to 12 months.

Source: §16 of the Basic Conditions of Employment Act, 1997 (last amended in 2018)

## **Weekend / Public Holiday Work Compensation**

Workers may be required to work on weekly rest days and public holidays. In such circumstances when employees have to work on official holidays, they are entitled to receive wages at a premium rate of 200% of the normal hourly wage rate. Workers working on weekly rest days are entitled to premium pay at the following rate:

- 150% of the normal hourly wage for workers usually working on Sundays;
- 200% of the normal hourly wage for workers not usually working on Sundays; and
- Normal daily wage if a worker works less than usual shift and he/she is entitled to the compensation less than his usual normal wage rate.

Source: §16 of the Basic Conditions of Employment Act, 1997 (last amended in 2018)

# 03/13 ANNUAL LEAVE & HOLIDAYS

## **ILO Conventions**

Convention 132 (1970) on Holidays with Pay Convention Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days. In addition, for several industries, different Conventions apply.

**South Africa has not ratified the Conventions 14, 47, 106 & 132.**

## *Summary of Provisions under ILO Conventions*

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognized public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week

## Regulations on annual leave and holidays:

- Basic Conditions of Employment Act, 1997 (last amended in 2018)

### Paid Vacation / Annual Leave

The Basic Conditions of Employment Act provides for annual leave on completion of a year of continuous service with an employer. A worker is entitled to 21 consecutive days of paid annual leave. Alternatively, a worker may be entitled to one day of leave for every 17 days worked or one hour for every 17 hours worked on mutual agreement.

BCEA does not specify whether workers get higher number of days as annual leave with seniority. An employer may reduce a worker's entitlement to annual leave by the number of days of occasional leave on full remuneration granted to the worker at the worker's request in the leave cycle of 12 months. An employer must grant a worker an additional day of paid leave if a public holiday falls on a day during a worker's annual leave on which the worker would ordinarily have worked. An employer must grant annual leave within six months after the end of the annual leave cycle. An employee may take leave in one consecutive period, or at intermittent periods during an annual leave cycle.

An employer may not require or permit a worker to work for the employer during any period of annual leave. An employer must pay a worker annual leave-pay at least equivalent to the remuneration that the worker would have received for working for a period equal to the period of annual leave. An employer must pay a worker annual leave-pay before the beginning of the period of leave; or by agreement, on the worker's usual pay day.

The employer is prohibited to pay compensation in lieu of annual leave except on termination of employment.

Source: §20-21 of the Basic Conditions of Employment Act, 1997 (last amended in 2018)

### Pay on Public Holidays

Workers are entitled to paid holidays during Festival (public and religious) holidays. These include memorial holidays and religious holidays (Christian origin). These are usually 12 in number. (Public Holidays Act, 1994 amended in 1995). These days are New Year's Day (January 01), Human Rights Day (March 21), Good Friday (April 18), Family Day/Easter Monday (April 21), Freedom Day (April 27), Workers Day (May 01), Youth Day (June 16), National Women's Day (August 09), Heritage Day (September 24), Reconciliation Day (December 16), Christmas Day (December 25), and Day of Goodwill (December 26).

A public holiday is exchangeable for any other day which is fixed by agreement or agreed to between the employer and the employee.

Source: Public Holidays Act, 1994 amended in 1995

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## Weekly Rest Days

Workers are entitled to 36 consecutive hours of rest per week. Basic Conditions of Employment Act requires that weekly rest day, in principle, should be Sunday for all the workers unless otherwise agreed.

A written agreement may provide for a rest period of at least 60 consecutive hours fortnightly or a weekly rest period may be reduced to 8 hours if the rest period in the following week is extended equivalently.

An employer must give a meal interval of at least one continuous hour to an employee who works continuously for more than five hours. These breaks are not paid, unless the employee is required to work or be available for work. An employee is remunerated for any part of a meal interval that is in excess of 75 minutes, unless the employee lives on the premises at which the workplace is situated.

An employee may be required or permitted during a meal break to perform only duties that cannot be left unattended and cannot be performed by another employee. However, the employee must be paid for a meal interval in which the employee is required to work or is required to be available for work.

An employee is entitled to a daily rest period of at least twelve consecutive hours between ending and recommencing work. Daily rest period can be reduced to 10 hours by mutual written consent for an employee who lives on the premises at which the workplace is situated and whose meal interval lasts for at least 3 hours.

Rest breaks and daily rest period are not applicable in cases when work is required to be done without delay owing to circumstances for which the employer could not reasonably have been expected to make provision and it cannot be done by employees during their ordinary hours of work.

Source: §15 of the Basic Conditions of Employment Act, 1997 (last amended in 2018)



# 04/13 EMPLOYMENT SECURITY

## **ILO Conventions**

Convention 158 (1982) on employment termination

**South Africa has not ratified the Convention 158.**

### *Summary of Provisions under ILO Convention*

The questions under this section measure the security or even flexibility or precariousness of an employment relationship. Although these are not clearly mentioned in a single convention (severance pay and notice requirement are provided in the Termination of Employment Convention No. 158) however, the best practices in the field require that employees be provided with a written contract of employment; workers on fixed term contracts should not be hired for tasks of permanent nature; a reasonable probation period (ideally lower than or equal to 6 months) may be followed to assess the suitability of an employee; a period of notice must be specified in an employment contract before severing the employment relationship; and workers be paid severance allowance on termination of employment relationship.

A contract of employment may be oral or written however workers should be provided with a written statement of employment at the start of their employment.

Fixed Term Contract workers must not be hired for permanent tasks as it leads to precarious employment.

A reasonable probation period must be allowed to let a worker learn new skills. A newly hired employee may be fired during probation period without any negative consequences.

A reasonable notice period, depending on the length of service of an employee, may be required before an employer may sever the employment relationship.

Employers may be required to pay a severance allowance on termination of employment (due to redundancy or any other reason except for lack of capacity or misconduct).



## Regulations on employment security:

- Basic Conditions of Employment Act, 1997 (last amended in 2018)

## Written Employment Particulars

Individual employment contract may be of definite or indefinite duration and may be concluded orally or in writing. The BCEA requires employers to provide a written employment contract to the workers at the start of employment. An employment contract must state the following information: the full name and address of the employer; the name and occupation of the employee, or a brief description of the work for which the worker is employed; the place of work, and, where the worker is required or permitted to work at various places, an indication of this; the date on which the employment began; the worker's ordinary hours of work and days of work; the worker's wage or the rate and method of calculating wages; the rate of pay for overtime work; any other cash payments that the worker is entitled to; any payment in kind that the worker is entitled to and the value of the payment in kind; how frequently remuneration will be paid; any deductions to be made from the worker's remuneration; the leave to which the worker is entitled; the period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate; a description of any council or sectoral determination which covers the employer's business; any period of employment with a previous employer that counts towards the worker's period of employment; a list of any other documents that form part of the contract of employment indicating a place that is reasonably accessible to the worker where a copy of each may be obtained.

The employer must ensure that all the written particulars are clearly explained to the worker in a manner understandable by the worker. If there is a change in these particulars, the employer is required to revise the written document and supply a copy of document reflecting the change in the situation to the worker. The employer is obliged to keep the written particulars for a period of three years after the termination of employment.

However, these conditions are not applicable to workers employed for less than 24 hours in a month and for employers employing less than five workers.

Source: § 28-29 of the Basic Conditions of Employment Act, 1997 (last amended in 2018)

## Fixed Term Contracts

South African labour Law prohibits hiring fixed term contract workers for tasks of permanent nature. However, law does not prescribe maximum duration of a single fixed term contract. The duration of fixed term contract has to be clearly specified between the parties. Such a contract endures for a specified period, or upon the happening of a particular event or until the completion of a particular task. There is no clear mention of the maximum limit (including number and duration of renewals) in the labour laws.

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Labour Relations Act just mentions that non-renewal of a fixed term contract is equivalent to a dismissal in circumstances where the worker expected the employer to renew the contract on same or similar terms but the employer failed to renew the contract at all or offered to renew it on less favourable terms or where the employee expected the employer to retain the employee in employment on an indefinite basis but otherwise on the same or similar terms as the fixed term contract, but the employer offered to retain the employee on less favourable terms, or did not offer to retain the employee.

Source: § 186 (b) of the Labour Relations Act No. 66 of 1995 (last amended in 2014)

## **Probation Period**

At the beginning of an employment contract, the employer can set a probationary period in order to evaluate the worker's performance before confirming the appointment.

Laws do not specify maximum probationary period. Code of Good Practices (Schedule 8 of Labour Relations Act) only stipulates that probationary period should be of reasonable duration, negotiated and stipulated in the employment contract.

If the employer determines that the worker's performance is below standard or the worker is incompetent, the employer should give a reasonable evaluation, instruction, training, guidance or counselling to allow the worker to render a satisfactory service. The employer may either extend the probationary period or dismiss the worker. The procedure of dismissal includes an investigation to establish the reasons for the unsatisfactory performance and the employer should consider other ways, short of dismissal, to remedy the matter.

Source: §8 of the Schedule 8 (Code of Good Practices) of the Labour Relations Act No. 66 of 1995 (last amended in 2014)

## **Notice Requirement**

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; and by the supervening impossibility of performance, where either party becomes permanently unable to perform his/her obligations in terms of a contract.

An employment contract may not be terminated in the absence of a justified reason. The Labour Relations Act expressly recognises the following grounds for termination of the employment contract: misconduct on the part of the employee; worker's poor work

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performance and/or incapacity; and the operational requirements of the employer.

Either party can terminate a contract by serving a notice or paying in lieu thereof. According to the Labour Relations Act, a contract of employment may be terminated for any fair reason. Fair reason includes worker's (mis)conduct, poor work performance, employer's operational requirements and health injury leading to incapacity for work. If an employer wants to terminate the employment contract of a worker (or vice versa), the period of notice is at least:

- One week for workers who has been employed for six months or less;
- Two weeks for workers who have been employed for more than six months but less than one year; and
- Four weeks for workers who have been employed for one year or more

Notice period for domestic and farm workers (with more than six months of employment) are four weeks. A collective agreement may allow a shorter notice period than what is required under the law. A collective agreement may allow the notice period of four weeks for workers employed for more than one year to be reduced to (not less than) two weeks. According to the law (LRA s187) it is unfair to dismiss a worker for: participating in a protected strike; failure to perform the work of strikers during a strike (unless essential to prevent actual danger to life, personal safety or health); compelling the acceptance of a demand in respect of any matter of mutual interest between the employer and employee; for exercising a right conferred by the Act; for participating in proceedings against an employer; (intended or unintended) pregnancy; a transfer, or a reason related to a transfer; or a contravention of the Protected Disclosures Act, 2000, by the employer, on account of an employee having made a protected disclosure defined in that Act; and Discrimination on the ground of race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility) and age (unless normal or agreed retirement age). A dismissal may still be considered fair if the reason for dismissal is based on an inherent requirement of the particular job.

A dismissal that is not automatically unfair, is considered unfair if the employer fails to prove that the reason for dismissal is a fair reason is related to the employee's conduct or capacity; or based on the employer's operational requirements; and that the dismissal was effected in accordance with a fair procedure.

Source: § 37-38 of the Basic Conditions of Employment Act, 1997 (last amended in 2018); §186-187 of the Labour Relations Act No. 66 of 1995 (last amended in 2014)

## Severance Pay

The Basic Conditions of Employment Act provides for severance pay. A worker, who is dismissed for reasons based on the employer's operational requirements or whose contract of employment is terminated on account of insolvency, is entitled to the severance pay at the rate of one-week pay for each completed year of service. Amount of severance pay may be increased by the mutual agreement between the employer and worker, this agreement prevails over the statutory minimum imposed by BCEA.

A worker, who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer, is not entitled to severance pay. Payment of severance pay does not affect the rights of a worker to any other payable amount.

Source: §41 of the Basic Conditions of Employment Act, 1997 (last amended in 2018)

# 05/13 FAMILY RESPONSIBILITIES

## ILO Conventions

Convention 156: Workers with Family Responsibilities Convention (1981)  
Recommendation 165: Workers with Family Responsibilities (1981)

**South Africa has not ratified the Convention 156.**

### *Summary of Provisions under ILO Convention*

Paternity leave is for the new fathers around the time of childbirth and is usually of shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks the employers to look into the measures for improving general working conditions through flexible work arrangements.

## Regulations on family responsibilities:

- Basic Conditions of Employment Act, 1997 (last amended in 2018)

## Paternity Leave

In accordance with the section 27 of the BCEA, workers with at least 4 months of service are entitled to fully paid family responsibility leave of 3 days during each annual leave cycle (12 months). Family responsibilities include birth of a child among other family events.

Upon the request of the employer, a worker must provide a reasonable proof of the event necessitating family responsibility leave.

In line with a 2018 amendment in BCEA, employees are entitled to a 10-day leave paid paternity leave on the birth of a child (paid through Unemployment Insurance Fund). Adoptive parent is also entitled to a paternity leave of 10 days from the date the adoption order is granted or that a child is placed in the care of a prospective adoptive parent by a competent court, pending the finalisation of an adoption order in respect of that child, whichever date occurs first.

A worker is required to notify the employer in writing, unless the employee is unable to do so, of the date on which the employee plans to start parental leave; and return to work after parental leave. Such notification must be given at least one month before the employee's child is expected to be born; or the adoption date (or the adoption order date) or if it is not reasonably practicable to do so, as soon as is reasonably practicable.

The paternity benefit must be paid at a rate of 66% of the earnings of the beneficiary at the date of application, subject to the maximum income threshold set in the Unemployment Insurance Act.

Source: §25A and 27 of the Basic Conditions of Employment Act, 1997 (last amended in 2018); §12 of the Unemployment Insurance Act 2001 (last amended in 2018)

## Parental Leave

No provisions could be located in the law supporting parental leave for new parents after exhaustion of maternity leave.

## Flexible Work Option for Parents / Work-Life Balance

No provisions could be located in the law supporting work-life balance for parents or workers with family responsibilities.

# 06/13 MATERNITY & WORK

## ILO Conventions

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

**South Africa has not ratified both Conventions 103 & 183.**

### *Summary of Provisions under ILO Convention*

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to same or equivalent position after availing maternity leave.

After childbirth and on re-joining work, a worker must be allowed paid nursing breaks for breast-feeding the child.

## Regulations on maternity and work:

- Basic Conditions of Employment Act, 1997 (last amended in 2018)

## Free Medical Care

No maternity related statutory benefits are provided under labour laws.

## No Harmful Work

The BCEA prohibits employment of pregnant workers or those nursing their children in work that is hazardous to their health or the health of their children. During the pregnancy and for the six months after the birth of child, an employer must offer a worker suitable alternative employment on terms and conditions that are not less favorable than her original terms and conditions in case if the employee is performing night work or her work poses a danger to her health and safety or to that of her child and when it is practicable for the employer to provide such reasonable accommodation.

Source: § 26 of the Basic Conditions of Employment Act, 1997 (last amended in 2018)

## Maternity Leave

Maternity leave is provided and regulated under the Basic Conditions of Employment Act.

Female workers are entitled to at least four consecutive months of fully paid maternity leave (17.32 weeks). The worker may commence maternity leave four weeks prior to the expected date of confinement or earlier if a medical practitioner certifies that it is necessary for the health of worker or her child. Also, a worker is not allowed to work within 6 weeks of child's birth unless a medical practitioner certifies her to do so.

In the event of a miscarriage in the third trimester of pregnancy or a stillbirth, the woman is entitled to six weeks of leave from the date of the miscarriage or stillbirth whether or not she has commenced maternity leave at the time of miscarriage or stillbirth.

The pregnant worker must notify her employer in writing at least 4 weeks prior to the date of commencement of maternity leave and when she intends returning to work from maternity leave.

An employee, who is an adoptive parent of a child who is below the age of two, is entitled to adoption leave (paid through Unemployment Insurance Fund) of at least ten weeks consecutively or paternity leave of 10 days. An employee may commence adoption leave on the date that the adoption order is granted; or that a child is placed in the care of a prospective adoptive parent by a competent court, pending the finalization of an adoption order in respect of that child, whichever date occurs first.



A commissioning parents is also eligible for commissioning leave of at least ten consecutive weeks or paternity leave of days on the birth of a child.

Source: § 25, 25-B and 25-C of the Basic Conditions of Employment Act, 1997 (last amended in 2018)

## **Income**

Maternity leave is paid leave. These benefits are paid under Unemployment Insurance Act. A worker, contributing to UIF, is eligible for a maternity benefit of 38% to 60% of average earnings in the last six months, depending on the insured person's level of income. Maternity benefit is paid for a total of 17.32 weeks.

Earlier, the law allowed only six weeks benefit in the event of a miscarriage or birth of a stillborn child. However, with the amended law, a contributor who has a miscarriage during the third trimester or bears a still-born child is entitled to a full maternity benefit of 17.32 weeks. A worker is entitled to benefits under the law only if she was in employment, whether as a contributor or not, for at least 13 weeks before the date of application for maternity benefits.

Under the amended law, maternity benefits must be paid at a rate of 66% of the earnings of the beneficiary at the date of application, subject to the maximum income threshold.

Under the Amended Act, an application for maternity benefits must be made in the prescribed form at an employment office at any time before or after childbirth provided that the application has to be made within a period of 12 months after the date of childbirth

The adoption benefit and commissioning parental leave benefit must be paid at a rate of 66% of the earnings of the beneficiary at the date of application, subject to the maximum income threshold set in the Unemployment Insurance Act.

Source: § 12-13, 24, 25 & 2nd Schedule of the Unemployment Insurance Act 2001 (last amended in 2018)

## **Protection from Dismissals**

It is unfair for an employer to dismiss a female worker due to her pregnancy or maternity leave. Laws consider dismissal of a worker on account her pregnancy, intended pregnancy, or other reasons related to her pregnancy, as automatically unfair.

Source: §185-187 of the Labour Relations Act No. 66 of 1995 (last amended in 2014)

## **Right to Return to Same Position**

According to the Labour Relations Act, a female worker has the right to return to same job/position and resume her employment on the same terms and conditions after availing her maternity leave.

Law considers it unfair dismissal if an employer does not allow a worker to resume work after availing her maternity leave.

Source: §186 of the Labour Relations Act No. 66 of 1995 (last amended in 2014)

## **Breastfeeding**

There is no explicit provision in the Labour laws however, in the "Code Of Good Practice on the Protection of Employees During Pregnancy and after the Birth of a Child", issued in pursuance of section 26 of BCEA which prohibits employment of pregnant and breastfeeding women workers in hazardous work, requires that arrangements should be made for workers who are breast-feeding to have breaks of 30 minutes twice per day for breast-feeding or expressing milk each working day for the first six months of the child's life.

Source: §26 of the Basic Conditions of Employment Act, 1997 (last amended in 2018); § 5(13) of the Code of Good Practice on the Protection of Employees during Pregnancy and after The Birth of a Child

# 07/13 HEALTH & SAFETY

## **ILO Conventions**

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

**South Africa has ratified both Conventions 81 & 155.**

### *Summary of Provisions under ILO Conventions*

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

## Regulations on health and safety:

- Occupational Health & Safety Act, 1993

## Employer Cares

Occupational Health & Safety Act (OHSA) makes it obligatory for the employer to provide and maintain a working environment that is safe and without risk to the health of the workers.

It is obligatory for an employer to provide and maintain plant and systems and procedures of work that are safe and without risk to workers' health. Employer must ensure safety and absence of risks to health in connection with the production, processing, use, handling, storage and transport of articles and substances.

Provision of such information, instruction, training and supervision of workers is very crucial to maintain safe and healthy workplace. Precautionary measure should be taken to eliminate or mitigate any hazards or potential hazard to the safety and health of workers.

Preventive and protective measures should be taken after proper risk assessment (at least once a year) to ensure that all chemicals, machinery, equipment, tools and processes are safe and without risk to health and comply with the requirements of safety and health provisions in this Act.

A worker must take care of health and safety of himself and of others who may be affected by his acts or omissions. Worker must use the safety equipment with care and act according to the prescribed instructions to preserve his health and protect him from getting injured. Worker must not involve in any action that tends to obstruct implementation of the instructions or the misuse or causing of damage or loss to the means provided for the protection, safety and health of other workers. He/she must report the employer or health and safety representative about any unhealthy or unsafe situation.

Employer may not permit workers to work unless all precautionary measures to protect health and safety of all workers have been taken.

Source: §8-15 of the Occupational Health & Safety Act (OHSA)

## Free Protection

The Occupational Health and Safety Act require employers to provide free protective equipment (PPE) to workers involved in hazardous work.

OHSA requires employers to take such steps, which will mitigate any potential hazard to the health and safety of workers before resorting to personal protective equipment. Employers are required to provide protective equipment free of cost to the workers and

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cannot make any deduction from any employee's remuneration or require or permit any employee to make any payment to him or any other person for provision of such equipment.

Source: §8 & 23 of the Occupational Health & Safety Act (OHSA)

## **Training**

In accordance with the Occupational Health and Safety Act 2003, it is the responsibility of an employer to provide instruction, training and supervision as is necessary to ensure health and safety at work of his workers. Every worker is to be made conversant with (trained on) the work he is supposed to perform, any article or substance he has to produce, process or transport and any plant/machinery he is supposed to operate. Employer has to ensure that work is performed and that plant or machinery is used under the general supervision of a person trained to understand the hazards associated with it and who have the authority to ensure that precautionary measures taken by the employer are implemented.

Source: §8 of the Occupational Health & Safety Act (OHSA)

## **Labour Inspection System**

OHSA provides for a vibrant labour inspection system and is quite in line with the requirements of ILO Convention 081 although South Africa has not ratified the Convention.

The department of labour is mainly responsible for labour and employment issues. It is divided into 4 branches, which are further divided into different Directorates. The Directorate of Inspection and Enforcement Services (IES) is responsible for ensuring compliance with legislation, protecting vulnerable workers, promoting equity and skills development in the workplace. The Office of the Inspector General comprises three teams, Occupational Safety and Health, Minimum Labour Conditions, and Employment Equity, each of which is responsible for labour inspection matters within its jurisdiction.

Labour inspectors are empowered to issue compliance orders against employers who do not comply with statutory obligations. Compliance orders that are not obeyed can be made into and enforced as orders of the Labour Court. Financial penalties may be imposed on employers who do not comply with these obligations. Labour inspector may, in writing, prohibit an employer from continuing or commencing with an act which in the opinion of an inspector threatens or is likely to threaten the health or safety of any person.

The national legislation provides inspectors the powers to enter the work premises at any reasonable time without prior notice; interview anyone; ask for a book, record or other documents to examine and ask for their explanation; inspect any article, substance, plant or machinery and can take sample for examination or analysis.

If an occupier or his representatives do not facilitate the inspector and obstruct the execution of his duties, he/she commits an offence and is liable to a fine up to R50,000 or to imprisonment up to one year or to both.

Source: § 27-30 & 38 of the Occupational Health & Safety Act (OHSA)

# 08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

## ILO Conventions

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

**South Africa has not ratified the Conventions 102, 121 & 130.**

### *Summary of Provisions under ILO Conventions*

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

## Regulations on sick leave & Employment Injury Benefits:

- Basic Conditions of Employment Act, 1997 (last amended in 2018)
- Unemployment Insurance Act, 2001 (last amended in 2017)
- Compensation for Occupational Injuries Act, 1993

## Income

In accordance with the BCEA, every worker is entitled to 01 day of fully paid sick leave for every 26 days worked. This implies that during a 3-year period, worker is entitled to the sick leave equal to the number of days they would normally work in a six-week period, which are 36 days (for workers working 6 days a week) and 30 days (for workers working 5 days a week).

Sick leave is fully paid. The employer must pay, on usual pay day, the wage that the worker would have ordinarily earned for work on that day. Sick leave pay may be reduced, by mutual agreement, if the number of days of sick leave is increased. A worker is then entitled to 75% of the wages for the sick leave over the sick leave cycle.

Other than that, workers are also granted sickness/illness benefit (@45% of insured worker's weekly earnings) payable up to 26 weeks after a waiting period of four to six weeks.

An employer may not pay a worker who has been on sick leave for more than 2 consecutive days or on more than two occasions during an 8-week period, if the worker, on request by the employer, does not produce a medical certificate stating that the duration of his/her absence on account of sickness or injury.

Under the Unemployment Insurance Act, 2001, amended in 2017, a contributor is not entitled to benefits if the period of illness is less than seven days.

Source: §22 of the Basic Conditions of Employment Act, 1997 (last amended in 2018); ISSA Country Profile for South-Africa, 2017

## Medical Care

Worker's medical benefits include medical, surgical, and hospital care, rehabilitation, and appliances. Benefits are provided for up to two years and may be extended in special cases.

The compensation fund reimburses the cost of transporting an injured worker to a hospital, a doctor's office, or to his or her place of residence. An employer who demands or receives from an employee a contribution towards the cost of medical aid supplied or to be supplied is guilty of an offence.

Source: §71-79 of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993

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## Job Security

There is no explicit provision that employment of a worker is secure during the paid sick leave.

## Disability / Work Injury Benefit

Work injuries are divided into four categories: (i) permanent total incapacity (ii) permanent partial incapacity (iii) temporary incapacity and (iv) fatal injury leading to death of a worker.

In the case of permanent incapacity/disability, benefit is 75% of an insured worker's earnings.

In case of permanent partial disability when the assessed degree of disability is between 31-99%, a percentage of total disability pension is paid according to the assessed degree of disability. If the assessed degree of disability is less than 30%, worker is entitled to a lump sum of 15 times average monthly earnings.

In the case of temporary disability, 75% of worker's monthly average salary is paid for 12 months. This can be extended to a maximum of 24 months or more in special cases. Temporary disability benefit is paid after 3-day waiting period.

In case of temporary partial disability, percentage of salary as determined by the Compensation Commissioner's Office is paid for up to 12 months. This can be extended to a maximum of 24 months in special cases. Temporary partial disability benefit is paid periodically or as a lump sum.

In the case of fatal injury, dependents (widow/widower, children) receive survivors' pension. 40% of the permanent total disability pension a deceased worker would have received, if assessed with permanent total disability, is paid to the widow/widower with permanent disability. This pension does not cease on remarriage. 20% of the permanent total disability pension a deceased worker was entitled to receive is paid for each unmarried orphan younger than 18 years. No age limit for disabled children. Law also provides for funeral grant.

Source: §47-55 & Schedule 4 of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993; ISSA Country Profile for South-Africa, 2017

# 09/13 SOCIAL SECURITY

## ILO Conventions

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions

Employment Injury Benefits: Conventions 121 (1964),

Invalidity, Old age and survivors' benefits: Convention 128(1967)

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

**South Africa has not ratified the Convention 102, 121, 128, 130 & 168.**

## *Summary of Provisions under ILO Conventions*

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give "due regard to the working ability of elderly persons" and "demographic, economic and social criteria, which shall be demonstrated statistically". Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.

## Regulations on social security:

- Unemployment Insurance Act, 2001 (last amended in 2003)
- Social Assistance Act 13 of 2004 (last amended in 2010)

## Pension Rights

Law provides for means tested old age grant for a permanent resident of South Africa aged 60 and over. A worker is entitled to old age grant (means-tested) if his/her annual income is below a certain amount. The old age pension is 1,600 Rand for pensioners aged 60-74 and 1,620 Rand for pensioners aged 75 or older. If the pensioner resides in a care facility under contract to the state for more than three months, the pension is reduced to 25% of the maximum amount.

Constant attendance allowance of 380 rand per month is also paid if the person receiving the old age grant requires the constant attendance of others to perform daily functions.

sources: §10 of the Social Assistance Act 13 of 2004 (last amended in 2010); ISSA Country Profile for South Africa, 2017

## Dependents' / Survivors' Benefit

Survivors' benefits are payable to workers as provided under the Unemployment Insurance Act. The employee must have accumulated credits at the time of death. One credit (one day of paid leave) is earned for every five completed days of employment, and up to 365 days of paid leave may be accumulated in the four years before application for the survivor benefit. The accumulated credits may be used for sickness, adoption, unemployment, and survivor benefits. On the death of a worker, the spouse or life partner can claim dependant's benefits. The dependent children can also claim this benefit if there is no spouse or life partner or if the spouse or life partner does not claim the benefit within 18 months of the worker's death (or even later on showing the just cause).

38% to 60% of the deceased's daily earnings, depending on the level of earnings, is paid for up to 365 days. Any credits used for sickness, adoption, and unemployment is deducted from this payment. Lower-income insured persons receive a higher percentage of their earnings and higher-income receive a lower percentage.

Daily earnings are calculated by multiplying the deceased worker's last monthly earnings by 12 (or last weekly earnings by 52), and then dividing by 365. If the deceased's earnings fluctuated significantly, the calculation is based on the deceased's average monthly earnings for the six months before the date of death.

Source: §14 & 30-36 of the Unemployment Insurance Act, 2001 (last amended in 2017); ISSA Country Profile for South Africa, 2017

## Unemployment Benefits

In the case of involuntary unemployment, worker contributing to the Unemployment Insurance Fund and having accumulated sufficient credits before becoming unemployed, is entitled to unemployment benefits for up to 34 weeks. The application for unemployment benefit must be made within 12 months of the termination of the contract of employment (earlier this was 6 months), but the Commissioner may accept an application made after the expiry of 12-month time limit on showing just cause.

Unemployment benefit of 38% to 60% of average earnings in the last six months, depending on the insured's period of service and level of income, is paid for up to one year. For every five completed days of employment, the insured is eligible for one additional day of benefits, up to 365 days in the four-year period immediately preceding the day after the date of ending of the period of employment. Provided that the unemployed person is capable of and available for work and must register with and report to the public employment exchange, unless unemployment is the result of illness or pregnancy. The first 238 days of benefits are paid at the income replacement rate set under the law (38-60%) and the remainder of credits is paid at a flat rate of 20%. Under the amended law, unemployment benefits must be paid to the unemployed contributor regardless of whether or not the contributor has received benefits within that four-year cycle, if the contributor has credits.

Unemployment must not be the result of refusing suitable work or training. The unemployment benefit is paid after 14 days of waiting period.

Source: §12, 13, 15-18 of the Unemployment Insurance Act, 2001 (last amended in 2017); ISSA Country Profile for South Africa, 2017

## Invalidity Benefits

The above laws provide for invalidity benefit in the case of non-occupational accident/injury/disease resulting into permanent invalidity. If a citizen or permanent resident aged 18-59 years is assessed with temporary disability for more than six months, that person is entitled to the means tested disability benefit of up to 1,620 rand per month. The benefit is considered permanent if a citizen is assessed as medically disabled for more than 12 months.

Constant-attendance allowance of 380 rand per month is paid to the person receiving the disability grant requires the constant attendance of others to perform daily functions.

Source: §9 of the Unemployment Insurance Act, 2001 (last amended in 2003); ISSA Country Profile for South Africa, 2017

# 10/13 FAIR TREATMENT

## ILO Conventions

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

**South Africa has ratified both Conventions 100 & 111.**

### *Summary of Provisions under ILO Conventions*

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

Not clearly provided in ILO Conventions. However, sexual intimidation/harassment is gender discrimination.

An employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

## Regulations on fair treatment:

- Constitution of the Republic of South Africa, 1996, last amended in 2012
- Basic Conditions of Employment Act, 1997 (last amended in 2018)
- Employment Equity Act, 1998, last amended in 2015

## Equal Pay

There is no explicit provision in the labour laws about equal pay for equal work. An employer is required to take steps to promote opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice (which includes, among others, remuneration, employment benefits and terms and conditions of employment). In accordance with the amended Employment Equity Act, a difference in terms and conditions of employment between employees of the same employer performing the same or substantially the same work or work of equal value that is directly or indirectly based on any one or more of the grounds listed in the law (which include among others Sex), is unfair discrimination. The Employment Equity Regulations provide for equal wages for work of equal value.

Source: §5 & 6(4) of the Employment Equity Act 1998, last amended in 2015

## Sexual Harassment

Sexual harassment is prohibited under the law however its enforcement is left to employers.

The Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace defines sexual harassment as a unwanted conduct of a sexual nature that violates the rights of an employee and constitutes a barrier to equity in the workplace. In terms of this Code, sexual harassment may include physical conduct, verbal conduct and non-verbal conduct. This Code is not legally binding, but it provides useful guidance in the manner in which an employer should deal with allegations of sexual harassment, and encourages the development and implementation of policies and procedures to prevent sexual discrimination.

Employer may dismiss the perpetrators in some circumstances. Victims may resort to civil action and criminal prosecution, which allows tougher punishments for harassers. Harassment of a worker is a form of unfair discrimination. Sexual harassment is also prohibited under Protection from Harassment Act No. 17 of 2011. This act defines sexual harassment as a unwelcome sexual attention from a person who knows or ought reasonably to know that such attention is unwelcome; unwelcome explicit or implicit behaviour, suggestions, messages or remarks of a sexual nature that have the effect of offending, intimidating or humiliating the complainant or a related person in circumstances, which a reasonable person having regard to all the circumstances would have anticipated that the complainant or related person would be offended, humiliated or intimidated; implied or expressed promise of reward for complying with a sexually oriented request; or implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually oriented request.

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Employment Equity Act provides that if it is alleged that a worker contravened a provision of the EEA by, for example, harassing another worker and the employer fails to take the necessary steps to deal with the allegations of sexual harassment, the employer is deemed also to have contravened the EEA. The section 60(3) of EEA effectively holds an employer vicariously liable for the unlawful, discriminatory conduct of its workers.

Source: §60(3) of the Employment Equity Act 1998, last amended in 2015; The Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace; Protection from Harassment Act No. 17 of 2011

## **Non-Discrimination**

In accordance with the article 09 of the South African Constitution, all persons are equal before law and they may not be discriminated on the grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. The law also prohibits antiunion discrimination by employers. Employment Equity Act also prohibits direct or indirect discrimination against an worker in any employment policy or practice on any of the following grounds: Race, gender, sex, pregnancy, marital status, family responsibilities, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, and birth or on any other arbitrary ground. However, it is not unfair discrimination to take affirmative action (to support a neglected group) or distinguish, exclude or prefer any person on the basis of an inherent requirement of a job. Medical testing to determine a worker's HIV status is prohibited.

Source: §9 of the South African Constitution, 1996; § 6-7 of the Employment Equity Act 1998, last amended in 2015

## **Equal Choice of Profession**

Women can work in the same industries as men as no restrictive provisions could be located in the laws. In accordance with article 22 of the Constitution, every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.



# 11/13 MINORS & YOUTH

## ILO Conventions

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

**South Africa has ratified both Conventions 138 & 182.**

### *Summary of Provisions under ILO Conventions*

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.



## Regulations on minors and youth:

- Constitution of the Republic of South Africa, 1996 (last amended in 2012)
- Basic Conditions of Employment Act, 1997 (last amended in 2018)
- Regulations on Hazardous Work by Children in South Africa, No. 32862

## Minimum Age for Employment

A person may not require or permit a child to work if the child is under 15 years of age or is under the minimum school leaving age in terms of any law. A person may also not require or permit a child to perform such work or services that are inappropriate for his/her age; that place at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development. A person who contravenes these provisions commits an offence and can be imprisoned for a period of three years along with a fine. Employment of children under 15 may be allowed in the performance of advertising, sports, artistic or cultural activities.

Source: § 43, 55 & 93 of the Basic Conditions of Employment Act, 1997 (last amended in 2018)

## Minimum Age for Hazardous Work

Minimum Age for Hazardous Work is set as 18 years. No person may require or permit a child worker to perform piecework or task work. A child worker may not be employed for more than 8 hours in a day. A child who is not enrolled in school may not work for more than 40 hours in a week while a school going child may not work more than 40 hours during school holidays and 20 hours during school term. A child may not be employed between 06 p.m. to 06 a.m.

Prohibited work includes deep sea fishing; commercial diving; animal slaughtering; meat processing; logging; Work in a bar, shebeen, tavern or pub; rock and stone crushing; working in confined spaces among many others. Underground mining is considered worst form of child labour. The following types of works are also prohibited for children under 18 years: work requiring respiratory protection equipment; work in an elevated position; lifting of heavy weights; work in cold, hot and noisy environments

Source: Regulations on Hazardous Work by Children in South Africa No. 32862

# 12/13 FORCED LABOUR

## **ILO Conventions**

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

**South Africa has ratified both Conventions 29 & 105.**

### *Summary of Provisions under ILO Conventions*

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

## **Regulations on forced labour:**

- Basic Conditions of Employment Act, 1997 (last amended in 2018)
- Constitution of the Republic of South Africa, 1996 (last amended in 2012)

## **Prohibition on Forced and Compulsory Labour**

Forced Labour is prohibited under the Constitution and BCEA. No person may for his or her own benefit or for the benefit of someone else, cause, demand or impose forced labour on any person. A person who violates this provision commits an offence and may be punished with an imprisonment term for 3 years along with a fine.

Source: § 13 of the Constitution of the Republic of South Africa 1996, § 48 & 93 of the Basic Conditions of Employment Act, 1997 (last amended in 2018)

## **Freedom to Change Jobs and Right to Quit**

Workers have the right to change jobs after serving due notice on their employer. For more information, please refer to the section on employment security.

## **Inhumane Working Conditions**

Working time may be extended beyond normal working hours of forty-five hours per week and nine hours a day for the workers working less than or equal to 5 days a week and 8 hours for the workers working more than 5 days in a week. However, total hours of work inclusive of overtime must not exceed twelve hours a day and 55 hours in a week cycle except in cases of emergency.

For more information on this, please refer to the section on compensation.

Source: §9 of the Basic Conditions of Employment Act, 1997 (last amended in 2018)

# 13/13 TRADE UNION

## **ILO Conventions**

Freedom of association and protection of the right to organize:  
Convention 87 (1948)

Right to Organize and Collective Bargaining: Convention 98 (1949)

**South Africa has ratified both Conventions 87 & 98.**

### *Summary of Provisions under ILO Conventions*

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.

## Regulations on trade unions:

- Labour Relations Act No. 66 of 1995 (last amended in 2014)
- Basic Conditions of Employment Act, 1997 (last amended in 2018)
- Constitution of the Republic of South Africa, 1996 (last amended in 2012)

## Freedom to Join and Form a Union

Constitution and labour law provide for freedom of association and allow workers and employers to join and form unions. This right is regulated by the Labour Relations Act.

In accordance with the BCEA, trade union is an association of workers whose principal purpose is to regulate relations between workers and employers, including any employers' organizations.

Every member of a trade union has a right to participate in its lawful activities; to participate in the election of any of its office-bearers, officials or trade union representatives; to stand for election and be eligible for appointment as an office bearer or official and, if elected or appointed, to hold office; and to stand for election and be eligible for appointment as a trade union representative and, if elected or appointed, to carry out the functions of a trade union representative in terms of this Act or any collective agreement. Trade unions may draw up their own statutes and administrative regulations, as long as these are not contrary to laws in effect. Unions have the right to participate in forming and joining a federation of trade union; and to affiliate and participate in the affairs of any international worker's organisation of international employers' organisation or the International Labour Organisation, and contribute to, or receive financial assistance from, those organisations.

The unions must get registered with the Ministry by filing their statutes and rules; a prescribed form (properly completed); and any further information required by the Registrar. A trade union is registered if the Registrar is satisfied that the organisation has fulfilled all the requirements and issues a registration certificate to the organization. The registrar also sends the certificate and a certified copy of the registered constitution to the applicant. Filing of a copy of resolution and a certificate signed by its Secretary stating that the resolution complies with its constitution has to be done again in case of any change in statutes and administration.

An employer is not allowed to interfere in a trade union's affairs. Employer may deduct union dues from the wages of the members only after their written consent. Discriminatory behaviour is prohibited for the employer on the basis of union affiliation or participation in union activities.

Source: §23(1-4) of the Constitution of the Republic of South Africa 1996 (last amended in 2012); §4-22 & 95-101 of the Labour Relations Act No. 66 of 1995 (last amended in 2014)

## Freedom of Collective Bargaining

Right to collective bargaining is recognized by the Constitution and regulated by Labour Relations Act. Law defines collective bargaining as a written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded by one or more registered trade unions, on the one hand and, on the other hand by one or more employers; one or more registered employers' organisations; or one or more employers and one or more registered employers' organisation. Bargaining councils are formed by registered trade unions and employers' organisations to deal with collective agreements, attempt to solve labour disputes, and make proposals on labour policies and laws. They may also manage pension funds, sick pay, unemployment and training schemes, and other such benefits for their members.

Collective bargaining agreement is a legally enforceable instrument, which generally lasts as long as each party's bargaining cycle. However, it could also be a long-lasting agreement, or one which is terminated after reasonable notice by either party.

National Economic Development and Labour Council (NEDLAC), constituted in 1994 under a law, is classified into four chambers, namely: a public finance and monetary policy chamber; a trade and industry chamber; a labour market chamber; and a development chamber. It consists of members who represent organised business, organised labour, organisations of community and development interests; and the members who represent the State.

NEDLAC considers policies and issues based upon requests tabled by the government or the NEDLAC constituencies in a given time period. NEDLAC creates a report that is then forwarded to the Minister of Labour and any other relevant Ministers. Government departments are bound, as parties of NEDLAC, to accurately represent the agreements that were reached at NEDLAC in the drafts they put before Parliament.

The Council conducts the necessary investigations, surveys and analysis of social and economic affairs; stays current with international developments on economic and social issues; evaluates the effectiveness of legislation and policy on economic and social issues; conducts research on social and economic policy, and works in cooperation with relevant partners (State, statutory bodies, programmes, forums, and non-governmental organizations) in formulation and implementation of social and economic policy. It presents its deliberations to Parliament in the form of a report.

Source: § 23(5) of the Constitution of the Republic of South Africa 1996 (last amended in 2012); §11-30 of the Labour Relations Act No. 66 of 1995 (last amended in 2014)

## Right to Strike

Right to strike is provided under the constitution and is regulated under the Labour Relations Act. The law does not place much restriction on the right to strike.

*The text in this document was last updated in January 2019. For the most recent and updated text on Employment & Labour Legislation in South Africa, please refer to: <https://mywage.co.za>*

Compulsory recourse to arbitration, long and complex conciliation and mediation procedures prior to strike actions generally restrict the right to strike. There is a compulsory 30-day mediation period before lawful strike action may be taken. Members of union must inform the employer, in writing, at least forty-eight hours prior to their intention to strike. Notice is given to the relevant council if dispute relates to a collective agreement to be concluded in a council; or to the relevant employer's organisation if employer is a member of employer's organisation that is a party to the dispute. Notice is given to the opposite party at least seven days prior to the commencement of the strike where State is the employer.

Strike is prohibited for the workers engaged in essential services or maintenance services. Strike is also prohibited for the worker bounded by an agreement that requires disputed issues to be referred to arbitration; or bounded by a collective agreement or an arbitration award that regulates the disputes in question; or the issue in dispute is one that a party has the right to refer to arbitration or to the Labour Court in terms of this Act or any other employment law.

A trade union may call a secondary strike in support of a lawful strike (primary strike) if seven days' notice of the commencement of the secondary strike has been given to the secondary employer. The secondary strike may pressurize the employer to resolve the dispute that gives rise to primary strike.

Employers also have the right to lockout workers. This right is subject to the same rules and restrictions as the right to strike.

In a protected strike or lockout workers or employees are guaranteed immunity from the reaches of the civil law i.e. they do not constitute a breach of contract. An employer is not obliged to remunerate an employee for services not rendered during a strike and workers are protected from dismissal.

In an unprotected strike or lockout, the affected party can approach the Labour Court for an interdict or order restraining a strike or lockout. The Labour Court can also order the payment of just and equitable compensation in the circumstances. Participation in an unprotected strike may constitute a fair reason for dismissal.

Picketing is allowed to the registered trade union members and supporters for the purpose of peaceful strike. Picketing is authorized in any place to which the public has access but outside the premises of an employer; or with the permission of the employer, inside the employer's premises.

Source: § 23(2) of the Constitution of the Republic of South Africa 1996 (last amended in 2012); § 64-77 of the Labour Relations Act No. 66 of 1995 (last amended in 2014)



# DECENT WORK QUESTIONNAIRE



## DECENTWORKCHECK.ORG

Check

Decent Work Check South Africa is a product of WageIndicator.org and  
www.mywage.co.za



National Regulation exists



National Regulation does not exist

## 01/13 Work &amp; Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

## 02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

## 03/13 Annual Leave &amp; Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

## 04/13 Employment Security





10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>

## 05/13 Family Responsibilities

15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>





## 06/13 Maternity &amp; Work

18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>

- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy<br><i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child   |  | <input type="checkbox"/> | <input type="checkbox"/> |





## 07/13 Health & Safety

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- |     |  |   |                          |                          |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace  |  | <input type="checkbox"/> | <input type="checkbox"/> |





## 08/13 Sick Leave & Employment Injury Benefits

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- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |    | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury                                       |   | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease     |  | <input type="checkbox"/> | <input type="checkbox"/> |









## 09/13 Social Security

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- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |

## 10/13 Fair Treatment

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- |     |  |   |                          |                          |
|-----|--|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination                                     |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment,promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Sex/Gender   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Race   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Colour   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Religion   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Political Opinion  |  | <input type="checkbox"/> | <input type="checkbox"/> |

\* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.

Nationality/Place of Birth		<input type="checkbox"/>	<input type="checkbox"/>
Social Origin/Caste		<input type="checkbox"/>	<input type="checkbox"/>
Family responsibilities/family status		<input type="checkbox"/>	<input type="checkbox"/>
Age		<input type="checkbox"/>	<input type="checkbox"/>
Disability/HIV-AIDS		<input type="checkbox"/>	<input type="checkbox"/>
Trade union membership and related activities		<input type="checkbox"/>	<input type="checkbox"/>
Language		<input type="checkbox"/>	<input type="checkbox"/>
Sexual Orientation (homosexual, bisexual or heterosexual orientation)		<input type="checkbox"/>	<input type="checkbox"/>
Marital Status		<input type="checkbox"/>	<input type="checkbox"/>
Physical Appearance		<input type="checkbox"/>	<input type="checkbox"/>
Pregnancy/Maternity		<input type="checkbox"/>	<input type="checkbox"/>
40 I, as a woman, can work in the same industries as men and have the freedom to choose my profession		<input type="checkbox"/>	<input type="checkbox"/>




## 11/13 Minors & Youth

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41. In my workplace, children under 15 are forbidden		<input type="checkbox"/>	<input type="checkbox"/>
42. In my workplace, children under 18 are forbidden for hazardous work		<input type="checkbox"/>	<input type="checkbox"/>





## 12/13 Forced Labour

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43. I have the right to terminate employment at will or after serving a notice		<input type="checkbox"/>	<input type="checkbox"/>
44. My employer keeps my workplace free of forced or bonded labour		<input type="checkbox"/>	<input type="checkbox"/>
45. My total hours of work, inclusive of overtime, do not exceed 56 hours per week		<input type="checkbox"/>	<input type="checkbox"/>

## 13/13 Trade Union Rights

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46. I have a labour union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
47. I have the right to join a union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
48. My employer allows collective bargaining at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
49. I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination		<input type="checkbox"/>	<input type="checkbox"/>

## Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

South Africa scored 40 times "YES" on 49 questions related to International Labour Standards

### If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

### If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

### If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.