

EMPLOYMENT LAW ALERT

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CLIFFE DEKKER HOFMEYR

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KIETI LAW LLP, KENYA

IN THIS ISSUE

New earnings threshold effective 1 March 2022

As of 1 March 2022, South Africans will see the implementation of the increased annual earnings threshold determined by the Minister of Employment and Labour (Minister) in the amount of R224,080.48. This represents an increase of R12,484.18 from the previous amount of R211,596.30, which has been in effect since 1 March 2021.



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The earnings threshold impacts on the application of provisions of the Basic Conditions of Employment Act, 1997 (BCEA), the Labour Relations Act, 1995 (LRA) and the Employment Equity Act, 1998 (EEA).

In terms of the BCEA, employees earning in excess of the earnings threshold are excluded from the provisions, which regulate ordinary hours of work, overtime, compressed working weeks, averaging of hours of work, meal intervals, daily and weekly rest periods, Sunday pay, pay for night work and pay for work on public holidays.

With regards to the LRA, employees earning in excess of the earnings threshold are not subject to the deeming provision in accordance with which employees engaged by a temporary employment service or labour broker who are not performing a temporary service are deemed to be employees of the 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).

Looking at the EEA, an employee earning in excess of the earnings threshold, who has a dispute under Chapter II of the EEA relating to unfair discrimination, is not permitted to refer the dispute to the CCMA for arbitration (unless the dispute relates to alleged unfair discrimination on the grounds of sexual harassment, or the parties all agree to arbitration) and is obliged to refer the dispute to the Labour Court for adjudication

For purposes of determining whether an employee earns in excess of the earnings threshold, "*earnings*" means an employee's regular

annual remuneration before the deduction of income tax, pension fund contributions, medical aid contributions and similar payments, but excludes similar contributions made by the employer in respect of the employee. This is subject to the proviso that subsistence and transport allowances received, achievement awards and payments for overtime worked do not fall within the scope of remuneration.

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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