

CONTRACT OF EMPLOYMENT Example by the Dept of Labour South Africa

Entered into between:

..... (Herein after referred to as "the employer")

Address of employer:

.....
.....
.....
.....

And

..... (Herein after referred to as "the employee")

1. Commencement

This contract will begin on and continue until terminated as set out in clause 4.

2. Place of work

.....

3. Job description

Job Title

(E.g. Domestic worker, child minder, gardener, etc)

Duties.....

.....

.....

4. Termination of employment (See Guidelines 2 and 3)

Either party can terminate this agreement with four weeks written notice. In the case where an employee is illiterate notice may be given by that employee verbally.

5. Wage (See Guidelines 4 and 5)

5.1 The employees wage shall be paid in cash on the last working day of every week/month and shall be: R.....

5.2 The employee shall be entitled to the following allowances/payment in kind:

5.2.1 A weekly/monthly transport allowance of R.....

5.2.2 Meals per week/month to the value of R.....

5.2.3 Accommodation per week/month to the value of R.....

5.3 The total value of the above remuneration shall be R.....(The total of clauses 5.1 to 5.2.3) (Modify or delete clauses 5.2.1 to 5.2.3 as needed)

5.4 The employer shall review the employee's salary/wage once a year.

6. Hours of work (See Guideline 6)

6.1 Normal working hours will be from a.m. to p.m. on Mondays to Fridays and froma.m. top.m. on Saturdays.

6.2 Overtime will only be worked if agreed upon between the parties from time to time.
6.3 The employee will be paid for overtime at the rate of one and a half times his/her total wage as set out in clause 5.3.

7. Meal Intervals (See Guideline 7)

The employee agrees to a lunch break of one hour/30 minutes (delete the one that is that not applicable). Lunchtime will be taken from to daily.

8. Sunday work (See Guideline 8)

Any work on Sundays will be by agreement between the parties from time to time.
If the employee works on a Sunday he/she shall be paid double the wage for each hour worked.

9. Public Holidays (See Guideline 9)

The employee will be entitled to all official public holidays on full pay. If an employee does not work on a public holiday, he/she shall receive normal payment for that day. If the employee works on a public holiday he/she shall be paid double.

10. Annual Leave (See Guideline 10)

10.1 The employee is entitled to..... days paid leave after every 12 months of continuous service. Such leave is to be taken at times convenient to the employer and the employer may require the employee to take his/her leave at such times as coincide with that of the employer.

11. Sick leave (See Guideline 11)

11.1 During every sick leave cycle of 36 months the employee will be entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.

11.2 During the first six months of employment the employee will entitled to one day's paid sick leave for every 26 days worked.

11.3 The employee is to notify the employer as soon as possible in case of his/her absence from work through illness.

12. Maternity leave (See Guideline 12)

(Tick the applicable clauses in the space provided).

12.1 The employee will be entitled to days maternity leave without pay; or

12.2 The employee will be entitled to days maternity leave on pay

13. Family responsibility leave (See Guideline 13)

The employee will be entitled to three days family responsibility leave during each leave cycle.

14. Deductions from remuneration (See Guideline 14)

The employer may not deduct any monies from the employee's wage unless the employee has agreed to this in writing on each occasion.

15. Accommodation

(Tick the applicable boxes).

15.1 The employee will be provided with accommodation for as long as the employee is in the service of the employer, and which shall form part of his/her remuneration package

15.2 The accommodation may only be occupied by the worker, unless prior arrangement with the employer.

15.3 Prior permission should be obtained for visitors who wish to stay the night. However where members of the employees direct family are visiting, such permission will not be necessary.

16. Clothing (Delete this clause if not applicable)

..... sets of uniforms will be supplied to the employee by the employer and will remain the property of the employer.

17. Other conditions of employment or benefits

.....
.....
.....
.....
.....
.....
.....
.....

18. General

Any changes to this agreement will only be valid if they are in writing and have been agreed and signed by both parties.

THUS DONE AND SIGNED AT ON THIS DAY OF
..... 20...

.....
EMPLOYER

.....
EMPLOYEE

Witnesses:

.....
.....

GUIDELINES

Notice period and termination of employment

In terms of the Basic Conditions of Employment Act, any party to an employment contract must give to the other written notice of termination as follows:

- One week, if employed for four weeks or less
- Four weeks if employed for more than four weeks.

Procedure for termination of employment

Whilst the contract of employment makes provision for termination of employment, it must be understood that the services of an employee may not be terminated unless a valid and fair reason exists and fair procedure is followed. If an employee is dismissed without a valid reason or without a fair procedure, the employee may approach the CCMA for assistance. Pro-rata leave and severance pay might be payable. In the event of a domestic worker being unable to return to work due to disability, the employer must investigate the nature of the disability and ascertain whether or not it is permanent or temporary. The employer must try to accommodate the employee as far as possible for example, amending or adapting their duties to suit the disability. However, in the event of it not being possible for the employer to adapt the domestic workers duties and/or to find alternatives, then such employer may terminate the services of the domestic worker. The Labour Relations Act, 66 of 1995 sets out the procedures to be followed at the termination of services in the Code of Good Practice, in Schedule 8.

Wage/Remuneration/Payment

There is no prescribed minimum rate of remuneration. Additional payments (such as for overtime or work on Sundays or Public Holidays) are calculated from the total remuneration as indicated in clause 5.3 of the contract. The total remuneration is the total of the money received by the employee and the payment in kind (i.e. the value of food and accommodation etc.). Payment in kind may not be less than R100.

Transport allowances, bonuses, increases

These are not regulated by Basic Conditions of Employment Act and are therefore open to negotiation between the parties.

Hours of work

Normal hours (excluding overtime)

A domestic worker may not be made to:

- work more than 45 hours a week;
- work more than nine hours per day for a five day work week;
- work more than eight hours a day for a six day work week; and

Overtime

A domestic worker may not work more than three hours of overtime per day or 10 hours per week and must be paid at least 1.5 times the wage or may agree to receive paid time off. .

Daily and weekly rest periods

A daily rest period of 12 consecutive hours and a weekly rest period of 36 consecutive hours, which must include Sunday, unless otherwise agreed, must be allowed. The daily rest period may by agreement be reduced to 10 hours for an employee who lives on the premises whose meal interval lasts for at least three hours. The weekly rest period may by agreement be extended to 60 consecutive hours every two weeks or be reduced to eight hours in any week if the rest period in the following week is extended equivalently.

Meal intervals

A domestic worker is entitled to a one-hour break for a meal after not more than five hours work. Such interval may be reduced to 30 minutes, by agreement between the parties. If required or permitted to work during this period, remuneration must be paid.

Sunday work

Work on Sundays is voluntary and a domestic worker can therefore not be forced to work on a Sunday. If the employee works on a Sunday he/she shall be paid double the daily wage. If the employee ordinarily works on a Sunday he/she shall be paid one and one half time the wage for every hour worked.

Public Holidays

The days mentioned in the Public Holidays Act must be granted but the parties can agree to further public holidays. Work on a public holiday is entirely voluntary and a domestic worker may not be forced to work on such public holiday.

The official public holidays in South Africa are:

- New Years Day (1 January)
- Human Rights Day (21 March)
- Good Friday (varies)
- Family Day (varies)
- Freedom Day (27 April)
- Workers Day (1 May)

- Youth day (16 June)
- National Woman's Day (9 August)
- Heritage Day (24 September)
- Day of Reconciliation (16 December)
- Christmas Day (25 December)
- Day of Goodwill (26 December)

Any other day declared an official public holiday from time to time should also be granted. These days can be exchanged for any other day by agreement. If the employee works on a public holiday he/she shall be paid double the normal day's wage.

Annual Leave

Annual leave may not be less than 21 consecutive days for full-time workers or by agreement, one day for every 17 days worked or one hour for every 17 hours worked. The leave must be granted not later than six months after completion of the period of 12 consecutive months of employment. The leave may not be granted concurrent with any period of sick leave, nor with a period of notice of termination of the contract of employment.

Sick leave

During every sick leave cycle of 36 months an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks. During the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked. The employer is not required to pay an employee if the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury.

Maternity leave

The employee is entitled to at least four consecutive months' maternity leave. The employer is not obliged to pay the domestic worker for the period for which she is off work due to her pregnancy. However the parties may agree that the domestic worker will receive part of or her entire salary/wage for the time that she is off due to pregnancy.

Family responsibility leave

Employees employed for longer than four months and for at least four days a week are entitled to take three days' paid family responsibility leave during each leave cycle when the employee's child is born, or when the employee's child is sick or in the event of the death of the employee's spouse or life partner or parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

Deduction from the remuneration

The Basic Conditions of Employment Act prohibits an employer from deducting any monies from the workers wages without his/her written permission.

Other issues

There are certain other issues which are not regulated by the Basic Conditions of Employment Act such as probationary periods, right of entry to the employers premises, afternoons off, weekends off and pension schemes, medical aid schemes, training/school fees, funeral benefits and savings account, however the aforementioned may be negotiated between the parties and included in the contract of employment.

Prohibition of Employment

The Basic Conditions of Employment Act prohibits employment of any person under the age of 15 and it is therefore important for an employer to verify the age of the domestic worker by requesting a copy of the identity document or birth certificate.

Other conditions of employment

There is no provision, which prevents any other conditions of employment being included in a contract of employment but any provision which sets conditions which are less favourable than those set by the Act, would be invalid. Please note: these guidelines are not meant to be a complete summary of the Basic Conditions of Employment Act and/or legal advice. Should there be any doubt as to rights and/or obligations in terms of the Act or terms of any clause of the suggested Contract of Employment, such queries can be directed to the local office of the Department of Labour, who will gladly assist