

EARNINGS THRESHOLD

- The Minister of Labour can from time to time determine an “earnings threshold” in terms of the BCEA. There are regular reviews of this amount, and increases usually take effect from 1 March of the given year.
- Employees who earn in excess of this threshold are excluded from the protection offered by the BCEA in terms of sections 9, 10, 11, 12, 14, 15, 16, 17(2) and 18(3).

This means, inter alia, that employees earning above this threshold (as well as senior managers) are not entitled to payment for overtime, Sunday work and some other minimum terms and conditions, such as compulsory meal intervals and minimum daily/weekly rest intervals.

[Note that some Industry / Sector Agreements may also provide specific protections for employees who earn below the earnings threshold.]

- Also, certain protections in the Labour Relations Act are applicable only to employees who earn below this threshold. For example, employees who earn below the threshold, may refer a dispute of under-payment by the employer to the CCMA for con-arb, whilst higher-earners are excluded from doing so. Employees who earn below the threshold may also be deemed permanent employees if they are employed for 3 months or more without a justifiable reason for fixing the term of the contract.
- Under the Employment Equity Act, an employee earning in excess of the earnings threshold, who has a dispute under Chapter II of the EEA relating to unfair discrimination, is not permitted to refer the dispute to the CCMA for arbitration, unless the dispute relates to alleged unfair discrimination on the grounds of sexual harassment, or the parties all agree to arbitration. In these cases, employees are obliged to refer the dispute to the Labour Court for adjudication.
- “Earnings” means (according to the definition in the Government Gazette) the regular annual remuneration before deductions, i.e. income tax, pension, medical and similar payments but excluding similar payments (contributions) made by the employer. However, subsistence and transport allowances received, achievement awards and payments for overtime worked shall not be regarded as remuneration for the purpose of calculating remuneration in terms of the threshold.

- Any increase in the threshold has the effect of increasing the number of employees who may be entitled to the above-mentioned rights and protections. An employer may not, however, due to the change in the threshold, make unilateral changes to the employment conditions of employees. Their contractual terms still apply and must be observed, unless agreed otherwise.

(*As of 1 March 2023, the earnings threshold amount is R241,110.59 p/a.)

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