

UHLOLOJIKHELELE LOMTHETHO WE BASIC CONDITIONS OF EMPLOYMENT (BCEA) AMENDMENT ACT, 2018



ISINGENISO NENHLOSO

Izinguquko ezenzeka kwi BCEA zethulelwe ukuthuthukisa ukusebenza kokuphoqelelwa kwezihlinzeko zawo lomthetho we BCEA ikakhulukazi ukuphoqelelwa ngempumelelo koMthetho kaZwelonke Wamaholo (National Minimum Wage). Lezi zinguquko (izichibiyelo)-

- Zihlinzeka ngezinhlobo ezintsha zekhefu labazali kanye nezinzuzo.
- Zichitha izinhleko ezibhekene namandla nemisebenzi ye Khomishini Yezimo Zokuqashwa (Employment Conditions Commission);
- Zilula izihlinzeko zokuqapha nokuphoqelelwa ngabahloli bezoMthetho wabasebenzi ukubandakanya ukhlonipha umholo kazwelonke nezidingo zomshuwalense wabangasebenzi; futhi
- Zilula igunya lika CCMA ukubandakanya izinqubo zokuphoqelela nokufakwa kwezicelo zokukhokhelwa imali yomholo ongaphelele ngokoMthetho we BCEA, umholo kazwelonke, uMthetho woMshuwalense Wabangasebenzi, nezicelo eziqhamuka kwinkontileka yomsebenzi nezivumelwano ezenziwe ngokuhlanganyela (collective agreements).
- Zilula igunya lika CCMA ekulamuleni kwezingxabano eziphathelele nencazelo nokusetshenziswa kwezindaba ezivelayo ngokwesigaba esingu nombolo 80 (ukuvikelwa kwabasebenzi ekubandlululweni).

“Isisebenzi”, okungukuthi, nanoma yimuphi umuntu osebenzela omunye futhi ethola, noma onelungelo lokuthola, inkokhelo ngokwalowo msebenzi okungakhathaleli ukuba imali noma olunye uhlobo lwenkokhelo, unelungelo lokuvikelwa ngokoMthetho we BCEA inqobo uma ukuvikelwa kuhlobene nezihlinzeko zokuphoqelela eziphathelele nomholo kazwelonke.

UMHOLO WOSUKU

Izinguquko noma izichibiyelo ze BCEA ngokwesigaba esingunombolo 9A futhi zethula isihlinzeko esithi lapo umsebenzi noma isisebenzi sisebenza amahora angaphansi kwamane nganoma yiluphi usuku, lowo msebenzi noma isisebenzi kumele sikhokhelwe amahora amane ngalolo suku.

Lesi sihlizwe somthetho sisebenza kulabo basebenzi noma izisebenzi eziyisithupha angaphansi kwenani lombundu obekwe nguNgqongqoshe (threshold) ngokwesigaba soMthetho esingu nombolo 6(3) se BCEA.

IKHEFU LABAZALI NENZUZO

Izigaba zoMthetho ezishintshiwe ze BCEA zihlanganisa ukususwa “kokuzalwa kwengane” njengesisekelo somthetho sokuthatha ikhefu lokubhekana nomthwalo womndeni. Ngokwesigaba esingunombolo 25A soMthetho we BCEA, umsebenzi wesilisa ongumzali wengane unelungelo lokuthatha ikhefu lezinsuku eziyishumi ezilandelanayo ukuze akwazi nokubhekana nomthwalo womndeni. Ikhefu lingaqala ngosuku mntwana azelwe ngalo. Izinsuku eziyishumi zekhefu yizinsuku zekhalenda hayi izinsuku zokusebenza.

Umsebenzi ofaka isandla Kwisikhwama Somshuwalense Wabalahlekelwe Yimisebenzi (Unemployment Insurance Fund), angafaka Kumnyango Wezabasebenzi, isicelo sokuthola inzuzo yabazali esebenzisa ifomu (form UI.2.9) ngokwesigaba 26B soMthetho WoMshuwalense Wabalahlekelwe Yimisebenzi (UIA).

IKHEFU LOKUTHOLWA KWENGANE NENZUZO

Lesi sigaba sihlolene nokutholwa kwengane engaphansi kweminyaka emibili. Umzali ongayedwa unelungelo lokuthatha izinsuku eziyishumi ezilandelanayo zekhefu lokutholwa kwengane. Uma kunabazali ababili bengane etholiwe, umzali oyedwa kuphela onelungelo lokuthatha ikhefu lokutholwa kwengane elingamasonto ayishumi alandelanayo. Omunye umzali unelungelo lokuthatha ikhefu labazali elijwayelekile lezinsuku eziyishumi ezilandelanayo (Bona ulwazi olungenhla ngekhefu labazali).

Ikhefu liqala ngosuku umyalelo wenkantolo wokutholwa kwengane unikeziwe, noma ngosuku inkantolo iyibeka ezandleni zabazali ingane etholiwe.

IKHEFU LABAZALI ABATHUMELAYO NENZUZO

Ikhefu labazali abathumelayo lihlolene nokuba ngumama othwalele, noma othwalele waphinde wazalela omunye wesifazane ongakwazi ukuzithwalela usana ngokwesimo sempilo. Ikhefu lingaqala ngosuku umntwana azelwe ngalo ngomphumela wesivumelwano sokuthwalela omunye wesifazane ongakwazi ukuzithwalela usana. Uma kunabazali ababili abathumelayo, bangakhetha: uma omunye ethatha ikhefu labazali abathumelayo, omunye angathatha ikhefu labazali elijwayelekile. Umzali othatha ikhefu labazali abathumelayo unelungelo lokuthatha ikhefu elingamasonto ayishumi alandelanayo futhi angakhokhelwa. Omunye umzali unelungelo lokuthatha ikhefu elijwayelekile lezinsuku eziyishumi ezilandelanayo futhi ezingakhokhelwa (Bona ulwazi olungenhla ngekhefu labazali).

Uma umqashi ehluleka ukuthi agcine isibophezelo esibhaliwe sokuhlonipha uMthetho, uMqondisi jikelele woMnyango Wezabasebenzi angafaka isicelo e-CCMA ukuthi uCCMA enze lesi sibophezelo noma umyalelo ophoqelelayo kube isinqumo sokwahlulela phecelezi (arbitration award).

Isikhathi esibekiwe kwisibophezelo esibhaliwe noma umyalelo ophoqelelayo kumele kube sesiphelile ngaphambi kokuba kwenziwe isicelo kwa CCMA sokuthi lesi sibophezelo noma umyalelo kube isinqumo sokwahlulela.

UCCMA angakhipha isinqumo sokwahlulela esidinga umqashi ahloniphe umyalelo ophoqelelayo uma abakwa CCMA benlisekile ukuthi -

- umyalelo ophoqayo wadluliselwa kumqashi, futhi;
- umqashi akafakanga isicelo sokuxazululwa kwengxabano ngokwesigaba esingunombolo 69(5) soMthetho we BCEA.

Uma umyalelo ophoqayo noma isibophezelo esibhaliwe sesenziwe isinqumo sokwahlulela, umfaki wecala angafaka isicelo kwa CCMA ukuthi lowo myalelo noma isibophezelo kwenziwe ukuphoqelelwa kwawo / kwaso ngokwesigaba esingunombolo 143 soMthetho we Labour Relations Act 66 of 1995 (LRA).

INSELELO YOMYALELO OPHOQELELA UKUHLONIPHA UMTHEHO

Umqashi kumele agcine umyalelo omphoqelelayo ukuthi ahloniphe umthetho kungeqi isikhathi esishiwo kuyo incwadi yomyalelo ophoqelelayo ngaphandle uma efaka isicelo esiphathelene nomyalelo lowo eCCMA kusona lesi sikhathi esishiwoyo encwadini kungeqi ngalena kwaso. Ikhophi yesicelo somqashi kumele idluliselwe kuwo wonke amaqembu athintekayo.

IZIJEZISO MAYELANA NEHOLO LIKAZWELONKE

Isigaba esingunombolo 76A sencwadi yomthetho iBCEA sithwalisa lezi zijeziso ezilandelayo uma umqashi engawuhloniphi umholo kazwelonke-

Noma yikuphi okukhulu phakathi-

- kwenkokhelo ephindwe kabili yomholo ongaphelele, noma
- umholo wenyanga womsebenzi ophindwe kabili

Umakwenzeka isigaba sesibili noma umqashi eqhubeka engawugcini uMthetho isijeziso siyoba, noma yikuphi okukhulu, phakathi -

- kwenkokhelo ephindwe kathathu yomholo ongaphelele, noma
- umholo wenyanga womsebenzi ophindwe kathathu.

UHLOLOJIKHELELE LOMTHETHO WE BASIC CONDITIONS OF EMPLOYMENT (BCEA) AMENDMENT ACT, 2018



Umnyango Wezabasebenzi uyadingeka ukuthi ushicilele kwi website yayo esemthethweni uhlu lwabaqashi abanikezwe imiyalelo ephoqeleyayo.

UKUFAKWA KWEZICELO EZIPHATHELENE NOKUHLULEKA UKUKHOKHA NANOMA YISIPHI ISAMBA SEMALI

Ngokwesigaba esingunombolo 73A encwadini yomthetho eyaziwa ngokuthi iBCEA, nanoma yimuphi umuntu angafaka eCCMA isicelo esiphathelene nokuhluleka komqashi ukukhokha nanoma yisiphi isamba semali amkweletwa yona ngokwawo lo Mthetho, ngoba uMthetho kwaZwelonke Wamaholo, ngokwenkontileka yomsebenzi, ngokwesiphetho somkhakha (sectoral determination) noma ngokwesivumelwano esenziwe ngokuhlanganyela (collective agreement).

UKUHLANGANISWA KWEZINQUBO

Isigaba esingunombolo 74 se BCEA sihlizeka ukuthi kungafakwa nanoma isiphi isicelo esiphathelene nokwephulwa koMthetho we BCEA noma uMthetho kaZwelonke Wamaholo (National Minimum Wage Act) ngokuhlanganyela nenqubo eqondene -

- nezinsolo zokuxoshwa ngokungafanele;
- ilungelo le severance pay (imali umsebenzi ayithola uma ediliziwe);
- nezinsolo zokubandlululwa ngokwe ncwadi yomthetho BCEA.

UKUTHOLA ISIBOPHEZELO ESIVELA KUMQASHI / UMYALELO OMPHOQA UKUTHI AHLONIPHE UMTHETHO

Izigaba zoMthetho ezishintshiwe kwincwadi yomthetho i BCEA okuyizinombolo 68(1) kanye 69(1) zinikeza amandla kubahloli bezomthetho wabasebenzi abanezizathu ezizwakalayo zokukholelwa ukuthi umqashi akasigcinanga nanoma isiphi isihlinzeko soMthetho we BCEA, uMthetho kaZwelonke Wamaholo, uMthetho woMshuwalense Wabangasebenzi noma uMthetho Weminikelo yoMshuwalense Wabangasebenzi, okuthi bangazama ukuthola isibophezelelo esibhaliwe kumqashi sokuthi ahloniphe isihlinzeko soMthetho noma bangakhupha umyalelo omphoqa ukuthi ahloniphe uMthetho.

Uma umqashi ehluleka ukuthi agcine isibophezelelo esibhaliwe sokuhlonipha uMthetho, uMqondisi jikelele woMnyango Wezabasebenzi angafaka isicelo e-CCMA ukuthi uCCMA enze lesi sibophezelelo noma umyalelo ophoqeleyayo kube isinqumo sokwahlulela ngolimi lwasemzini (arbitration award).

Isikhathi esibekiwe kwisibophezelelo esibhaliwe noma umyalelo ophoqeleyayo kumele kube sesiphelile ngaphambi kokuba kwenziwe isicelo kwa CCMA sokuthi lesi sibophezelelo noma umyalelo kube isinqumo sokwahlulela.

Umnyango wakwa CCMA angakhupha isinqumo sokwahlulela esidinga umqashi ahloniphe umyalelo ophoqeleyayo uma abakwa CCMA benelisekile ukuthi -

- (a) umyalelo ophoqayo wadluliselwa kumqashi, futhi;
- (b) umqashi akafakanga isicelo sokuxazulula kwezingxabano ngokwesigaba esingunombolo 69(5) soMthetho we BCEA

Uma umyalelo ophoqayo noma isibophezelelo esibhaliwe sesenziwe isinqumo sokwahlulela, umfaki wecala angafaka isicelo kumnyango wakwa CCMA ukuthi lowo myalelo noma isibophezelelo kwenziwe ukuphoqelelwa kwawo / kwaso ngokwesigaba esingunombolo 143 soMthetho we Labour Relations Act 66 of 1995 (LRA).

INSELELO YOMYALELO OPHOQELELA UKUHLONIPHA UMTHETHO

Umqashi kumele agcine umyalelo omphoqelela ukuthi ahloniphe umthetho kungeqi isikhathi esishiwo kuyo incwadi yomyalelo ophoqeleyayo ngaphandle uma efaka isicelo esiphathelene nomyalelo lowo iCCMA kusona lesi sikhathi esishiwo encwadini kungeqi ngalena kwaso. Ikhophi yesicelo somqashi kumele idluliselwe kuwo wonke amaqembu athintekayo.

IZIJEZISO MAYELANA NEHOLO LIKAZWELONKE

Isigaba esingunombolo 76A kwincwadi yomthetho iBCEA sithwalisa lezi zizeziso ezilandelayo uma umqashi engawuhloniphi umholo kazwelonke-

Noma yikuphi okukhulu phakathi-

- (a) kwenkokhelo ephindwe kabili yomholo ongaphelile, noma
- (b) umholo wenyanga womsebenzi ophindwe kabili

Uma kwenzeka isigaba sesibili noma umqashi eqhubeka engawugcini uMthetho isijeziso siyoba, noma yikuphi okukhulu, phakathi -

- (a) kwenkokhelo ephindwe kathathu yomholo ongaphelile, noma
- (b) umholo wenyanga womsebenzi ophindwe kathathu.

Umnyango Wezabasebenzi uyadingeka ukuthi ushicilele kwi website yayo esemthethweni uhlu lwabaqashi abanikezwe imiyalelo ephoqeleyayo.

UKUFAKWA KWEZICELO EZIPHATHELENE NOKUHLULEKA UKUKHOKHA NANOMA YISIPHI ISAMBA SEMALI

Ngokwesigaba esingunombolo 73A sencwadi yomthetho i BCEA, nanoma yimuphi umuntu angafaka eCCMA isicelo esiphathelene nokuhluleka komqashi ukukhokha nanoma yisiphi isamba semali amkweletwa yona ngokwawo lo Mthetho, okukanye ngoMthetho kwaZwelonke Wamaholo, ngokwenkontileka yomsebenzi, ngokwesiphetho somkhakha (sectoral determination) noma ngokwesivumelwano esenziwe ngokuhlanganyela (collective agreement).

UKUHLANGANISWA KWEZINQUBO

Isigaba esingunombolo 74 sencwadi yomthethi i BCEA sihlizeka ukuthi kungafakwa nanoma isiphi isicelo esiphathelene nokwephulwa koMthetho we BCEA noma uMthetho kaZwelonke Wamaholo (National Minimum Wage Act) ngokuhlanganyela nenqubo eqondene -

- nezinsolo zokuxoshwa ngokungafanele;
- ilungelo le severance pay (imali umsebenzi ayithola uma ediliziwe);
- nezinsolo zokubandlululwa ngokwe BCEA.

IMITHETHO EFANELE

- Basic Conditions of Employment Amendment Act 7 of 2018
- Labour Laws Amendment Act 10 of 2018
- National Minimum Wage Act, 2018
- Unemployment Insurance Act 63 of 2001
- Unemployment Insurance Contributions Act 4 of 2002.