

Mondstuk van die Suid-Afrikaanse aartappelbedryf • Mouthpiece of the South African potato industry

CHIPS

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The effect of the new earnings threshold on labour legislation

By Christo Bester, manager: legal services, LWO Employers Organisation

Along with the new national minimum wage that came into effect on 1 March 2021, employers have to take note of the increased annual earnings threshold that has been introduced. The previous earnings threshold has been in effect since 1 July 2014, but has now been increased from R205 433,30 to R211 596,30.

The earnings threshold affects the application of the provisions of the *Basic Conditions of Employment Act, 1997 (Act 75 of 1997) (BCEA)*, the *Labour Relations Act, 1995 (Act 66 of 1995) (LRA)* and the *Employment Equity Act, 1998 (Act 55 of 1998) (EEA)*.

What are earnings (income)?

First off, the meaning of 'income' or earnings must be made clear. Earnings refer to an employee's regular annual remuneration before deductions (for example, income tax, pension and medical aid contributions), excluding any contributions by the employer in respect of the employee.

Accommodation and transport allowances, performance rewards and remuneration for overtime worked are also excluded from the scope of earnings.

Act 75 of 1997 (BCEA)

In terms of the *BCEA*, employees earning in excess of the earnings threshold are excluded from the provisions regulating the following: ordinary hours of work, overtime, compressed work weeks, average hours worked, meal intervals, daily and weekly rest periods, Sunday pay, as well as pay for night work and work on public holidays.

This means that regulation of the aforementioned should be by mutual agreement and will not be regulated by the *BCEA* as is the case with employees earning below the threshold.

Act 66 of 1995 (LRA)

In terms of the *LRA*, employees earning in excess of the earnings threshold are not subject to the provision deeming the employees engaged by a temporary employment service/labour broker, to be employees of the employer/client for purposes of the *LRA*.

In addition, employees earning in excess of the earnings threshold fall outside the scope of the provisions relating to fixed-term employees who are deemed to be employed indefinitely after three

months (in the absence of justifiable reasons for fixing the term of the contract).

Act 55 of 1998 (EEA)

An employee earning in excess of the earnings threshold and who has lodged a dispute relating to unfair discrimination under *Chapter II*, is not permitted to refer the dispute to the CCMA for arbitration. Such an employee is obligated to refer the dispute directly to the Labour Court for adjudication, unless the dispute relates to alleged unfair discrimination on the grounds of sexual harassment, or the parties all agree to arbitration.

It is vital that every employer determines which employees earn above the earnings threshold and which employees earn below the threshold, as this has a huge impact on the terms and conditions of employment that the employer and employee can agree on. 📞

Die LWO help **boere as werkgewers** om aan arbeidswetgewing te voldoen.



Geniet 'n stresvrye arbeidsomgewing

Word lid:

- ➔ beskerm jou boerdery
- ➔ beskerm jou regte as werkgewer

Ons dienste as geregistreerde werkgewersorganisasie:

Arbeidsoudit | Gratis 24/7 regsadvies hulplyn |
 Gratis arbeidsreg dokumentasie & **dienskontrakte** |
Dissipline in die werksplek - konsultasies,
 waarskuwings, dissiplinêre verhore |
KVBA en Arbeidshof verteenwoordiging
 Bystand met stakings | Herstrukturering |
Personeelvermindering | Vakbond onderhandelinge |
 Bystand met Departement van Indiensneming en
 Arbeid **inspeksies** | Billike Werksgeleentheid, ens.

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