

EMPLOYMENT CONTRACTS IN SOUTH AFRICA



Is it necessary to have an employment contract?

When dealing with clients, both employers and employees, we often ask for copies of employment contracts and are told that there are no contracts.

South African law does not expressly state that you have to have an “employment contract”. However, section 29 of the Basic Conditions of Employment Act, 75 of 1997 (the “BCEA”) does require employers to provide certain information about an employee’s employment in writing.

The information that must be provided to an employee is set out in sections 29(1)(a) to (p) of the BCEA and includes information about the employer, information about the employee’s employment and information about the remuneration payable to the employee. Therefore, it is clear the legislature intended for employees to be provided with some form of written document relating to their employment.

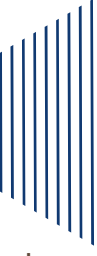
Why is an employment contract so important?

An employment contract is a consolidated document containing the terms and conditions applicable to the employment relationship. It is a reciprocal agreement and sets out the rights and obligations of both the employer and the employee.

By having a properly drafted employment contract both parties are aware of what is expected from them. This reduces the risk of conflicts arising in the future.

In addition, various aspects relating to the employment relationship can only be enforced if they are agreed to in writing between the parties. Some examples of these are:

1. more favourable leave provisions than are provided for in the BCEA;
2. deductions from an employee’s salary;
3. additional time off in lieu of overtime;
4. confidentiality provisions; and
5. restraint of trade provisions.



I don't have a contract, so what now?

Just because there is no employment contract does not mean there is no employment relationship. When determining whether somebody is an employee or not, courts, tribunals and officials will look at the actual relationship between the parties.

Both the BCEA and the Labour Relations Act, 66 of 1995, list 7 factors that must be considered when determining if a person is an employee or not.

If the employee earns less than a certain amount (currently R21197,64 per month) then the existence of even 1 of the 7 factors would create a rebuttable presumption that the person is an employee.

If the employee earns more than the above amount, the presumption will not automatically apply but the factors will be considered when determining the true relationship between the parties.

Therefore, if a person is found to be an employee, they will still have all of the rights and protection afforded to them under law regardless of whether there is an employment contract or not.

Not having an employment contract will not protect an employer against liability, but instead actually increases the risk.

What can I do to ensure that I have valid and enforceable employment contracts?

Labour and employment laws and regulations in South Africa are not codified and are found in various sources such as Acts, Regulations and Codes of Good Practice. Navigating these can be a daunting endeavour. To ensure your employment contracts are valid and enforceable we suggest you consult with a suitably qualified person or entity to assist you.

At RSW Law we have a team of experienced attorneys who can help you to ensure that your employment contracts are not only valid and enforceable but are also designed to suit your business and its specific needs.

Contact us to find out more about how we can help you.

Royce Steyl White Inc.

info@rswlaw.co.za

+27 (0)63 484 8105

www.rswlaw.co.za