

Overtime and compressed work weeks

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Since the inception of the Labour Relations Act, Act 66 of 1995 ('LRA') and the Basic Conditions of Employment Act, Act 75 of 1997 ('BCEA') the preponderance of South Africans have acquired a basic knowledge of their employment rights – specifically with regards to working hours and the payment of overtime. Few, however, know that various factors have an impact on these rights.

Working hours and payment of overtime:

The BCEA provides that an employer may not request or allow an employee to work more than 45 hours a week, 9 hours in a day, if that employee works 5 or fewer days per week, or 8 hours on a day if that employee works more than 5 days per week[1].

When an employee is required to work more than the abovementioned hours and employer is obliged to pay that employee overtime. Overtime, however, is limited to 12 hours per day. An employer can therefore, irrespective of the fact that the employee is paid overtime, not require or allow an employee to work more than 12 hours per day[2]. It is however note worthy that an employee's ordinary hours of work and overtime can be averaged over a period of 4 months if a collective agreement has been concluded[3] to that effect.

Compressed work weeks:

The BCEA provides an employer with the right to conclude a written agreement with an employee, requiring that employee to work up to 12 hours in a day without the payment of overtime. The employer, however, cannot request such an employee to work:

- More than 45 hours per work week;
- More than 10 hours over time in any work week; or
- More than 5 consecutive days in any work week[4].

An employer can furthermore not average an employee's working hours and overtime in such instances[5].

Escaping the *status quo*:

In the economic climate prevalent in South Africa today, it is trite that, for companies to stay relevant and competitive, they are forced to provide services to their clients faster and more cost effective than ever before. This could result in a company requiring employees – such as truck drivers in the transport and logistics industries[6] – to work more than 12 hours per day and/or more than 10 hours overtime per week. As this is a direct contravention of the provisions of the BCEA, employers' run the risk of being fined and/or even imprisoned[7]. The legislator anticipated this and therefore afforded an employer the right to apply to the Minister of Labour for an exemption from certain of the BCEA's provisions[8].

In this regard an employer is required to apply annually to the Provincial Executive Manager through medium of BCEA form 6 (this and other forms are available for download on the website of the Department of Labour (www.labour.gov.za))[9].

It is important to note that employers' applying for such exemptions must stipulate the sections of the Act from which they require exemption and must obtain consent from the relevant registered trade unions. If an employer cannot obtain the relevant registered trade unions' consent an employer must provide sufficient proof of service of the application unto the registered trade unions', as well as proof of the reasonable steps the employer took to bring this application under the attention of all the affected employees. If a shift roster is applicable, same must also be annexed to the application.

Conclusion:

In conclusion it is noteworthy to take the provisions of Section 36 of the Constitution of the Republic of South Africa[10] into account. This Section provides that the basic human rights contained in chapter 2 of the Constitution can only be limited if such 'limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom...'.

It is therefore trite that an employer will not be afforded the requested exemption if the reasons provided by the employer for such exemption does not comply with the provisions of Section 36 of the Constitution.

What is clear from the abovementioned is that the rights of employees' to only work a specific number of hours and be paid overtime are not absolute rights and can be limited in certain instances and that the Legislator has the best interests of employers and employees alike in mind when

drafting legislation.

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[1] Section 9 of the Basic Conditions of Employment Act, Act 75 of 1997. See also Sections 7 and 8 of the Basic Conditions of Employment Act.

[2] Section 10 of the Basic Conditions of Employment Act, Act 75 of 1997.

[3] Section 12 of the Basic Conditions of Employment Act, Act 75 of 1997.

[4] Section 11 of the Basic Conditions of Employment Act, Act 75 of 1997.

[5] *Supra footnote 4.*

[6] See the Sectoral determination governing working hours in the Road Freight and logistic industry published in Government Gazette number 42312 on 15 March 2019, NO. 426.

[7] Schedule 2 of the Basic Conditions of Employment Act, Act 75 of 1997.

[8] Section 51 of the Basic Conditions of Employment Act, Act 75 of 1997.

[9] *Supra footnote 8.*

[10] Section 6 of the Constitution of the Republic of South Africa, 1996.