

Increased earnings threshold entitles more employees to protection under labour laws

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From 1 March 2023, the earnings threshold will increase to R241,110.59, entitling employees falling below the new threshold to stricter protections in terms of labour legislation.



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The earnings threshold will increase to R241,110.59, representing a R17,030.11 increase from the earnings threshold that currently applies. The earnings threshold, a determination in terms of section 6(3) of the Basic Conditions of Employment Act (BCEA), impacts the applicability of certain of the provisions of the BCEA, the Labour Relations Act (LRA), and the Employment Equity Act (EEA). Employees who earn above the threshold are not entitled to certain of the protections afforded to those employees who earn below the threshold.

What labour legislation says about earnings threshold

- Sections of the BCEA regulating ordinary hours of work, overtime, meal intervals, daily and weekly rest periods, Sunday pay, pay for work at night and on public holidays only apply to employees earning below the threshold.
- Employees earning above the threshold are not subject to the deeming provisions that apply to temporary employment services (labour brokers), and fixed-term employment provisions under the LRA.

- In the EEA, employees earning above the threshold are not allowed to refer disputes relating to unfair discrimination to the CCMA for arbitration unless it is related to sexual harassment, or all parties agree to arbitration.



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To be able to calculate whether an employee falls above or below the earnings threshold, the determination outlines what should be included in defining "earnings". An understanding of this is essential in seeking to minimise the risk of non-compliance with the BCEA. Importantly, "earnings" in this context must be differentiated from what may otherwise be included in "remuneration" in terms of the Ministerial Determination regulating the Calculation of Employee's Remuneration in terms of section 35(5) of the BCEA.

Therefore, the increase to the earnings threshold may result in an increased number of employees becoming entitled to the stricter protections afforded by labour legislation such as overtime payments. This may, in turn, have financial consequences for employers. An assessment should be conducted by all employers to ensure that the increase and its consequences are accounted for in the workplace and, where necessary, changes to the employment contracts or remuneration structures are affected in order to mitigate the risks of any unintended contraventions of the BCEA or the deeming provisions applicable to atypical employment arrangements.

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