

Amendments to the Basic Conditions of Employment Act 75 of 1997: The Earnings Threshold

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INTRODUCTION

The Basic Conditions of Employment Act 75 of 1997 ("the BCEA") serves as a cornerstone in safeguarding the rights of employees within the South African workforce. Recent amendments to the BCEA have brought about significant changes, particularly concerning the determination of employee entitlements and the scope of applicability.

KEY AMENDMENTS

The BCEA applies to all employees, with a few exceptions mentioned in Section 3. Notably, Section 6 governs the applicability of Chapter 2, which governs working hours. This section excludes certain categories of employees, including senior managerial staff, autonomous sales staff, and those working limited hours per month.

Section 6(3) empowers the Minister of Labour to establish a threshold, effectively excluding employees earning above the stipulated amount from Chapter 2 provisions. Recently, this threshold was adjusted to R254,371.67 per annum, effective from 1 April 2024, constituting a 5.5% increase from previous levels.

This means that employees earning above the threshold do not enjoy the benefits provided to employees under sections 9, 10, 11, 12, 14, 15, 16, 17 (2), and 18(3) of the BCEA, including overtime pay, ordinary hours of work, rest periods, and pay for working on a public holiday.

Employees who earn in excess of the earnings threshold must refer disputes relating to alleged unfair discrimination under the Employment Equity Act, 1998 (excluding if the employee alleges unfair discrimination on the grounds of sexual harassment) to the Labour Court for adjudication and are not permitted to refer these disputes to the CCMA for arbitration without their employer's consent.

Employees who earn in excess of the earnings threshold are excluded from the application of section 198A – D of the Labour Relations Act, 1995, the purpose of which is to regulate non-standard employees, such as employees employed by labour brokers; fixed term contract employees, and part-time employees.

Those who earn above the threshold do not enjoy the same protection.

WHAT IS MEANT BY 'EARNINGS'?

For purposes of determining whether an employee earns in excess of the threshold, 'earnings' means an employee's regular annual remuneration before deductions including, income tax, pension, medical and similar payments, but excluding similar employer contributions, subsistence and transport allowances paid to an employee, achievement awards and overtime payments.

CONCLUSION

The recent amendments to the BCEA necessitate a thorough understanding of the implications for both employers and employees. At HBGSchindlers Attorneys, we specialize in navigating the complexities of labour law, providing comprehensive guidance to ensure compliance with the amended thresholds and regulations.

Our experienced legal professionals are dedicated to assisting clients in all aspects of corporate governance, regulatory compliance, and labour law matters.



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