

NOVEMBER 2024 NEWSLETTER

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Unpacking the BCEA

The Basic Conditions of Employment Act ensures fair labor practices in South Africa, setting standards for work hours, leave, and wages. It promotes healthy workplace environments, protects employees' rights, and helps businesses maintain compliance, fostering a stable and productive workforce essential for economic growth. Each month we will unpack a section of the BCEA starting with **leave types**. The BCEA mandates several types of leave, including annual leave, sick leave, maternity leave, and family responsibility leave.

Adoption Leave Summary: Any employee, whether male or female, who is a parent (including adoptive parents), will be entitled to 10 (ten) consecutive days parental leave, as prescribed by the UIF Act.

This leave shall be unpaid leave, commencing on the date of birth of the child or an adoption, or pending adoption, takes effect.

The employee will not be entitled to remuneration from the employer during this leave period, but may claim unemployment insurance benefits for this period, - the provisions of the UIF Act.

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01/05

Top News

Unpacking the Basic Conditions of Employment Act ("BCEA", Act 75 of 1997) - Adoption & Commissioning Parental Leave

Clarity on Zimbabwean Exemption Permits (ZEPs) deadlines

Employment Equity Reporting - What, Who, When and Where

Feature Article:
Annual Yearly Shutdown Leave Explained

Commissioning Parental Leave Summary:

Any employee, who is a commissioning parent in a surrogate motherhood agreement, will be entitled to 10 (ten) consecutive weeks unpaid leave, OR the parental leave referred to above, as prescribed by the UIF Act.

The adoption leave may commence on the date the child is born because of the surrogate motherhood agreement.

If a surrogate motherhood agreement has 2 (two) commissioning parents, one of the commissioning parents may apply for commissioning parental leave and the other commissioning parent may apply for the parental leave as set out above.

The employee will not be entitled to remuneration from the employer during this leave period, but may claim unemployment insurance benefits for this period, - the provisions of the UIF Act.

MUST
READ:

CLARITY ON **ZIMBABWEAN** **EXEMPTION PERMITS** **(ZEPs) DEADLINES**

- Current ZEP holders of the **ORIGINAL** ZEPs; extended and valid until **29 November 2024**.
- Current holders of ZEPs are entitled to apply for New Exemption Permits.
- New Exemption Permits issued are valid until **29 November 2025**.
- **ORIGINAL** ZEP holders who already applied for waivers and for other mainstream visas, **do not** have to apply for the “new” Exemption Permits; and therefore,
 - if an **ORIGINAL** ZEP holder has applied for a waiver and a mainstream visa, he/she will be allowed to remain and be employed in South Africa, until they receive the outcome of their applications.

Holders of ORIGINAL ZEPs have the option to apply for new exemption permits OR, waiver applications in order to apply for general work visas, if they have not done so already.

Employers and ZEP holders are encouraged to consult with an Immigration Specialist in order to determine which permit or visa is most suitable and to apply timeously, so as not to run out of time before the date of expiration of the current permits in November 2024.

**LABCO Annual holiday shutdown
period for 2024 will be:**

**Closed from 23 December 2024
Open for business on 02 January 2025**

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02/05

**IMPORTANT
MESSAGE**



REPORTS

REMINDER:

EE REPORTING (EEA2 and EEA4)



WHAT IS EE REPORTING?

Employers must prepare and implement an employment equity plan, setting out the affirmative action measures they intend taking to achieve the employment equity goals. Employers must report to the Department of Labour on the implementation of the plan in order for the department to monitor their compliance.

WHO MUST SUBMIT AN EE REPORT?

All Designated employers must submit an Employment Equity Report to the Department of Labour. The definition of a 'Designated employer' is as follows:

- An employer with 50 or more employees;
- An employer with fewer than 50 employees and who has exceeded the turnover threshold applicable to designated employers;
- A municipality or an employer bound by a collective agreement appointed as a Designated employer.

WHEN IS THE REPORTING DUE?

Reporting opens each year during October and closes mid January the following year.

WHERE DOES A COMPANY SUBMIT THEIR EE REPORT?

Through the Employment Equity Online Reporting Portal found on the website of the Department: Employment and Labour - DOL Systems Portal (<https://ee.labour.gov.za/DMISO/>)

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03/05



Annual Yearly Shutdown Leave Explained

Article by Tiaan Chauke

Management of leave is the responsibility of the employer: management, including line managers or supervisors. Many employers wait until it is too late before they put leave management policies, procedures, processes and systems in place. Failure to manage leave accurately in the workplace can result in devastating consequences for the employer, including loss of production and loss of income or insufficient manpower when needed.

1. Chapter 3 of the Basic Conditions of Employment Act (BCEA): Leave

This chapter of the BCEA regulates annual leave for employees. The chapter states thus:

- (1) In this Chapter, “annual leave cycle” means the period of 12 months’ employment with the same employer immediately following an employee’s commencement of employment: or the completion of that employee’s prior leave cycle.
- (2) The employer must grant an employee at least— 21 consecutive days’ annual leave on full remuneration in respect of each annual leave cycle.
- (3) or by agreement, one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.
- (4) by agreement, one hour of annual leave on full remuneration for every 17 hours on which the employee worked or was entitled to be paid.
- (5) An employee is entitled to take leave accumulated in an annual leave cycle in terms of subsection (2) on consecutive days.
- (6) An employer must grant annual leave not later than six months after the end of the annual leave cycle.

2. Responsibility to manage leave

Chapter 3 of the Basic Conditions of Employment Act puts the responsibility to manage leave on the employer, not solely on the employee, as the employer can determine when an employee will be in a position to take annual leave, having considered the business operation and the impact that taking annual leave by employees will have on the business of the employer.

Source:

1. https://www.gov.za/sites/default/files/gcis_document/201409/a75-97.pdf
2. <https://labourguide.co.za/employment-condition/shutdown#:~:text=The%20employee%20is%20entitled%20to,works%20a%206%20%2Dday%20week>

FEATURE ARTICLE



3. Calculating annual leave

Many employers and employees alike get confused with the 21 days annual leave stated in the BCEA and the 15 days annual leave in many employment contracts or in practice in the working environment.

The 21 days annual leave stated in the BCEA is **not** 21 working days, but 21 consecutive days, meaning this includes Saturday and Sunday over a period of three (3) weeks annual leave, where else 15 days, is 15 working days, which excludes Saturday and Sunday, only counting Monday to Friday over a period of three (3) weeks or put differently as per an article from Labour Guide:

“The employee is entitled to 21 consecutive days annual leave on full pay in every leave cycle. This equates to 15 working days per annum if the employee works a 5 -day week, and 18 working days per annum if the employee works a 6 -day week.”

Annual leave is primarily calculated or accumulated at 1.25 days per month, and over a period of 12 months equates to 15 working days.

4. Compulsory leave and Shutdown Periods/December

Depending on the nature of the business of the employer, in South Africa we have companies, businesses, institutions, including State Owned Enterprises (SoE) shutting down during December or during school holidays, where employers or businesses require employees to take compulsory annual leave during December or shutdown period. Employers must plan their leave or the annual leave of their employees throughout the year, to ensure that during shutdown or December periods employees have sufficient annual leave to go on shutdown and will not have to take unpaid leave due to poor leave management. Employers must deploy cutting-edge HR and Payroll technology (Human Resource Management Systems) in order to improve efficiency in managing leave for their employees. Before the shutdown period of the year, employers and businesses must educate and warn their employees concerning the dangers or disadvantages of exhausting their annual leave before shutdown, which will be unpaid leave for the employee who does not have sufficient or enough annual leave balance to go on leave during shutdown.

5. Public Holidays and Annual Leave

Employers must not make the mistake of including public holidays in their calculations of annual leave. Annual leave only applies to working days, not public holidays.