

EMPLOYMENT LAW ALERT

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CLIFFE DEKKER HOFMEYR

INCORPORATING
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.

CDH EMPLOYMENT LAW PRACTICE

OUR TEAM

For more information about our Employment Law practice and services in South Africa and Kenya, please contact:



Aadil Patel
Practice Head
Director
T +27 (0)11 562 1107
E aadil.patel@cdhlegal.com



Anli Bezuidenhout
Director
T +27 (0)21 481 6351
E anli.bezuidenhout@cdhlegal.com



Jose Jorge
Director
T +27 (0)21 481 6319
E jose.jorge@cdhlegal.com



Fiona Leppan
Director
T +27 (0)11 562 1152
E fiona.leppan@cdhlegal.com



Gillian Lumb
Director
T +27 (0)21 481 6315
E gillian.lumb@cdhlegal.com



Imraan Mahomed
Director
T +27 (0)11 562 1459
E imraan.mahomed@cdhlegal.com



Bongani Masuku
Director
T +27 (0)11 562 1498
E bongani.masuku@cdhlegal.com



Phetheni Nkuna
Director
T +27 (0)11 562 1478
E phetheni.nkuna@cdhlegal.com



Desmond Odhiambo
Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E desmond.odhiambo@cdhlegal.com



Hugo Pienaar
Director
T +27 (0)11 562 1350
E hugo.pienaar@cdhlegal.com



Thabang Rapuleng
Director
T +27 (0)11 562 1759
E thabang.rapuleng@cdhlegal.com



Hedda Schensema
Director
T +27 (0)11 562 1487
E hedda.schensema@cdhlegal.com



Njeri Wagacha
Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E njeri.wagacha@cdhlegal.com



Michael Yeates
Director
T +27 (0)11 562 1184
E michael.yeates@cdhlegal.com



Mohsina Chenia
Executive Consultant
T +27 (0)11 562 1299
E mohsina.chenia@cdhlegal.com



Faan Coetzee
Executive Consultant
T +27 (0)11 562 1600
E faan.coetzee@cdhlegal.com



Jean Ewang
Consultant
M +27 (0)73 909 1940
E jean.ewang@cdhlegal.com

OUR TEAM

For more information about our Employment Law practice and services in South Africa and Kenya, please contact:

**Amy King**

Professional Support Lawyer
T +27 (0)11 562 1744
E amy.king@cdhlegal.com

**Riola Kok**

Professional Support Lawyer
T +27 (0)11 562 1748
E riola.kok@cdhlegal.com

**Tamsanqa Mila**

Senior Associate
T +27 (0)11 562 1108
E tamsanqa.mila@cdhlegal.com

**Dylan Bouchier**

Associate
T +27 (0)11 562 1045
E dylan.bouchier@cdhlegal.com

**Abigail Butcher**

Associate
T +27 (0)11 562 1506
E abigail.butcher@cdhlegal.com

**Asma Cachalia**

Associate
T +27 (0)11 562 1333
E asma.cachalia@cdhlegal.com

**Rizichi Kashero-Ondego**

Associate | Kenya
T +254 731 086 649
T +254 204 409 918
T +254 710 560 114
E rizichi.kashero-ondego@cdhlegal.com

**Jordyne Löser**

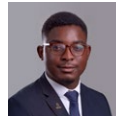
Associate
T +27 (0)11 562 1479
E jordyne.loser@cdhlegal.com

**Christine Mugenyu**

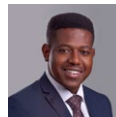
Associate | Kenya
T +254 731 086 649
T +254 204 409 918
T +254 710 560 114
E christine.mugenyu@cdhlegal.com

**Peter Mutema**

Associate | Kenya
T +254 731 086 649
T +254 204 409 918
T +254 710 560 114
E peter.mutema@cdhlegal.com

**Mayson Petla**

Associate
T +27 (0)11 562 1114
E mayson.petla@cdhlegal.com

**Kgodisho Phashe**

Associate
T +27 (0)11 562 1086
E kgodisho.phashe@cdhlegal.com

**Taryn York**

Associate
T +27 (0)21 481 6314
E taryn.york@cdhlegal.com

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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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196.
Private Bag X40, Benmore, 2010, South Africa.
Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111
E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001.
PO Box 695, Cape Town, 8000, South Africa.
Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388
E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D,
Riverside Drive, Nairobi, Kenya.
P.O. Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 |
+254 710 560 114
E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central,
Stellenbosch, 7600.
T +27 (0)21 481 6400
E cdh Stellenbosch@cdhlegal.com

