

BASIC CONDITIONS OF EMPLOYMENT ACT, 1997

AHASA presentation: Medforum



labour

Department:
Labour
REPUBLIC OF SOUTH AFRICA



Purpose of the BCEA

- Sets minimum conditions of employment or terms of service
- Covers issues such as working time, leave, age of employment, particulars of employment and remuneration
- Includes mechanisms for conditions to be varied by bargaining or government to suit individual or collective needs.

Protection

- Covers all employees except members of the State Security Agency and unpaid volunteers working for a charitable organisation.
- Part-time workers get 'proportional rights'

Regulation of working time

- This chapter does not apply to:
 - Senior Managerial Employees
 - Sales Staff who travel and regulate their own hours of work
 - Employees who work less than 24 hours p.m.
 - Employees earning above earnings threshold – R205 433.30 p.a.
 - “Emergency work”
- Working time must be arranged with due regard to health and safety and family responsibility of workers

Regulation of working time (S 7)

Core rights

- Every employer must regulate the working time of each employee
 - In accordance with the provisions of any Act governing occupational health and safety
 - With due regards to the health and safety of employees
 - With due regard to the Code of Good Practice of Working Time
 - With due regard to the family responsibilities of employees

Definitions

- Week
 - Means the period of seven days within which the working week of that employee ordinarily falls
- Interpretation of day
 - 24 hours measured from the time when the employee normally commences work

Hours of work

Choice between

- S 9 & 10 – Ordinary hours of work - 45 hrs p.w. and Overtime - 10 hrs p.w. paid by 1.5 the hourly rate (Security Sector 48hrs)

Or

- S 11 – Compressed working week – By agreement work up to 12 hrs p.d. without payment for overtime.
 - Agreement may not permit employee to work more than 45 ordinary hours and more than 10 hours overtime and more than 5 days in any week.

Or

- S 12 – Averaging of hours of work – **By collective agreement,** Ordinary hours of work and overtime may be averaged over a period of up to 4 months provided that not more than an average of 45 ordinary hours and 5 hours overtime per week are worked by collective agreement

Have to comply with

Daily and weekly rest periods (S 15)

- 12 hours per day
- 36 hours per week (1½ days) or 60 hours every second week (2½ days) OR
- By agreement 60 hours every two weeks (2½ days)

Night work (S 17)

- Is work between 18:00 - 06:00
- Can only be worked by agreement
- Employee must be paid an allowance (not prescribed) or hours must be reduced
- **Transport must be available at commencement and conclusion of shift.**

- Late Night Work – 22:00 06:00
 - Employees must be informed of any health & safety hazards
 - Right to undergo medical examinations

Code of Good Practice on the arrangement of working time

- *The purpose of the code is to provide information and guidelines to employers and employees concerning the arrangement of working time and the impact of working time on the health, safety and family responsibilities of employees.*
- Must be read in conjunction with chapter Two

Relationship to health and safety laws

- *Regulation of working time is closely connected to the protection and promotion of health and safety of employees*
- *Working-time schedules must comply with the Occupational Health and Safety Act, 1993 and the Mine Health and Safety Act, 1996*
- *Employees who perform regular night work must be informed of the health and safety hazards associated with the work that they perform*

Design and evaluation of Shift systems

- *Sensitive to the impact on employees and their families*
 - *Consultation*
 - *Negotiations questionnaires to employees*
- *Information that an employer may require on the effect of shift roster includes-*
- *The ranked preferences of employees for different shift systems*
- *The employee's views of the advantages and disadvantages of the existing or proposed shift system*
- *Aspects of the employee's work that could affect the determination of a suitable shift length*
- *How an existing or proposed shift schedule affects or might affect the health and safety of employees*
- *Means, costs and availability of transport to and from the place of residence and the personal security of the employee while commuting*
- *The childcare needs of the employees*

Arrangement of shifts

- Recommendations:
 - Avoid overtime
 - Changeover overlap
 - Allow the exchange of shifts
 - Display or distribute schedule for easy access
 - Reasonable notice of changes
 - Accommodate special needs of workers

Design of shift rosters

- Factors to be taken into account:
 - Frequency of night work, weekend work and work on public holidays should be limited
 - Frequency of shift rotation should take account of difficulties workers may have in adapting to night work
 - Preferable that shifts be rotated in forward direction, bearing in mind workers' preferences, local conditions and difficulties in scheduling a long period of rest after spells of night shifts
 - Night shifts should not be longer than other shifts. Where long night shifts are used they should be carefully reviewed to find ways to avoid excessive fatigue
 - Rest periods should be scheduled to fall on weekends a certain minimum number of times during a given period

Performance of safety-critical tasks

- Particular care should be taken in timing of safety-critical tasks in shift cycles and during individual shifts
- These should, to the greatest extent possible, not be undertaken at a time when the employees involved may be fatigued or have low levels of alertness
- This is of particular importance to employers, such as operators of major hazard installations whose activities have a direct impact upon the public, and operators of services such as mass transportation or goods transportation

Health assessment and counseling

- *Section 17(3)(b) - medical examination if requested. When - at time of commencing regular night work and thereafter at regular intervals while continuing to work regularly at night.*
- *Cost to the employer although arrangements could be made for the cost to be covered through medical aid.*
- *Timing should be determined by individual or collective agreement in the light of the employee's health status, the nature of the work the employee performs and the working hours.*
- *The examination should cover—*
 - *Any difficulties the employee may be having in adapting to night-work routines;*
 - *Any health problem that the employee is manifesting i.e. asthma, non-insulin-dependent diabetes, depression, elevated cholesterol etc.*
 - *Any psychological, emotional and social stresses experienced by the employee, strategies that may help the employee cope with night work and educational input on the risks of shift work;*
 - *Insomnia and symptoms of sleep deprivation such as irritability and chronic fatigue;*
 - *Use of medication, the effectiveness of which depends upon circadian (daily body) rhythms*
 - *Diet and use of caffeinated drinks, alcohol, sleeping pills and cigarettes*

Health assessment and counseling cont

- *In certain circumstances, it may be appropriate to advise certain individuals against shift work. These circumstances include where the effectiveness of medication is fundamentally affected by circadian rhythms, workers with gastro-intestinal or cardiovascular disorders and epileptics*
- *The examination should also include educational input on the health risks that may be associated with the employee's work schedule and as coping strategies that may assist the employee.*

Working environment

- *Employers should regularly assess whether the work environment, in particular the lighting and heating, are adequate for the health, safety and physical comfort of employees, particularly night workers*

Management services

- *Employers should provide appropriate management services to employees working outside of ordinary hours. Depending on the nature of the business, some aspects of management services should be available at all time to night shift workers*
- *Services that should be available*
 - *First aid services*
 - *Qualified safety supervision*
 - *Occupational health services e.g. counseling on nutrition and fatigue related-problems*
 - *Emergency services in case of accidents, including transportation to hospitals*
- *Employers who engage employees on night work should ensure that—*
 - *There is adequate security for employees at the workplace*
 - *Employees are able to obtain safe, affordable transportation between their places of residence and their workplace;*
 - *There are adequate eating facilities*
 - *There are adequate rest rooms and change-rooms*

Management services cont.

- *Administrative services should be sufficient*
- *The need for and extent of administrative services will depend on the type of shift patterns.*
- *Employees working at night should not be disadvantaged in having access to education and training.*
- *Employees working at night should not be disadvantaged in having access to education and training.*
- *Collective bargaining should be arranged to allow employees who work at night to participate*
- *An agreement for the reduction of meal intervals should not be concluded if it may have the effect of endangering health and safety of employees*
- *Adequate rest periods must be ensured.*
- *The number and duration of rest pauses during the shift and rotation should be adapted to the workload. Particular attentions must be given to the scheduling of rest periods for employees who are engaged in—*
 - *Physically and mentally strenuous work;*
 - *Work involving manual lifting*
 - *Work involving repetitive movement*
 - *Monotonous work*
 - *Shifts of longer than eight hours*

Coping strategies

- *Employers should provide appropriate and up-to-date information to employees about coping strategies, both in the workplace and at home. Strategies that will assist employees to cope with shift work and night work include—*
 - *Maintaining a regular sleeping routine*
 - *Taking steps to block out noise and light for employees who have to sleep in the day*
 - *Maintaining a healthy diet*
 - *Exercise and relaxation*

Variation of Conditions of Employment

Variation by agreement (S.49)

- **Bargaining Council Agreement** : Must be consistent with the purpose of the Act and may not reduce the protection and the entitlement of certain core-rights afforded to employees e.g. health and safety, child labour, sick leave, maternity leave etc. [Section 49(1)].
- **Collective Agreement**: To the extent permitted by the Act or a Sectoral Determination. (Registered Unions)
- **Contract of employment**: To the extent permitted by the Act

Leave

- This chapter does not apply to an employee who works less than 24 hours a month or **to leave in excess of entitlement**
- **Annual leave** – 21 Consecutive days or 1 day for every 17 days worked
- **Sick leave** – An amount equal to the number of days worked in a period of 6 weeks in a cycle of 3 years or 1 day for every 26 days worked in the first 6 months
- **Maternity leave** – 4 months unpaid
- **Family responsibility leave** – 3 days per year

Leave cont...

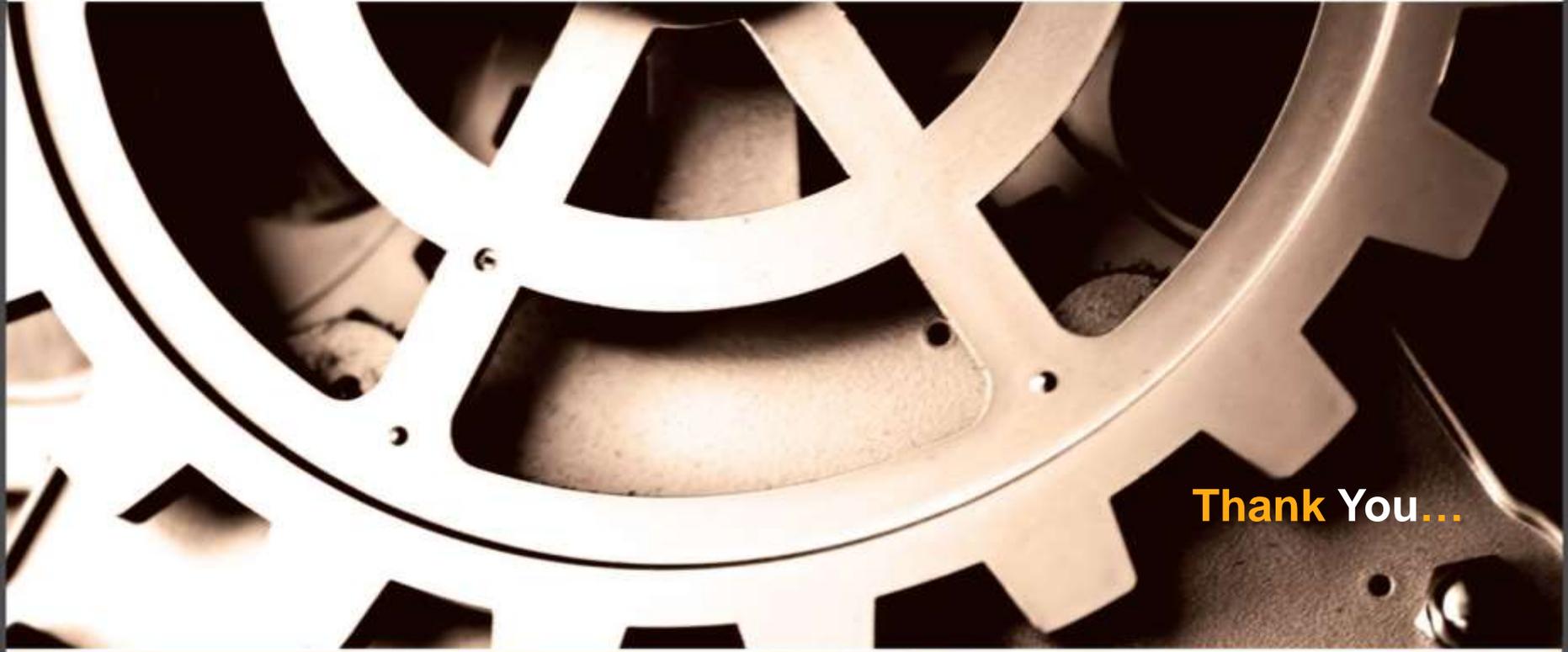
- **BCEA amendment:**
- **Parental leave** – 10 consecutive days unpaid leave for the birth of a child
- **Commissioning parental leave** – 10 consecutive weeks / 10 days unpaid leave after child is born.
- **Adoption leave** – 10 consecutive weeks unpaid leave for adoptive parents

Conclusion

- The Act is flexible and makes provision for individual or collective needs.

Conclusion

- Questions



Thank You...