

3 considerations for small businesses when building their workforce

According to South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA), an estimated 80% of its cases originate from the employees of small businesses. This finding highlights the pressing need for local small businesses to familiarise themselves with employment law and ensure compliance in order to avoid unnecessary and potentially costly disputes.



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Shedding light on the main regulatory requirements of which small businesses need to be aware is Marjan Gerbrands, corporate legal counsel at small- to medium-sized enterprise (SME) financier, Business Partners Limited. As she advises, "From health and safety measures and hiring policies, to employee remuneration and working hours, South Africa's labour law provides clear guidelines on the basic conditions that every employer, big or small, needs to comply with."

Not investing time and resources into understanding your rights and responsibilities as an employer represents a substantial risk, even more so for small businesses who do not necessarily have the resources for prolonged court cases that could interfere with the running of the business.

Contracts as the basis of all employment agreements

The main instruments of South African law that small businesses need to familiarise themselves with are the Basic Conditions of Employment Act of 1997 and the Labour Relations Act of 1995. Together, these two pieces of legislation provide a framework for regulating employment practices, regardless of sector or the size of the business.

Although there are no formalities required for the formation of a contract of employment, section 29 of the Basic Conditions of Employment Act requires ‘written particulars of employment’ to be given to an employee. The Act stipulates that the particulars required are to be provided.

These range from the occupation of the employee, or a brief description of the work, an outline of what the required working days and hours are, the place of work, the wages or remuneration and any deductions that apply. Further, this also includes the employee’s formal starting date to detail on the notice period required upon resignation and a list of any other documents or workplace policies that form part of the contract of employment.

While some may deem formal contracts to be unnecessary, Gerbrands cautions against entering into ‘good faith’ agreements. A signed contract with mutually agreed upon terms will provide certainty and limit unnecessary employment disputes, freeing up your time and allowing you to focus on the operations of the business. Contracts also serve as an effective reference point for both the employee’s and the employer’s rights and obligations in the unfortunate event of disciplinary action or any ambiguity that may arise with regards to employee performance and what is expected from employees.

Limitations on working hours

In start-up environments where the pressure to produce consistent outputs are more apparent than in larger businesses, employees may be called upon to work overtime or on weekends. While this may very well be necessary to get a new business off the ground, small business owners need to be aware that demanding workers to go above and beyond normal working hours, may be deemed illegal.

Any hours more than normal hours of work will be regarded as overtime hours. Here, because all overtime must be voluntary, contracts play a role in stipulating upfront that the employee agrees to work overtime. There is, however, a limit that applies: by law, no employee can be forced to work more than 45 hours in a week. Likewise, no employee can be subjected to work more than nine hours a day if they work for five days or less per week, or for more than eight hours a day if they work more than five days a week.

Furthermore, employees who earn less than the annual earnings threshold, which was set at R241,110.60 per year from 1 March 2023, have the right to additional pay, as stipulated in the Act, for working overtime.

As Gerbrands advises, these stipulations are particularly important for small businesses in industries that operate outside of normal working hours. “These industries include 24-hour services, security, hospitality, emergency services and customer support. SMEs in these sectors need to ensure that when they require employees to work overtime, the instruction is legitimate and enforceable in terms of the Act.”

The national minimum wage

Another key element of labour law that local businesses should be aware of is the national minimum wage as outlined by the government, which is the threshold level below which no employee can be paid.

Currently, the rate, which came into effect on 1 March 2023, stands at R25,42 per hour. As of 1 March 2024, this will increase to R27,58. It’s also important for small businesses to bear in mind that this minimum wage excludes any allowances such as board or accommodation, transport and equipment as well as bonuses, tips, or food. As such, business owners cannot argue that you pay an employee less than the minimum wage because you contribute to their uniform,

transport or paid them a bonus.

Business owners have a responsibility to keep abreast of the developments in employment law. However, the legal aspects of running a business and dealing with employees can weigh down a business. Therefore, seeking legal advice or enlisting the services of a legal consultant may be the best way of doing this. Gerbrands encourages business owners to also use the Labour Advice mobile app, created by Business Unity South Africa in collaboration with the CCMA, which provides business owners with useful and accessible information and guidance on how to ensure compliance.

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