

BCEA protection band expands as earnings threshold increases

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6 Mar 2024

The earnings threshold will increase to R254,371.67 with effect from 1 April 2024, entitling employees falling below the threshold to stricter protections in terms of labour legislation.



Image source: Andriy Popov – [123RF.com](#)

It is the fourth consecutive annual increase to the threshold (following a period of seven years without any adjustment) and sees the threshold increase by R13,261.08 from the current earnings threshold of R241,110.59.

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 earning below the threshold.

- Sections of the BCEA regulating ordinary hours of work, overtime, meal intervals, daily and weekly rest periods, Sunday pay, pay for night work and pay for work 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.
- Employees earning above the threshold are not allowed to refer disputes relating to unfair discrimination under the EEA to the CCMA for arbitration unless it is related to sexual harassment or all parties agree to arbitration. Such disputes must proceed to the Labour Court for adjudication.

The determination delineates that which is to be included in the definition of “Earnings” for purposes of calculating whether an employee falls above or below the earnings threshold and 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 that which 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.

The increase to the earnings threshold may result in an increase or decrease in number of employees that are entitled to the stricter protections afforded to such employees in labour legislation, such as overtime payments. This is dependent on the extent of increases awarded to employees during the last year and potentially where in the remuneration review cycle an employer is. This may, in turn, have financial consequences for employers.

It is appropriate that employers review their remuneration structures in order to account for the change and the associated costs. Equally, employers that make use of atypical employment arrangement must review such arrangements (or require a review by any temporary employment service facilitating such arrangements) in order to ensure ongoing compliance with the BCEA and, where necessary, to avoid the consequences of deeming provisions under the LRA becoming applicable.

Updated: 1.48pm - 7 March 2024

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