

# MINISTERIAL DETERMINATIONS



## WHAT IS A MINISTERIAL DETERMINATION?

The Minister of Employment and Labour may establish basic conditions of employment for employees in a certain sector or area by means of a Ministerial Determination.

The Minister may make a determination to replace or exclude almost any basic condition of employment provided for in the Basic Conditions of Employment Act 75 of 1997 (BCEA), in respect of a category of employees or a category of employers (on his own accord) or any employer or employee on application by the employer or a registered employers' organisation (or employer and registered employers' organisation acting together).

## ESTABLISHING MINISTERIAL DETERMINATIONS

- An employer or employers' organisation or the two acting together, must apply to the Department of Employment and Labour for the Minister to establish a Ministerial Determination. This is done by completing a BCEA form 6.
- The Minister will refer the application to the Employment Conditions Commission (ECC) for its recommendations.
- The Minister may ask the ECC to advise on the application and to prepare guidelines for the application of a Ministerial Determination.
- When a Ministerial Determination is applied for, the consent of all trade unions representing employees in the workplaces is required. However, where a copy of the application has been served on the trade unions stating that an opportunity for representations exist and where the trade union does not represent the majority of the employees to be affected, the issuing of the Ministerial Determination may go ahead without such consent.

## CONTENTS OF MINISTERIAL DETERMINATIONS

The Ministerial Determination may be issued on any conditions and for a period determined by the Minister.

A Ministerial Determination however may not amend certain issues. The issues that may not be amended are as follows:

- Regulation of working time;
- Ordinary hours of work;
- Determination of hours of work;
- Night work on a regular basis after 23:00 and before 06:00;
- Employment of a child whose less than 15 years of age; and
- Demanding or imposing forced labour.

The BCEA further restricts the Minister's power to vary the ordinary hours of work in a sector. Therefore, a Ministerial Determination may only vary if the hours of work are more favourable than an employee's ordinary hours of work and:

- is agreed to in a collective agreement; or
- is necessary due to operational reasons in this sector; or
- applies to the private security or agricultural sector.

## AMENDMENTS OF MINISTERIAL DETERMINATIONS

On application of either of the parties to a Ministerial Determination, the Minister may amend or withdraw a Ministerial Determination.

## MINISTERIAL DETERMINATION FOR SMALL BUSINESSES

This determination applies to employers who employ less than ten employees.

To the extent provided for in this determination, it varies the application of the BCEA, to such employers and their employees.

This determination must also be read in conjunction with the BCEA. In addition, unless otherwise indicated, any word used in this determination has the same meaning as in the BCEA.

A **Bargaining Council** agreement or **Sectoral Determination** takes precedence over the determination, unless the agreement or determination provides otherwise.

This determination does **not apply** to:

- The employment of domestic workers;
- The public service
- Any employer who conducts more than one business; and
- Any business formed by the division or dissolution of an existing business.

## RELEVANT LEGISLATION

- Basic Conditions of Employment Act 75 of 1997, as amended, section 50.