

Understanding the legalities of overtime

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The Basic Conditions of Employment Act sets out some clear, realistic laws governing overtime that all employers must heed. This legislation does a good job of balancing the rights of employees and the needs of businesses to avoid contention between employers and employees.



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Who must be paid overtime?

According to a determination from Minister Mildred Oliphant, all employees who earn less than R205,433.30 a year are entitled to be remunerated for overtime worked. In this case, earnings mean gross pay, before deductions but excluding the employer's contributions to worker's retirement fund or medical insurance.

Who is excluded?

You do not have to remunerate all classes of employees when they put in overtime hours at your request. The following categories of employees are not entitled to overtime pay:

- Anyone earning more than R205,433.30 a year
- Senior managers
- Sales representatives who travel to customers' premises and who regulate their own hours of work
- Employees who work less than 24 hours a month for you

However, if you have agreed to pay your employees overtime in your employment contract, then you must do so or else you will be in breach of contract.

How much must you pay for overtime hours?

You should pay employees at least 1.5 times the usual rate of pay. Alternatively, with the employee's agreement, you can

trade overtime for paid time off on another day.

Working on a public holiday is only with the worker's agreement. If he or she is asked to work on a public holiday, remuneration should be paid at least double the rate. Time worked on a public holiday is exchangeable for other paid days off by mutual agreement instead of payment.

It is a good idea to write your rate of overtime pay or the agreement to trade overtime for paid leave into your employment contracts.

How many hours of overtime can an employee work each week?

You should not require - or even permit - workers to work more than three hours overtime a day or 10 hours overtime a week, according to South African labour law.

Can you force employees to work overtime?

This is a complex question, but the bottom line is that you cannot usually force employees to work overtime, unless there is an agreement to that effect. With an agreement in place, a refusal to work the agreed overtime amounts to misconduct. Put a clause about overtime into all of your employment contracts in case you will need it.

The Basic Conditions of Employment Act does offer you some leeway

If you have work that must be done immediately, because of circumstances you could not reasonably make provision for and which your team will not be able to complete in their usual hours of work, you can oblige employees to put in the overtime. If they refuse, that could be grounds for disciplinary action. If employees collectively refuse to work agreed overtime, it effectively amounts to industrial action.

ABOUT MADELEIN TALJAARD (VAN DER WATT)

Madelein van der Watt is Development Manager at Sage Pastel Payroll & HR and a regular commentator in financial and business media, is an expert in areas of employee tax and legislative changes affecting payroll.

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