



Are you paying someone in exchange for work or labour?

If you answered yes then you are an employer and need to think about the following:

CONTRACTS

A **contract** is a lawful **agreement** (written or oral) made between two or more persons with **serious intention** of creating legal obligations. These intentions should **not be vague** and should be **possible** to perform, all parties should be of the **same mind**. **Examples of contracts:** Contracts of sale, Contracts of lease, Contracts of employment

The importance of contracts:

- It outlines expectations
- Protects both parties
- It creates certainty
- Helps to manage expectations
- Assist with dispute resolution

Basic Conditions of Employment Act – focused on domestic workers

- Domestic workers & gardeners should have a signed employment contract, recording annual and sick leave as well as contribution to UIF
- Explain the contract orally as well
- The starting point/minimum wage is R15.57 per hour
- Working hours may not exceed 45 hours per week
- Medical aid and pension contributions are optional
- Annual Leave of 1.25 days per month worked
- Sick leave 30 days over a 3 year period
- Up to 4 months unpaid maternity leave – employee can claim from UIF
- **UIF – Unemployment Insurance Fund**
You must register yourself with the Department of Employment and Labour. Your domestic worker or gardener is registered as your employee – a total of 2% of their salary is contributed per month (1% by employer, 1% by employee) to the fund.

***Until the contract is signed nothing is real
– Glenn Danzig***

**Do you have a
Domestic
worker,
gardener or
child minder?**

Then you are
legally required
to sign an
employment
contract with
them

TERMINATION OF EMPLOYMENT

Fair procedure has to be followed!

A **Probation** period of 3 months can be given, in this time either party may terminate. After that, 3 **written warnings should be given** followed by a disciplinary hearing. If the person has worked for you more than 6 months, 4 weeks' **notice** of dismissal should be given.

However, you may dismiss an employee outright for gross misconduct – which includes theft or endangering the life of your child. This is called **summary dismissal**, and no notice period is required.

Retrenchment – “the reduction of costs or spending in response to economic difficulty”.

- Consultation must take place
- Show attempts to minimise dismissal
- Assist with alternative employment

Employees should be paid one week's pay for every year worked, and given one months' notice.

An employee may approach the CCMA if unfairly dismissed.

CCMA

Commission for Conciliation, Mediation and Arbitration

- The CCMA's task is to perform dispute resolution formally.
- If you are an employee in dispute with your employer, or vice versa, over a matter such as:
 - Dismissal;
 - Wages and working conditions;
 - Workplace changes;
 - Or discrimination;

You may approach the CCMA.



Referring disputes to the CCMA

Open a case within 30 days - complete a CCMA form of Unfair dismissal

Deliver a copy of the form to the other party - in person or registered mail - keep proof

CCMA inform both parties of date for hearing

Conciliation hearing - to reach mutual agreement

CCMA issues certificate of resolution
(legal representation is not allowed)

If no agreement reached:
Referred to arbitration or Labour court
Complete a request for arbitration form
Arbitration decision - no appeals allowed
(Legal representation is allowed)

QUESTIONS AND ANSWERS

1. What is a Certificate of Service?

A document given to an employee on termination of employment that reflects an employee's length of service, work performed, remuneration received and reason for termination, should an employee request it.

2. Do I need to pay my domestic worker overtime?

Yes, 1.5 times the normal hourly rate.

3. What is Constructive dismissal?

"Where an employer creates hostile working conditions, which reduces the continuation of the employment relationship intolerable for the employee - to such a degree that the employee has no other option but to resign."



Contact us today for assistance with contracts and other labour law related issues.

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