

Important Considerations for Employers Regarding Inspections by the Department of Labour

Under the Basic Conditions of Employment Act 75 of 1977

INTRODUCTION

The Department of Labour is empowered in terms of section 63(1) of the Basic Conditions of Employment Act 75 of 1997 ("**the BCEA**"), to appoint labour inspectors to monitor compliance with applicable labour legislation. Employers are required to comply with statutes including, but not limited to, the Compensation for Occupational Injuries and Diseases Act, the Unemployment Insurance Act, and the Employment Equity Act. Failure to comply with labour legislation may result in investigations and/or fines.

This article considers the rights and duties of employers during labour inspections and highlights the potential consequences of non-compliance with labour legislation, along with key considerations that employers should consider if an inspector arrives at the workplace.

WHAT ARE THE EMPLOYER'S RIGHTS AND HOW MUCH NOTICE SHOULD EMPLOYERS GET?

Section 63(3) of the BCEA requires the Minister to issue labour inspectors with a signed certificate specifying their functions and the legislation they may enforce.

A labour inspector may, without warrant or prior notice, enter any workplace or business premises (excluding a home) at any reasonable time as provided for in section 65(1)(a) of the BCEA. Reasonable notice will vary depending on the labour inspector's reasons for wanting to monitor and enforce compliance with labour legislation.

Section 65(4) provides that, where practicable, employers or trade union representatives must be notified that the labour inspector is present at the workplace and must be given a reason for the inspection. Such notice need not be given in advance. Notice of an inspection may be given within a reasonable time beforehand; however,

whether such notice is provided rests solely within the discretion of the labour inspector.

The Act does not prescribe a notice period, and where non-compliance is suspected, inspections may be conducted unannounced without any prior notice to the employer. Although the BCEA does not prescribe a specific notice period for inspections, in practice labour inspectors may provide short notice where compliance is suspected, typically ranging between 24 and 48 hours.

As an employer, you are entitled to request sight of the section 63(3) certificate. In terms of section 66(3), inspectors must, on request, produce the signed certificate, as well as return anything that was removed from the workplace within a reasonable time and provide a receipt for the item removed. Items that may be removed by a labour inspector include but are not limited to a document, substance, records and machinery.

WHAT DOCUMENTATION SHOULD EMPLOYERS PROVIDE UPON INSPECTION?

During an inspection, a labour inspector may request that the employer produce relevant documentation. Such a request need not be made in writing and the following may *inter alia* be requested: -

1. The date on which the employee's employment began.
2. The employee's ordinary hours of work and days of work.
3. The name and occupation of the employee, or a brief description of the duties for which the employee is employed.
4. Records of remuneration and how frequently the remuneration is paid, any deductions that are made from the employee's remuneration, leave pay, and overtime.
5. The time worked by each employee.

Employment records should be kept by the employer for a period of three years after the termination of the employment.

Employers are further required to display, in a visible area within the workplace, a statement in the prescribed form outlining employees' rights under the BCEA, in the official languages spoken in that workplace.

CONSEQUENCES OF NON-COMPLIANCE

Section 93(1) of the BCEA provides that any magistrates court has jurisdiction to impose a penalty for offences committed in terms of the BCEA. Where an employer fails to comply with the BCEA, Schedule 2 sets out the maximum permissible fines. Table 1 applies to contraventions not involving underpayment, with fines ranging from R300 to R1,500 for each employee that is impacted. Table 2 applies where underpayment occurs, with fines ranging from 25% to 200% of the amount due, including any interest payable as at the date of the order. Failure to comply with the BCEA can result in the above fines, employers should therefore ensure compliance to avoid potential penalties.

CONCLUSION

In practice, employers should keep proper records and ensure that they understand their rights and obligations under the BCEA. Employers who have a clear grasp of the inspection process and the consequences of non-compliance are better placed to respond appropriately during inspections. Employers should ensure that the workplace structure aligns with statutory requirements as this not only reduces the risk of penalties but promotes a compliant and transparent employment environment.

Please note: this article is for general public information and use. It is not to be considered or construed as legal advice. Each matter must be dealt with on a case-by-case basis and you should consult an attorney before taking any action contemplated herein.



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