

What you need to know about notice periods, termination pay and the BCEA

If you have signed an employment contract that specifies something different to the Basic Conditions of Employment Act (BCEA), this will supersede what's outlined in the Act provided that there is agreement between the parties and the conditions specified are not less favourable than the BCEA, warns Cathie Webb, member (and prior executive) of the South African Payroll Association (SAPA).



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The BCEA is committed to regulating fair labour practice for both employers and employees in South Africa. It clearly explains what needs to be done when notifying an employer that you are leaving and what the employer needs to do when it comes to final salary payments. The Act also covers a multitude of additional issues and challenges that could face the business or the employee in the workplace, providing clear guidelines that are upheld by law.

However, when it comes to calculating remuneration during termination periods, there are some complexities that need to be addressed, which may not be covered by the BCEA.

The BCEA states that the notice period must be four weeks (for someone who has worked for more than a year with the company). Many companies, though, require a calendar months' notice. If the signed contract is for a calendar month, then the employee and payroll have to adhere to this timeline. Generally, the terms and conditions outlined in a signed contract will trump those outlined by the BCEA and employees need to be aware of this from the outset.

“That said, an employment contract may not offer working conditions worse than the basic conditions specified in the BCEA,” says Webb. “Employees do need to check their contracts before signing them to avoid unpleasantness. It is exciting to have a new job lined up, but the time to negotiate your employment terms is before you start, not after.”

Payroll needs to know

“It is critical that payroll be aware of what's outlined in an employees' contract to avoid any confusion when the person resigns,” adds Webb. “For example, many companies do not allow you to take annual leave in your resignation period, but situations may arise that make taking leave during this period a necessity. This possibility needs to be planned for, so that

both the employer and the employee know how this would be dealt with, and what is to be paid out in the final payslip. Clarity from both sides is essential.”

Payroll needs to know and understand the rules of the third parties who are paid from employee deductions / contributions. Medical aids run from calendar month to calendar month, and contributions are usually made in arrears. This means that the final deduction from payroll pays for their final contribution to the medical aid. Pension and provident funds may work differently, with their month running from the 16th of one month to the 15th of the next. This may mean that, in a company where a 30 day notice period applies and an employee resigns before the 16th of the month, they do not contribute to the fund in their final month, while if they resign after the 16th, there will still be a deduction.

Other pay elements like final commissions, travel claims and re-imbursements, shift allowances, etc., should also follow what has been stipulated in the contract of employment.

Employees are also not aware that quite often they are not paid on the 25th of their last month. Companies have been burned by employees leaving the moment they receive their final salary, and not working the last 5 or so days of their final month. So companies may have a policy to pay employees who are leaving on first day of the following month. This must be outlined in the contract and will affect the employee if not clearly communicated when they resign. This may result in an employee having to make special banking arrangements to deal with debit orders which may be set to be processed towards the end of the month. Payroll can make this process a lot smoother.

“The BCEA also outlines how much notice is required according to how long a person has worked at a company,” says Webb. “If you have worked for less than six months it is one week’s notice, if for more than six months it is two weeks’ notice, and if it is more than a year it becomes four weeks’ notice.”

Webb emphasises that payroll plays a vital part in ensuring that both employee and employer finish their last month amicably.

“Things need to be maintained by both payroll and HR so that when a person leaves all elements are calculated correctly and comply with the conditions outlined by the BCEA,” concludes Webb.