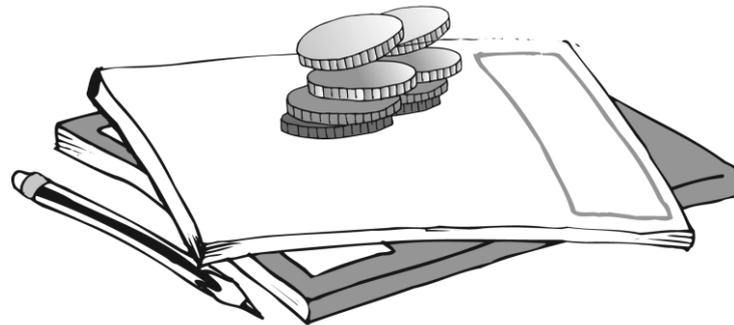


CONTRACT OF EMPLOYMENT

A contract of employment is the contract that a company makes with an employee. The contract of employment specifies the terms and conditions that will apply between the company and the employee in the new relationship.

- It serves as a legal and binding contract between employer and employee
- An employment contract is signed by the employee and a representative of the organization
- An employment contract may not contradict the Basic Conditions of Employment Act (BCEA)



See below an example of a contract of employment for Company X. Examine the main headings.

- What is the difference between a Contract of Employment and the Basic Condition of Employment Act?
- Do you agree with everything written here? What things do you disagree with?
- Do you think this is a fair contract of employment?
- Fill in the missing spaces in the contract for Company X below!

Contract of Employment: Company X

1. Terms and conditions of employment

1.1 The terms and conditions set out herein will constitute the employee's contract with the company. Where a basic condition of employment is not specifically mentioned, the relevant legislation will be applicable (e.g. the Basic Conditions of Employment Act, Act 75 of 1997, the Labour Relations Act, Act 66 of 1995, etc.).

2. Job description

2.1 Job title

.....

2.2 Duties

2.2.1 The duties of this position are set out in the Duty Sheet annexed hereto as annex **A**. The Duty Sheet forms part of this contract. Subsequent changes thereto may only be affected in consultation with the employee.

2.2.2 Although the employee has been employed in the position referred to in paragraph 2.1 and will therefore be responsible for the duties referred to in paragraph 2.2.1 supra, he/she may be required to perform other duties that may reasonably be expected of him /her within the company from time to time.

2.2.3 During the period of employment within the company the employee will report to (the)..... and obey instructions given by him/her and any other person duly authorised (or delegated) by the company to do so.

3. Termination of employment

This contract may be terminated only on notice of not less than- :

one week, if the employee has been employed for four weeks or less;

two weeks, if the employee has been employed for more than four weeks but not more than one year;

four weeks, if the employee has been employed for one year or more; or

is a farm worker or domestic worker who has been employed for more than four weeks.

3.2 Probation

3.2.1 The employee will be on probation for a period of three (3) months from the date of employment during which he/she will be required to prove his/her ability and suitability to perform the functions of the position referred to in item 2 of this contract.

3.2.2 Review discussions will be held with the employee during which the progress of the employee will be discussed. On the successful completion of the probation period the employee will

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automatically be appointed as a permanent employee of the employer.

3.2.3 The probationary period may be extended with another three (3) months, should the employer reasonably be of the opinion that the employee has not adapted fully to the working environment and has thus not proven his/her ability to the satisfaction of the employer, but has the potential to do so. Under these circumstances the employer must show effort in assisting the employee in achieving the set standard.

3.2.4 Should the employee prove to be unable to perform the tasks required during the probationary period or be otherwise unsuitable for the position, the employer will be entitled to terminate this contract with twenty-four (24) hours notice after following a fair procedure.

3.2.5 The employer will be entitled to terminate this contract with 24 hours notice in the event of discovering any misrepresentation in the employee's application for employment during the probation period.

3.3 The employer will be entitled to terminate this contract in terms of the Disciplinary Procedures referred to in paragraph 20 hereof.

4. Remuneration

4.1 The employee's total monthly remuneration will be R, payable in arrears on the..... day of each month. Should the regular payment date fall on a weekend or public holiday, the employer will pay the salary on the last working day before said day.

4.2 Remuneration will include the following

Basic salary	R.....
Allowances	R.....
Total	R.....

4.3 The following will be deducted from the salary

4.4 Benefits

Medical Aid:	R.....
UIF:	R.....
Retirement Fund:	R.....
Total	R.....

5. Working hours

5.1 Normal working hours will be from to..... from Mondays to Fridays and from to on Saturdays.

5.2 The employer may not require or permit the employee to work more than forty-five (45) hours per week, calculated as follows: B

5.2.1 Nine (9) hours on any day, if the employee works five (5) days or less a week; or

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5.2.2 eight (8) hours on any day if the employee works on more than five (5) days in a week; and

5.2.3 lunch breaks are not included in this calculation.

5.3 Hours of work in terms of item 5.2 may be extended by up to fifteen (15) minutes a day, but may not exceed one (1) hour a week. The reason for this provision is to allow the employee to finish the task at hand, especially when serving a client, at the end of a working day.

6. **Meal intervals**

6.1 The employee is entitled to a lunch break of minutes. Lunch breaks will be taken from..... to daily.

7. **Overtime**

7.1 Limit on overtime

7.1.1 The employee may be permitted or requested to work overtime from time to time when needed, provided that the daily overtime shall not exceed three (3) hours a day and a total of ten (10) hours a week.

7.2 Remuneration in respect of overtime.

7.2.1 The employer shall calculate overtime remuneration at no less than 12 (one and one-half) the employee's hourly wage for each hour of overtime worked; or

7.2.2 Pay the employee no less than the employee's ordinary wage for each hour of overtime worked **and** grant the employee at least thirty (30) minutes time off with full pay for every hour of overtime worked; or

7.2.3 Grant the employee at least ninety (90) minutes paid time off for every hour of overtime worked.

7.3 The remuneration method in 7.2.1 above will be the normal method of remuneration. Should the employer need to use one of the other options due to circumstances, he/she will inform the employee accordingly, preferably in writing, before the commencement of overtime.

8. **Work on Sundays and Public Holidays**

8.1 Sundays

8.1.1 Work on Sundays will not be compulsory, but will be agreed on by the parties to the best interest of the company and the employee from time to time.

8.2 Public holidays

8.2.1 The employee will be entitled to the following official public holidays on full pay:

*New Year's Day, *Youth Day, Human Rights Day, *National Women's day, *Good Friday, *Heritage Day, *Family day, *Day of Reconciliation, Freedom day, *Christmas Day, Workers day, *Day of Goodwill.

8.2.2 Any other holiday declared by Government from time to time will also be granted with full pay.

8.3 Remuneration

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8.3.1 If the employee does not work on a public holiday, he/she shall receive normal payment for that day.

8.3.2 If the parties agree that the employee should work on any of the above days, the employee shall be paid double the normal day's wage for a full day or double the hourly wage for every hour worked.

8.3.3 The employer may also by agreement grant two (2) paid working days off in lieu of payment.

9. Annual leave

9.1 The employee is entitled to thirty (30) calendar days leave per annum calculated from the day of commencement of service. Leave shall accumulate at the rate of two and one-half (22) days for each completed month of service, subject to item 13.4 of this contract.

9.2 Leave will not be granted concurrently with any other period of sick leave granted.

9.3 Leave will normally not be granted within the notice period regarding termination of service.

9.4 Leave may not be accumulated for more than eighteen (18) months, except where explicit written consent is obtained, detailing the amount of leave which may be accumulated. Motivated written application must be made to obtain such consent.

9.4.1 Leave accumulated in terms of special permission referred to above will not be paid out at termination of service. Leave may thus not be accumulated for purposes of inflating a severance package.

9.5 Leave must be applied for in writing in the form and manner prescribed by the company from time to time, and may only be taken after approval by the company or its delegated authority.

10. Sick leave

10.1 During every sick leave cycle (36 months) the employee will be entitled to an amount of sick leave equal to the number of days the employee would normally work during a period of six (6) weeks. The employee will therefore be entitled to thirty (30) days sick leave over a period of thirty-six (36) months (3 years).

10.2 During the first six (6) months of employment the employee is entitled to one day's paid sick leave for every twenty-six (26) days worked.

10.3 In the case where the employee is unable to attend work due to medical reasons, the employee must ensure that the company is notified as soon as reasonably possible.

10.4 An application for sick leave must be supported by a certificate from a registered medical practitioner.

11. Maternity leave

11.1 The employee is entitled to at least four (4) consecutive months maternity leave subject to the following conditions.

11.2 The employee may commence maternity leave:

11.2.1 at any time from before the expected date of birth, unless agreed otherwise; or

11.2.2 on a date from which a medical practitioner or a midwife certifies that it is necessary for

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the employee's health or that of her unborn child.

11.3 The employee may not work for six (6) weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so

11.4 If the employee has a miscarriage during the third semester of pregnancy or bears a stillborn child, she is entitled to maternity leave for six (6) weeks after the miscarriage or stillbirth, irrespective of whether or not the employee had commence maternity leave at the time of miscarriage or stillbirth.

11.5 The employee must notify the employer in writing of the date on which she intends to commence maternity leave: B

11.5.1 At least four (4) weeks before the intended commencement thereof; or

11.5.2 If it is not reasonably practicable to do so, as soon as is reasonably possible.

11.6 The employee must notify the employer in writing of the date on which she intends to return to work after maternity leave at least four (4) weeks in advance.

11.7 The payment of maternity leave will be determined in terms of the provisions of the Unemployment Insurance Act, Act 30 of 1966 read together with the provisions of the Basic Conditions of Employment Act, Act 75 of 1997.

12. **Family responsibilities leave**

12.1 The employee will be entitled to three (3) days family responsibility leave during each leave cycle (12 months).

12.2 Paragraph 12.1 only applies to an employee who:

12.2.1 Has been employed with the employer for longer than four (4) months; and

12.2.2 Works at least four (4) days a week for the employer.

12.3 The employer is only obliged to grant family responsibility leave under the following circumstances:

12.3.1 When the employee's child is born; or

12.3.2 When the employee's child is sick; or

12.3.3 in the event of death of the employee's spouse or life partner, parent or adoptive parent, grandparent, child, adopted child, grandchild or sibling.

13. **Leave without remuneration**

13.1 Leave without remuneration may be granted when the employee's

13.1.1 Sick leave credits are insufficient or have been depleted; or

13.1.2 Application for sick leave cannot be reasonably substantiated; or

13.1.3 Family responsibility leave credits are insufficient or have been depleted **and** no vacation

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leave credits are available.

13.2 The employee may apply in writing to be granted leave without remuneration for an extended period not exceeding six (6) months in exceptional circumstances. The application will be fully motivated. The employer is not obliged to approve such an application.

13.3 If the employee is absent from duty without prior arrangement or permission, the employer may regard any period of such absence as leave without remuneration. This does not preclude the employer from taking disciplinary measures against the employee in terms of this contract.

13.4 Leave without remuneration will affect the accumulation of vacation leave credits on a pro-rata basis.

13.5 Leave without remuneration may affect the calculation of any bonus or reward that the employer may contemplate.

14. **Deductions from remuneration**

14.1 The employer may not deduct any monies from the employee's salary unless the employee has agreed thereto in this contract or in writing on each occasion.

15. **Trade secrets/confidentiality**

15.1 The employee undertakes, without prejudice to any general duty of confidentiality, not to disclose during the continuance of this contract or afterwards, any of the trade secrets of the employer or any information which is confidential to the employer's business. Trade secrets include the following, which list will not be regarded as exhaustive..... (insert appropriate specific items)

15.2 The employee further undertakes immediately after the termination of his/her services to hand over to the employer all documentation and data in his /her possession belonging to the employer, whether in hard copy, contained on computer disc or any other recording medium, including documents made by him /her in the course of his/her employment. The aforementioned implies that any copy, abstract, or any précis of any document belonging to the employer made by the employee or any other person shall itself belong to the employer.

15.3 The employee will not be liable to the employer for information divulged in terms of legislation or a court order compelling him/her to do so.

16. **Restraint of trade**

16.1 The employee may not for a period of twelve (12) months from the date of termination of this contract, whether on his/her own behalf or on the behalf of any other person, close corporation, partnership or company solicit custom from, deal with or supply any person, close corporation, partnership or company with whom the employer dealt at any time during his/her employment.

16.2 Paragraph 16.1 also applies to potential clients in which the employer has shown interest or with whom the employer was negotiating at the time of the employee's employment in the company.

16.3 This limitation of trade is restricted to the nature of the employer's business, products and services.

17. **Exclusive service**

17.1 The appointment under this contract is a full time appointment and the employee shall devote his/her full commitment, energy and attention to the employer's business. The

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employee shall not at any time during the continuance off this contract be directly or indirectly engaged, concerned or interested, whether for reward or otherwise, in any other trade, business or profession without the explicit written consent of the employer.

18. **Freedom of association**

18.1 The company subscribes to the principle of freedom of association as stipulated in the Constitution of the Republic of South Africa, Act 108 of 1996, and thus the employee may join any organisation/trade union of his/her own choice as regulated in the Labour Relations Act, Act 66 of 1995.

19. **Policies, grievance and disciplinary procedure**

19.1 The employee will be subject to the company's disciplinary procedure, code of conduct and policies as determined and amended from time to time.

19.2 The Disciplinary Procedure and Code of Conduct is annexed hereto as annex **B**, and forms part of this contract.

19.3 Grievances or problems can be raised through the stipulated internal communication channels.

20. **General**

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

**Thus done and signed at on this, the..... day of
..... 2000.**

.....

Employer

.....

Employee

.....

Witness

.....

Witness