

DOMESTIC WORKERS AND THE LAW

PACSA FACTSHEET NO. 38

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Introduction

The relationship between an employer and domestic worker is changing in terms of their legal rights and obligations. This factsheet explains the changes and suggests guidelines for clear and just working relationships.

New Legislation for domestic workers

The Basic Conditions of Employment Act (BCEA)

Act No. 137 of 1993.

This legislation became effective from January 1994, and provides regulation of employment conditions for domestic workers.

The definition of a domestic worker includes a person doing household chores, gardeners, drivers and people who take care of children, the aged, the sick, the frail and the disabled, on household premises.

The information below outlines the Act, and provides recommendations by the **South African Domestic Workers Union (SADWU)**. It largely refers to full time workers employed by one employer. For domestic workers employed for less than 3 days/week (called 'regular day workers') there are some different conditions which are specified.

It must be stressed that these are **minimum standards**, and employers and employees are encouraged to work out improved conditions and salaries between themselves.

Working hours

A **full time worker** engaged by one employer for 5 days/week may work a maximum of 46 hours/week, and no more than 9¼ hours/day. A person working 6 days /week may not work more than eight hours/day unless the time worked on one day of the week does not exceed 5 hours. This refers to work done Monday to Saturday, as there are limitations regarding work on Sundays.

The South African Domestic Workers Union (SADWU) recommends weekends off.

A worker is entitled to a one-hour lunch break, which may be shortened to not less than half-an-hour by mutual agreement, and should be taken after not more than 5 hours' work on any day.

Workers may not work for a **spreadover** of more than 12 hours on one day (14 hours if a domestic worker lives in). If, for example, a worker starts at 07:00 and works until 12:00, then is off duty until 16:00, and works until 19:00, s/he will have worked for eight hours with a spreadover of 12 hours. Workers could not work from 07:00 to 12:00, be off until 17:00 and then work until 20:00 because the spreadover time is longer than 12 hours.



Overtime

Time worked in excess of normal working hours is **overtime** and must be paid at the rate of 1½ times the hourly rate. For work done on a **Sunday** or **public holiday**, an employee is entitled either to be paid 2 times the hourly rate, or 1½ times the hourly rate and a day off within 7 days.

Overtime is restricted to a maximum of 3 hours/day and no more than 10 hours/week, unless the employee looks after children, the aged, the sick, the frail and the disabled, in which case s/he can work 14 hours paid overtime per week. Overtime may be worked only by mutual agreement between the employer and employee.

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Salaries and Wages

Recommended pay

Although the Act does not specify a minimum wage for any category of domestic worker, **SADWU** (South African Domestic Workers Union) recommends a living wage to be a **minimum of R600/month for a full time live-in worker**. If meals are not provided, the wage should be raised by **R100/month**. If accommodation is not provided, transport costs should be paid by the employer.

A **regular day worker** should be paid **at least R6/hour**.

Workers with more skill or responsibility (such as cooking, speaking two languages, taking care of children or the elderly) should be paid more than this basic minimum, which should be negotiated between employee and the employer.

Wages should be paid in cash, unless there is an agreement between the employer and employee that money be paid directly into an employee's account.



Vacation leave and sick leave

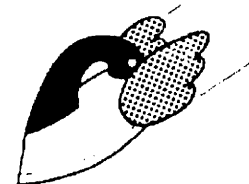
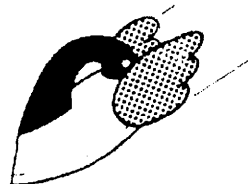
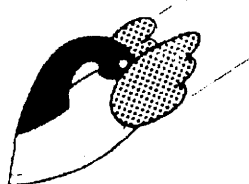
Full time workers are entitled to at least 14 consecutive days paid leave per year (**SADWU recommends 21 days**). If a person works 5 days/week, s/he is entitled to 30 days paid sick leave in every three year cycle. A 6 day/week worker is entitled to 36 days paid leave in every three year cycle.

For regular day workers, leave and sick leave are calculated in a manner which essentially entitles workers to be paid annual leave and be paid sick leave of 1 day for every 26 days worked (for that employer).

A medical certificate may be required by the employer if the worker is sick for 2 days or more. For both categories of workers, if any specified working day falls on a holiday, the employee is entitled to paid leave for that day.

Maternity leave

Maternity leave of four weeks before the anticipated date of delivery, and eight weeks after, must be provided.



Termination of employment

The employer or employee should give one another written notice to terminate the employment agreement. If an employee is a **full time worker** paid monthly, one month's notice is required, by either the employee or employer. For **regular day workers**, there is no notice period specified in the Act, but it is customary that, if the worker is paid weekly, then a week's notice is required, or a month's notice is required, if paid monthly.

On termination of employment, all domestic workers are entitled to a **certificate of service** from the employer, stating the full names of both parties, the period worked and the salary earned at the time of termination. However, if a worker leaves without notice, the employer does not have to provide this certificate.

Workers are entitled to be paid for annual leave owing them but not taken, before the termination of employment. However, if the employee does not give the required notice, s/he forfeits this leave pay.

Contravention of the Act

If employers do not comply with the provisions in the Act, they could be fined R1000 and be guilty of a criminal offence.

If conflicts arise amongst employer and employee, they can take the dispute to the Department of Manpower, or seek advice from agencies such as the Pietermaritzburg Advice Office (phone 426368) or other legal aid clinics.

Pensions

Many domestic workers reach retirement with little financial preparation. Although everyone over a certain age is entitled to an old age pension, this is inadequate for their needs. Furthermore, if the pensioner has any private income over a certain proportion of the government pension, they do not qualify for the government pension (the means test).

Several pension schemes are available for domestic workers, and it is recommended that the domestic worker and employer discuss these, and use one appropriate to the worker's needs.

Contracts

It is recommended that the employer and employee have a **written contract** which is **clearly understood** and **agreed upon** by both parties. This makes both parties fully aware of their rights and obligations and obviates the need for the employer to keep detailed record of hours worked and other particulars.

Below are example contracts for:

- A live-in domestic worker
- A non-live-in domestic worker who works more than 3 days/week
- A regular day worker (an employee who works for 3 days or less per week).

These do not cover every specific domestic worker-employer relationship. Consult the Pietermaritzburg Advice Office (426368), the Department of Manpower, an attorney or labour consultant for further information and advice if your situation is more complex.



Example of a Contract for a Live-in Domestic Worker

between.....(insert name of employer), 'the employer',
and.....(insert name of employee), 'the employee'.

1. Salary

1.1 The employer shall pay the employee a cash amount of R.....per month payable in arrears on the last working day of the month.

1.2 In addition to this amount the employee's salary shall include the value of payment in kind in terms of which the employer provides food and living quarters for the employee which is determined in the sum of R100,00 per month (or greater amount determined by agreement between the employer and the employee).

2. Hours of Work

(Ordinary working hours at maximum of 46 per week). The hours of work of the employee shall be:

Monday.....to.....
Tuesday.....to.....
Wednesday.....to.....
Thursday.....to.....
Friday.....to.....
Saturday.....to.....
Sunday.....to.....

In the event of a change in the hours of work such change shall be recorded in writing and signed by the parties.

3. Overtime

The employee undertakes to work no more than three hours overtime per day when required by the employer upon reasonable notice to do so, providing that the maximum overtime worked by the employee in any week shall not exceed 10 hours. The rate for overtime shall be calculated at 1 $\frac{1}{3}$ times the employee's hourly rate of pay (which rate shall be calculated to include the value of the payment referred to in 1.2).

4. Work on Sundays

If the employee works on a Sunday for four hours or less, s/he must be paid not less than a day's pay.

If the employee has worked longer, s/he must be paid either:

4.1 her/his salary for two days or at double her/his rate of pay for the whole time worked whichever is the greater; or

4.2 be paid 1 $\frac{1}{3}$ normal pay rate for the whole time worked and be granted one day's leave on full pay within seven days of such Sunday.

The rates of pay shall be calculated to include the value of the payment referred to in 1.2.

5. Public Holidays

The employee shall be entitled to paid leave on:

New Years Day
Good Friday
Family Day
Human Rights Day (21 March)
Constitution Day (27 April)
Workers' Day (1 May)
Youth Day (16 June)
National Women's Day (9 August)
Heritage Day (24 September)
Day of Reconciliation (16 December)
Christmas Day
Day of Goodwill (26 December)

If the employee works on any of the public holidays referred to above, s/he shall be paid either:

5.1 double his/her normal rate of pay; or
5.2 1 $\frac{1}{3}$ his/her normal pay and the employee shall be entitled to a day's leave within 7 days of working on that particular public holiday, which rates of pay shall be calculated to include the value the payment referred to in 1.2.

6. Meal Intervals

The employee shall be granted an hour lunch break after not more than 5 hours' work on any day.

7. Leave

The employer shall grant the employee 14 consecutive days' leave per annum.

8. Sick leave

The employee shall be entitled to sick leave as prescribed by the Basic Conditions of Employment Act.

9. Notice

The employer or the employee shall give the other one month's written notice to terminate this agreement which notice must be given on or before the 1st day of such month.

Signed at.....
on.....

(Name of Employer).....

Signed at.....
on.....

(Name of Employee).....

The employee acknowledges that this agreement has been interpreted into her/his vernacular language, namely.....

by.....
on.....

and that s/he understands the contents herein.

(Delete if not applicable).

Standard Contract for a non-live-in Domestic Worker who works more than three days a week

between.....(insert name of employer), 'the employer',
and.....(insert name of employee), 'the employee'.

1. Salary

The employer shall pay the employee a salary of R.....per month payable in arrears on the last working day of the month.

2. Hours of work

(Ordinary working hours are a maximum of 46 per week)

The hours of work of the employee shall be:

Monday..... to.....
Tuesday..... to.....
Wednesday..... to.....
Thursday..... to.....
Friday..... to.....
Saturday..... to.....
Sunday..... to.....

3. Overtime

The employee undertakes to work no more than three hours overtime per day when required by the employer upon reasonable notice to do so, provided that the maximum overtime worked by the employee in any week shall not exceed 10 hours. The rate for overtime shall be calculated at $1\frac{1}{3}$ times the employee's hourly rate of pay.

4. Work on Sunday

If the employee works on a Sunday for four hours or less, s/he will be paid not less than a day's pay. If the employee has worked longer, s/he will be paid either:

- 4.1 her/his normal salary for two days or at double her/his rate of pay for the whole time worked, whichever is the greater; or
- 4.2 be paid $1\frac{1}{3}$ normal pay rate for the whole time

worked and be granted one day's leave on full pay within seven days of such Sunday.

5. Public holidays

The employee should be entitled to paid leave on:

New Years Day
Good Friday
Family Day
Human Rights Day (21 March)
Constitution Day (27 April)
Workers' Day (1 May)
Youth Day (16 June)
National Women's Day (9 August)
Heritage Day (24 September)
Day of Reconciliation (16 December)
Christmas Day
Day of Goodwill (26 December)

If the employee works on any of the public holidays referred to above, s/he shall be paid double her/his normal rate of pay or $1\frac{1}{3}$ her/his normal pay and entitled to a day's leave within seven days of working on that particular public holiday.

6. Meal intervals

The employee shall be granted an hour lunch break after not more than five hours' work on any day.

7. Leave

The employer shall grant the employee 14 consecutive day's leave per annum.

8. Sick leave

The employee shall be entitled to sick leave as prescribed by The Basic Conditions of Employment Act.

9. Notice

The employer or the employee shall give the other one month's written notice to terminate this agreement which notice must be given on or before the 1st day of such month.

Signed at.....

on.....

(Name of Employer).....

Signed at.....

on.....

(Name of Employee).....

The employee acknowledges that this agreement has been interpreted into her/his vernacular language, namely.....

by.....

on.....

and that s/he understands the contents herein.

(Delete if not applicable).

Suggested Contract for a regular day worker

between.....(insert name of employer), 'the employer',
and.....(insert name of employee), 'the employee'.

1. Days and hours of work

(Maximum number of ordinary working hours to be worked on each day - 9¼). The employee undertakes to work for the employer for the following hours on the following days of each week:

(Stipulate days and hours - not more than 3 days per week). e.g.

Monday..... to.....
Wednesday..... to.....
Friday..... to.....

(Meal intervals shall not be included in the computation of hours worked).

2. Salary

The employer shall pay to the employee a cash amount of R.....per week/month payable in arrears on the last working day of the week/month. (Delete which is inapplicable).

3. Overtime

The employee undertakes to work no more than 3 hours overtime per day when required by the employer upon reasonable notice to do so, provided that the maximum overtime worked by the employee in any week shall not exceed 10 hours. The rate for overtime shall be calculated at $1\frac{1}{3}$ times the hourly rate of pay.

4. Work on Sundays

If the employee works on a Sunday, for 4 hours or less, s/he will be paid not less than a day's pay. If the employee has worked longer s/he will be paid either:

- 4.1 her/his salary for two days or at double her/his rate of pay for the whole time worked whichever is the greater; or
- 4.2 be paid $1\frac{1}{3}$ normal pay rate for the whole time worked and be granted one day's leave on full pay within 7 days of such Sunday.

5. Public holidays

If any of the public holidays referred to below falls on a day which is an ordinary working day for the employee, the employee shall be entitled to paid leave for that particular holiday.

The public holidays are:

New Years Day
Good Friday
Family Day
Human Rights Day (21 March)
Constitution Day (27 April)
Workers' Day (1 May)
Youth Day (16 June)
National Women's Day (9 August)
Heritage Day (24 September)
Day of Reconciliation (16 December)
Christmas Day
Day of Goodwill (26 December)

If the employee works on any of the public holidays referred to above, s/he shall be paid either:

- 5.1 double her/his normal rate of pay; or
- 5.2 her/his normal pay and the employee shall be entitled to a day's leave within 7 days of working on that particular holiday.

6. Meal intervals

The employee shall be granted a ½ hour lunch break after not more than 5 hours' work on any day that s/he works.

7. Leave

The employee shall be granted 1 working day's leave of absence on full pay in respect of every 26 working days for which s/he has been employed by the employer.

8. Sick leave

The employer shall grant the employee who is absent from work through incapacity one working day's sick leave on full pay in respect of every 26 working days for which s/he has been employed by such employer.

9. Notice

The employer or the employee shall give the other one week's/month's written notice to terminate this agreement which notice must be given on or before the 1st day of such week/month. (Delete which is inapplicable - one week's notice if employee is paid every week; alternatively one month's notice if paid monthly).

Signed at.....

on.....

(Name of Employer).....

Signed at.....

on.....

(Name of Employee).....

The employee acknowledges that this agreement has been interpreted into her/his vernacular language, namely.....

by.....

on.....

and that s/he understands the contents herein.

(Delete if not applicable).