



EMPLOYING A DOMESTIC WORKER

A legal and
practical guide



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 **izwi**
Domestic Workers Alliance

SERI
socio-economic rights institute
of south africa

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SERI is a registered non-profit organisation and public interest law clinic that provides professional, dedicated and expert socio-economic rights assistance to individuals, communities, community-based organisations and social movements in South Africa. SERI conducts applied legal research, litigates in the public interest, facilitates civil society mobilisation and coordination, and conducts popular education and training. Visit SERI's website at: <https://www.seri-sa.org/>

Izwi is a network of domestic workers in Johannesburg that provides information and advice on employment issues, and assistance with individual cases. Izwi also provides training to domestic workers and collects and shares the stories and experiences of domestic workers. Visit Izwi's website at: <https://www.izwi.org.za/>

Together SERI and Izwi have collaborated over the last three years to raise public awareness about domestic worker issues.

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About This Guide



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This Guide has been written for employers of domestic workers in South Africa. An employer of a domestic worker is anyone who employs someone to perform domestic work in a private household. According to the Department of Employment and Labour, this includes gardeners, drivers, and people who take care of children, the elderly, the sick, the frail or persons living with disabilities. It also includes domestic workers who are employed or assigned by employment services.

The purpose of this guide is to:

- Inform employers of their rights and obligations in the domestic employment relationship according to the law;

- Provide practical advice towards creating a healthy working environment; and
- Support employers to improve their employment practices.

It is based on the legislation which regulates the domestic work sector, namely the Constitution; the Basic Conditions of Employment Act and Sectoral Determination 7; the Labour Relations Act; the Unemployment Insurance Act; the Employment Equity Act; the Occupational Health and Safety Act; the Compensation for Occupational Injuries and Diseases Act; and the National Minimum Wage Act. See the Appendix for more information on what the law says about domestic work.

This guide provides legal advice and guidelines on different phases of the employment relationship:

- Section 1, **“Beginning the domestic employment relationship”**, outlines the process of hiring a domestic worker from the interview process to signing the written particulars of employment, including the basic terms of employment which employers should know and comply with like wages, overtime pay and leave.
- Section 2, **“Managing the domestic employment relationship”**, provides guidance on how to maintain a mutually beneficial relationship including what do to when changes need to be made.
- Section 3, **“Creating a fair workplace”** provides guidance on how to create a fair workplace and discusses fair wages, social protections, pensions and other benefits.
- Section 4, **“Ending the domestic employment relationship”**, provides information on the rights and responsibilities of both parties at the end of the employment relationship under the law.
- Section 5, provides frequently asked questions and answers.
- Section 6, provides contact details and additional resources.
- The Appendix is the legal framework governing domestic work and provides sample documents.

How to use the Guide

This guide can be used as a ready reference to look up specific information about aspects of the employment relationship, by using the contents to page through the document or by clicking on the links when viewing the document in PDF. However, employers can also read entire sections to gain a better understanding of a particular aspect of the domestic employment relationship.

Several information boxes are found in the guide:



Examples
to illustrate the application of the law.



Important additional information and warnings.

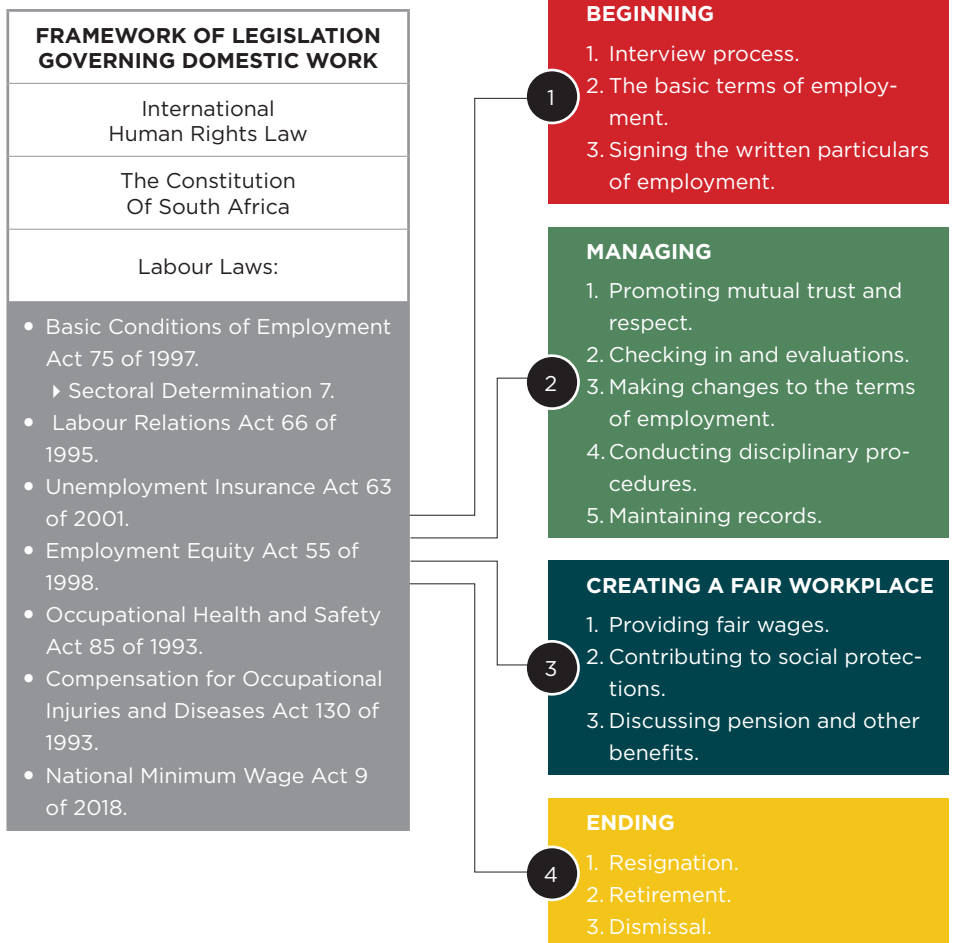


Advice and suggestions to employers on particular issues.

1. Regulation of the domestic employment relationship

At any point an employer is either beginning, managing or ending his or her relationship with a domestic employee. At every phase of the domestic employment relationship, its activities are regulated by a framework of legislation, details of which can be found in the Appendix.

Section 23 of the Constitution, the supreme law of the land, states that, “Everyone has the right to fair labour practices”. This right applies to everyone including foreign nationals, regardless of their legal status. This means that undocumented workers, like South African citizens and documented foreign nationals, enjoy the labour protections listed below.



Beginning the Domestic Employment Relationship



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This section of the guide provides guidelines about how to start the employment relationship from interviewing a prospective employee, to discussing the terms of employment and finally, entering into an employment contract. Clarifying the steps in the process when hiring a domestic worker should assist employers and domestic workers to build a positive relationship by starting out on the right foot.

1. Conducting the interview¹

An employer may identify prospective domestic workers in a variety of ways, including through employment agencies, classified advertisements online or on notice boards in public places and through recommendations from friends and family. It is important to conduct interviews with prospective candidates before one enters into an employment relationship, even where a candidate comes highly

¹ This section is drawn from Hand in Hand: The Domestic Employers Network, *Interviews*, Hand in Hand (2021), available at: <https://domesticemployers.org/resources-and-faqs/resources-interviews>

recommended by friends, family or an employment agency. Conducting an interview sets the tone for a professional working relationship, explores whether the two parties are a good match, and helps to avoid problems later on.

Before the interview, the employer should share information about the job and ask questions to make sure that an in-person interview is worthwhile for both parties. For example, the general size of the home when hiring a domestic worker to clean, or the number of children who need care when hiring a domestic worker to look after children, or certain skills and references required by the employer.

During the interview an employer should:

- Provide a full description of the job that is on offer and ask about their previous experience doing similar work.
- Ask for stories about their previous experience; what they found challenging and how they overcame those challenges.
- Ask if the candidate has any specific questions or concerns.
- Ask for references.
- Offer a paid trial after which a permanent offer might be made, if satisfied with the work done.

The employer should also try to get to know their potential employee by asking questions about their background, family life and neighbourhood. This will help to gain a broader understanding of the candidate's life and other responsibilities they may have, like childcare. An employer should in turn provide some background to their lives as well.

2. Understanding the terms of employment

If an employer is happy with a candidate and is seriously considering employing them, the two parties need to understand the terms of employment and discuss them. The terms of employment are the basic standards of employment set out in the Basic Conditions of Employment Act, Sectoral Determination 7 and other labour laws. Whatever agreement is drawn up by the parties must meet these minimum requirements or it will not be considered binding.

Below is a summary of the basic terms of employment which an employer should discuss with his or her domestic worker and on which the contract of employment is based. Information on the employment contract follows this section. This section will cover the following terms of employment in detail: working hours, meal breaks, rest periods, wages, deductions, overtime pay, public holidays, Sunday work, standby, night work, annual leave, sick leave, maternity leave and family responsibility leave.

3. The basic terms of employment

All terms of employment between an employer and employee must meet these minimum standards or be more favourable to the employee.

3.1 Working Hours

Sectoral Determination 7 states that domestic workers may not be required to work more than:

- 45 hours in any week;
- 9 hours in a day (if the domestic worker works for 5 days or less in a week);
- 8 hours in any day (if the domestic worker works for more than 5 days a week).

Anything more than the above is considered overtime. Unless it is agreed on in the employment contract, a domestic worker has the right to decline to work overtime, or on Sundays or public holidays. Further, a domestic worker may not work more than:

- 12 hours, including overtime, on any day;
- 15 hours overtime in a week.

A domestic worker must be paid extra for overtime hours, as well as work on Sunday or on public holidays. See page 9-10.

3.2 Meal Intervals

Sectoral Determination 7 states:

- A domestic worker is entitled to a one-hour break for a meal after five hours of continuous work. The interval may be reduced to 30 minutes by written agreement.
- During a meal interval, a domestic worker is permitted to perform duties that cannot be left unattended and cannot be performed by another domestic worker.

- For example, if a small child the domestic worker is looking after wakes up during the meal break, the domestic worker should attend to him or her. In this case the domestic worker must be paid for the meal interval.
- A domestic worker must be paid for any portion of a meal interval that is in excess of 75 minutes, unless the domestic worker lives at the workplace. The aim of this requirement is to protect live-out domestic workers from employers who might take advantage of them by requiring them to take an extended rest break during the course of the work day, but not paying them for that period,² which does not constitute time off because the domestic worker cannot engage in anything meaningful, unlike a live-in domestic worker.
- When a second meal interval is required because of overtime worked, the second meal interval may be reduced to not less than 15 minutes.
- The parties can agree to dispense with a meal interval if the domestic worker works less than 6 hours on a day.

² Verushka Reddy and Erwyn Durman, "Twelve things to know about rights that workers have to rest breaks in South Africa", *Global Workplace Insider* (19 December 2016), available at: <https://www.globalworkplaceinsider.com/2016/12/twelve-things-to-know-about-rights-that-workers-have-to-rest-breaks-in-south-africa/>

3.3 Rest periods

- **Daily Rest:** A domestic worker is entitled to a daily rest period of 12 consecutive hours. Both parties can agree to reduce the daily rest period to 10 hours for a domestic worker who lives on the premises whose meal interval lasts for at least 3 hours.
- **Weekly rest:** A worker is entitled to a weekly rest period of 36 consecutive hours. This must include Sunday, otherwise agreed to by both parties. This means that it is unlawful to require that a domestic worker work more than 5 and a half days straight.
- The parties can agree to extend the weekly rest period to 60 consecutive hours every two weeks instead of the weekly rest period of 36 hours every week.

3.4 Wages

The Minister of Employment and Labour announces the national minimum wage for domestic workers each year. Since March 2022, domestic workers are entitled to 100% of the national minimum wage. The minimum wage for 2024 is R27.58 per hour. See the Department's [media desk](#) for updated information about the minimum wage.

Most employers provide domestic workers with a monthly wage, therefore it is important for employers to ensure that their employee's hourly rate is at minimum wage or above. R27.58 roughly translates to R4,633.44 per month for a domestic worker who works fulltime (8 hours a day, 21 days a month on average).

A minimum wage is the lowest pay an employer can legally pay their employee. However, the minimum wage for domestic workers may fall below the poverty line, which according to Statistics South Africa is R1,417 per person per month.³ See page 23 for issues employers should consider when deciding on wages.

Employers are required by Sectoral Determination 7 to provide their employees with payslips. Copies of payslips should to be kept by an employer for 3 years. Payslips are important for confirming that overtime pay or pay for extra work like Sunday work are calculated correctly. Employees also need it for bank accounts and other administrative purposes. See page 63 for a sample payslip and page 21 for other records employers need to keep.

3.5 Deductions

An employer may make deductions from a domestic worker's wages. However, there are various types of deductions that are unlawful. An employer may not deduct any money from the employee's wages without their written permission. Below is a list of lawful and unlawful deductions:

³ Statistics South Africa, *National Poverty Lines*, Statistics South Africa (2022), p. 3.

LAWFUL DEDUCTIONS

- Deductions equal to the amount equivalent to the length of time a domestic worker was away on unpaid leave.
- 10% or less of a domestic worker's wage for a room or other accommodation. See page 30-32 about the requirements for accommodation provided to domestic workers.
- Deductions towards any medical insurance, savings, provident or pension fund of which the domestic worker is a member; trade union subscriptions; loans and rental. Employers may make payments to the relevant institution.
- Deductions that go to the Unemployment Insurance Fund (UIF). Employers are responsible for registering their employees for UIF. See page 24 for information about UIF.
- Deductions towards loans that an employer gave to a domestic worker. The deduction cannot exceed 10% of the wage due on the pay day concerned, toward the repayment.

UNLAWFUL DEDUCTIONS

- Deductions for hiring the domestic worker.
- Deductions for training the domestic worker.
- Deductions for work equipment or tools like cleaning supplies.
- Deductions for any clothing or uniform.
- Deductions for food given to the domestic worker while working.
- Deductions for breakages (for example dishes and electrical appliances). See below for more information on breakages.

SUGGESTION

Regular pay: Employees should be paid regularly, on the agreed upon day. Employers can create an automatic payment for domestic workers, similar to what is done for children's school fees and medical aid.



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Deductions for damage or loss caused by the employee may be made only if:

- The employer has followed a fair procedure and given the domestic worker a chance to show why the deduction should not be made;
- The domestic worker agrees in writing; and
- The total deduction is not more than 25% of the domestic worker's net pay.

It is a criminal offence to deduct money for UIF or other benefits from the employee's wages and not pay it over to the related fund.

3.6 Overtime Pay

- A domestic worker can refuse to work overtime if the circumstances do not suit him or her and the employer would have to make alternative arrangements (unless overtime was part of the original work agreement). Overtime rates will apply every time work is performed overtime even if it is in the employment contract.
- According to Sectoral Determination 7 overtime pay must be at least one and a half times ($\times 1.5$) the normal wage, unless it is on Sunday or public holiday, in which case the pay must be doubled. See Sunday work and public holidays below.
- Overtime ordinarily, should be paid in money, unless the domestic worker waives this. A domestic worker can also choose to exchange a lower overtime rate (but not anything less than the

ordinary wage) for 30 minutes time off for every hour of overtime worked. This will be paid time off. For example, if a domestic worker works 2 hours overtime, he or she would receive the normal wage per hour plus 1 hour time off with full pay. This practice, however, is uncommon.

- A domestic worker can also give up overtime cash payment in exchange for at least 90 minutes off for each hour of overtime worked. This time off must be given to him or her within a month of being entitled to it. For example, if a domestic worker works 2 hours overtime one day, he or she would then get at least 3 hours off sometime during that month. If both employer and employee agree for the domestic worker to take that time off at a later stage, it needs to be put in writing. This will only be valid for a year.

3.7 Public Holidays

An employer may not require a domestic worker to work on a public holiday. Such work must be agreed to by both parties.

If a domestic worker agrees to work on a public holiday then they are entitled to double the daily wage. Any employee who does not work on the public holiday is still entitled to their full pay on the normal pay day.

- The Basic Conditions of Employment Act also states that an employee can ask for 2 days of paid leave as compensation for public holiday work.

3.8 Sunday Work

- If Sundays are not part of ordinary working hours, then the wage must be **double** for the hours worked on Sundays.
- If Sunday work is part of a domestic worker's ordinary working hours, according to his or her contract, then the wage for Sunday work must be **1.5x** the normal hourly rate.

During this period the domestic worker is allowed to rest and sleep, and only permitted to perform work which is required to be done without delay i.e. look after the children once the employer has left.

However they are paid for the entire period they are there.

3.9 Standby

According to Sectoral Determination 7, standby for domestic workers means any period between 8pm and 6am when a domestic worker is needed at the workplace and is permitted to rest or sleep but must be available to work if necessary.

An employer may only require or permit a domestic worker to be on standby if it is agreed in writing and if the domestic worker is compensated by the payment of an allowance per shift.

An employer may only require or permit a domestic worker on standby to perform work which is required to be done without delay.

The regulations on standby are easy to understand in the context of live-in domestic workers who would be close by to take up duties should it be necessary. Live-in workers need to be compensated for standby even if they live on the property of their employer because they are not free to leave the workplace or engage in activities which will get in the way of their performing work when needed. Regardless, a domestic worker on standby is paid.

In the case of live-out workers the clause on standby usually means that either a) the domestic worker must be willing to be at the workplace between 8pm and 6am or b) travel arrangements need to be made to get the domestic worker to the workplace when necessary. In this situation, the employer and domestic worker need to consult openly and apply the principles of reasonableness and fairness.

EXAMPLE

For example, if there is a chance an employer will need to leave his home in the evening to pick up his wife from the airport should she not find a taxi, he may ask the domestic worker to be on standby to look after the children when he leaves.





PLEASE NOTE:

- Compensation for standby according to Sectoral Determination 7 is at least R30 per shift⁴. This amount however has not changed since 26 November 2014. Employers therefore should provide a reasonable allowance.
- According to Sectoral Determination 7, an employer may not require or permit a domestic worker to be on standby more than 5 times per month or 50 times per year.
- When the period of standby exceeds 3 hours, an employer should pay the domestic worker his or her overtime rate or grant paid time off. See the section on overtime on page 9.

be asked to work at night under special circumstances.

Although, night work is uncommon in the domestic work sector, according to the BCEA night work is only permitted if:

- An agreement is reached with the employee to do so.
- Adequate public transport is available between the employee's place of residence and the place of employment at the beginning and the end of the shift.
- The employee is paid an allowance. The amount of the allowance must be agreed on.

Where there is no public transport, it is reasonable that the employer may be expected to bear the responsibility to provide transport to the night shift employee.

3.10 Night Work

Night work is entirely different from overtime work and standby and is regulated differently by the Basic Conditions of Employment Act (BCEA).

Night work is performed after 6pm and before 6am the next day. The ordinary hours of work fall during this period. An example of a domestic worker who does night work is a night nurse, someone who looks after an infant or toddler overnight. They are specifically employed to work between 6pm and 6am however there are instances where a domestic worker who usually works during the day might

On the day following the night shift, if the employee works for a period of longer than 1 hour between 10pm and 6am, and this happens at least five times per month or 50 times per year, then the employer is required to comply with [sections 17\(3\) and \(4\) of the BCEA](#) which include the right for the employee to undergo a medical examination.

These sections state that an employer needs to inform an employee in writing or verbally about this arrangement and take care to inform them of any health and safety hazards associated with working night shifts.

Since night work is uncommon for domestic workers, it is recommended that employers consult a labour consultant to understand the full terms of night work.

⁴ See Sectoral Determination 7, Updated to 26 November 2014, available at: http://www.saflii.org/za/legis/consol_reg/sd7dws457/



3.11 Annual Leave

A domestic worker is entitled to:

- 21 consecutive days of fully paid leave for each year or;
- 1 day of leave for every 17 days worked or;
- 1 hour for every 17 hours worked;
- Their leave pay before they go on leave.

When discussing the terms of employment, employers should clarify that leave pay is the amount that the domestic worker would have been paid anyway if he or she worked during that period; that is, leave pay is not additional to monthly wages.

The employer and domestic worker need to agree when leave will be taken. If both parties cannot agree, it is up to the employer to decide. However the leave must not be given later than 6 months after the employee has completed a year of employment.

An employer may not:

- Count public holidays as part of leave days or;
- Give annual leave at the same time as sick leave, maternity leave or any other type of leave;
- Give annual leave during a notice period if a contract is terminated;
- Pay a domestic worker instead of granting paid leave.

SUGGESTION:

To avoid misunderstandings, it is good to have leave dates or requests for leave agreed upon in writing, whether in a notebook or on WhatsApp or SMS.

An employer should keep a record of sick leave taken too. See page 21 for records employers should keep.

3.12 Sick leave

According to Sectoral Determination 7, during the first 6 months of employment, a domestic worker is entitled to 1 day's paid sick leave for every 26 days worked.

Afterwards it is calculated for every 3 year period:

For every 3 years a domestic worker is employed with the same employer, they have a right to an amount of paid sick leave equal to the days they would normally work during a period of 6 weeks.

- For example, if a domestic worker works 5 days per week for an employer, he or she is entitled to 30 days sick leave over the 3 years of his or her employment (5 days per week x 6 weeks). If she works 1 day per week, she is entitled to 6 days of sick leave over three years.

After 36 months of employment, a new sick leave cycle begins.

An employer can request that the domestic worker produce a medical certificate in order to receive paid sick leave when absent from work:

- for more than two days in a row; or
- on more than two occasions during an 8-week period.

A medical certificate can be from a doctor, a traditional healer, community health worker, psychologist or a qualified nurse.

PLEASE NOTE:

Employers cannot deny their employees sick leave under any circumstances. If an employer suspects dishonesty, then they should request the employee to provide a medical certificate.



- The law does not require an employer to pay an employee during her maternity leave. However the law does require employers to register their domestic workers for UIF, which includes maternity benefits.
- A domestic worker on maternity leave can claim maternity benefits from UIF for up to 17 weeks. See page 24 for more information about UIF.
- An employer may not ask or permit a pregnant domestic worker or one who is nursing to perform work which is hazardous to her health or the health of her child.

It is illegal to dismiss a domestic worker because she is pregnant or has given birth.

3.13 Maternity Leave

- According to Sectoral Determination 7, a woman domestic worker has the right to at least 4 consecutive months of maternity leave, beginning at any time from 4 weeks before the expected date of birth, unless otherwise agreed.
- The domestic worker should inform an employer in writing (if they are able to) when they want to start the maternity leave and when they intend to return to work. She may not be required to work for 6 weeks after the birth of the child.
- A domestic worker who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for 6 weeks after the miscarriage or stillbirth, whether or not she had commenced maternity leave at the time of the miscarriage or stillbirth.

3.14 Family Responsibility Leave

A domestic worker who has been employed for longer than 4 months and works at least 4 days a week for the employer has the right to paid family responsibility leave:

- When his or her child is born.
- When his or her child is sick.
- In the event of death of a spouse or life partner, parent or adoptive parent, grandparent, child or adoptive child, grandchild or sibling.

A domestic worker has the right to 5 days family responsibility leave during each 12 months of employment. He or she must be paid their normal wage during this period, on the usual payday. An employer may require reasonable proof of the birth, illness or death for which an employee requests leave.

4. Signing the written particulars of employment

According to the Basic Conditions of Employment Act (BCEA) and Sectoral Determination 7, an employer **must** supply a domestic worker, when he or she starts work, with a “written particulars of employment”. A written particulars needs to include the following:

- The full name and address of the employer;
- The name and occupation of the domestic worker, or a brief description of the work for which he or she is employed;
- The place of work, and where he or she is required or permitted to work;
- Date of employment;
- The domestic worker’s ordinary hours of work and days of work;
- The domestic worker’s wage or rate and method of payment;
- The rate of pay for overtime work;
- Any other cash payments he or she is entitled to;
- Any payment in kind he or she is entitled to and the value of payment in kind (this includes any kind of benefit, including accommodation, travel allowance, food allowance etc.);
- How frequently wages will be paid;
- Any deductions to be made from wages;
- The leave he or she is entitled to;
- The period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate.

The written particulars form the foundation of an employment contract, which could also include additional terms to the agreement between the two parties

for example the rules and contributions for medical aid benefits.

The written particulars of employment needs to be signed by both parties and should be reviewed each year. Both parties should keep a signed copy.

It is fair to allow the domestic worker to take the document home to review it before signing it, especially if the contract is not written in the domestic worker’s home language.

Please note that if no written agreement is in place, employers are still liable to uphold labour regulations as well as terms of employment that were agreed upon verbally.

See page 59 for a sample written particulars of employment from the Department of Employment and Labour.

Sectoral Determination 7 states that other conditions of employment can be included however any conditions included in a contract of employment which are less favourable than those set by the Determination would be invalid.

There are legal limitations to changing the job descriptions after a verbal or written agreement has been made. Please see page 18 to read about changing the terms of employment.



Amy Tekié, Izwi

SUGGESTION:

It is never too late for an employer to put a verbal agreement in writing. When doing so both parties need to make sure that the original terms of employment, including the original start date of the employment relationship, are what is recorded. That way the written agreement does not constitute a new agreement—simply the same verbal agreement in written form. If an employer wants to make a change to the terms of employment when putting a verbal agreement into writing, they should get the agreement of the domestic worker. See page 18 about changing the terms of employment.



Once the written particulars have been signed by both parties, it is beneficial for the employer to start an employee file. See what records go into such a file on page 21.

Managing the Domestic Employment Relationship



Jonathan Torgovnik, Getty Images

Once the employment relationship has begun, both parties need to manage it. This section will discuss four areas of attention for both parties to maintain a healthy and mutually beneficial working relationship, namely: building a relationship based on mutual respect, check-ins and evaluations, what to do when changes need to be made, disciplinary procedures and maintaining records.

1. Promoting mutual trust and respect

The domestic employment relationship, like any other employment relationship, must be based on mutual trust and respect. The home environment, an intimate space not often associated with “work”, presents unique challenges.

Often disagreements between an employer and a domestic worker are based on misunderstandings. These might be due to differing expectations and assumptions being made and misinterpreting actions and words due to cultural differences.

Domestic workers interviewed by Izwi Domestic Workers Alliance offered the

following tips for employers to promote healthy communication:

- Simple acts, like a friendly greeting in the morning when they arrive, go a long way.
- Employers should make the time to sit down together to speak about issues, rather than doing it as he or she walks out the door in the morning.
- Both parties should keep in mind that WhatsApp and text messages can often be misread, or read in a different tone than was intended.
- Employers should address issues they are unhappy with as soon as possible.
- Many domestic workers find it very difficult to approach their employer about things that they are unhappy about, even when they have a really good relationship. Employers should ask questions regularly and do their best to create an open environment.
- Provide positive feedback. Employers should provide positive feedback whenever it is deserved. A simple “thank you” or “job well done” go a long way.
- Employers should understand that domestic workers have the right to decline requests which fall outside of their employment agreement.

Bullying or verbal harassment or intimidation is not uncommon in the domestic employment relationship. In fact, domestic workers report that one of the most difficult aspects of their work is how some employers treat and speak to them.

The Commission for Conciliation, Mediation and Arbitration (CCMA) describes harassment as “an act or

omission directed towards an individual at the workplace that is unwelcome, unwanted and has a destructive effect”. Harassment is recognised as a form of unfair discrimination and employees can take employers to the CCMA or the Equality Court. The CCMA gives the following as examples of harassment:

- Bullying.
- Insulting someone particularly on gender, race or disability grounds.
- Ridiculing or degrading someone.
- Picking on them or setting them up to fail.
- Exclusion or victimisation.
- Unfair treatment based on race, gender, sexual orientation, pregnancy, age, disability, religion, HIV status.
- Overbearing supervision or other misuses of power or position.
- Unwelcome sexual advances like touching, flirting, or standing too close.
- Making threats or comments about job security without foundation.

The above are examples of abuse of power by the employer. It is also an abuse of power to disregard the safety and well-being of their employee for example, forcing the domestic worker to leave work late knowing that she would have to travel after dark. Another example is an employer placing the domestic worker in a position they feel is degrading, for example asking them to share a room with pets (when sharing sleeping quarters with animals could be considered degrading in some cultures).

2. Checking-in and conducting evaluations

Setting time aside for regular check-ins is crucial to maintaining a mutually beneficial working relationship.

- It is a good idea to include an annual evaluation in the contract of employment. An evaluation is an in-depth conversation between an employer and employee where both can reflect on the strengths and challenges, to bring up major concerns and draw up plans of action to resolve the issues brought up in the discussion.
- Employers can also schedule brief check-ins with domestic workers where both parties can ask questions, provide feedback and resolve minor issues together. These could be scheduled weekly, monthly or quarterly depending on what is useful for both parties.

TIPS FOR CONDUCTING AN EVALUATION⁵



- Provide the worker with advance notice of the evaluation so he or she has time to consider any points they might want to raise.
- Always begin by thanking your employee and expressing your appreciation for their contribution to your family life. Highlight positive aspects of their work.
- Then move on to areas of their work where you feel there is room for improvement. Referring to the employment contract is useful.

- Then give your employee a chance to tell you about areas for improvement. You would have to reassure them that you want them to express themselves fully. Ask about issues that make it difficult to fulfil their responsibilities.
- If there are any major changes you want to introduce to the terms of employment an evaluation gives you the opportunity to do it. See below about making changes to terms of employment.
- Together, draw up an action plan that addresses the concerns raised in the conversation. Again, express your appreciation for their work.

3. Making changes to the terms of employment

Any changes to the employment contract, even when the contract is verbal, need to be discussed by both parties and a new agreement reached. **This means that an employer may not unilaterally implement changes in the employment relationship without first discussing it with their employee.** These include changes to the type of work for which they were employed, place of work, working hours, wages and leave entitlement. Additionally, terms of employment have to be in line with or more favourable than the standards set out in labour laws. The following scenarios may help to illustrate this:

⁵ These tips are adapted from Hand in Hand: Domestic Employer Network, Regular Evaluation, Hand in Hand (2021), available at: <https://domesticemployers.org/resources-and-faqs/resources-regular-evaluation/>

3.1 Unlawful changes to terms of employment

Thembi, an employer, meets with a financial adviser and is advised to reduce her expenses to remain financially sustainable. She decides that one of the expenses she can cut back on is the wages for her domestic worker, Lerato. At the end of the month, instead of depositing R3,000 into Lerato's account, she deposits R2,000, which she feels is more affordable. When Lerato enquires about the missing R1,000, Thembi informs her that, this amount is what she can afford.

3.2 Lawful changes to terms of employment

Thembi meets with a financial adviser and is advised to reduce her expenses to remain financially sustainable. She decides that one of the expenses she can cut back on is on the wages for her domestic worker, Lerato. After making this decision Thembi arranges to meet with Lerato to explain the new proposed changes due to her personal circumstances. She explains to Lerato that she wishes to reduce her wages from R3,000 to R2,000 in the next month, keeping the daily rate of R250 (for 8 hours). Since wages and working hours are connected, that would mean that Lerato will go from working three times a week to twice a week. Thembi then asks for Lerato's thoughts and if she is happy with working two days per week; with the alternative being that Thembi would look for a new employee who would accept the new terms. Although the subtraction of R1,000 negatively impacts on Lerato's monthly budget, she decides she is happy

working for Thembi since they have a good relationship. Lerato asks Thembi if she knows of any of her friends looking for a domestic worker to come in one day a week.

PLEASE NOTE:

This does not mean employers may not make changes to suit their needs, as long as the changes do not significantly change the employment contract or change the essential nature of the work. For example, an employer may:

- Request that the domestic worker take her meal break at 12pm instead of 1pm because it is more convenient.
- Request that the domestic worker begin with laundry on a specific day instead of cleaning because the employer is preparing to travel.
- Request that the domestic worker come on Tuesday instead of Wednesday because the employer is expecting visitors on Tuesday evening (this of course will depend on whether the domestic worker is available and willing).

There are a number of reasons employers need to make changes to the terms of employment, for example the young children a domestic worker looks after begin to attend crèche on certain days and no longer need babysitting 5 days a week.

What employers need to remember is whenever they want to make a change which alters the terms originally agreed on by both parties in any way, there needs to be a discussion and the new terms agreed on must be **fair** and in line with labour laws.

When proposing changes, employers need to practice fairness. In general this means that:

- If an employer wants to reduce wages, the domestic worker's hours would be reduced proportionally.
- If an employer wants to increase the workload, the domestic workers' hours or days of work would need to be increased and therefore their wages would need to be increased proportionally.

CHANGES ASSOCIATED WITH THE IMPLEMENTATION OF THE NATIONAL MINIMUM WAGE

The purpose of the National Minimum Wage Act (NMWA) is to advance economic development and social justice by a) improving the wages of lowest paid workers; b) protecting workers from unreasonably low wages; c) preserving the value of the national minimum wage; d) promoting collective bargaining; e) supporting economic policy; and f) reducing wage inequality. The national minimum wage is the lowest pay an employer can legally provide to their employee.

In implementing the national minimum wage, it is an unfair labour practice for an employer to unilaterally alter hours of work or other conditions of employment. In other words, an employer may not reduce wages or increase working hours just because their worker's wages are higher than the minimum wage.

4. Conducting a disciplinary procedure

In any employment relationship, the employer should ensure that his or her employee is aware of the rules and reasonable standards of behaviour which are expected of them in the workplace.⁶ The employee in turn should comply with these rules and procedures.

However, even in good employment relationships, problems can arise which cause tension in the work environment. It is important for employers to understand the difference between poor work performance and misconduct: *poor work performance* has more to do with an employee failing to achieve a required standard while *misconduct* is when a rule or standard which has been set by an employer has been broken.⁷ Poor work performance issues are dealt with through counselling and guidance while misconduct is dealt with through a disciplinary procedure.

⁶ CCMA, "Disciplinary Procedure", CCMA (2018), available at: <https://www.ccma.org.za/Advice/Information-Sheet>

⁷ South African Labour Guide, "Counseling Procedure – Incapacity - Poor Performance", South African Labour Guide (2021), available at: <https://www.labourguide.co.za/poor-performances/233-counseling-procedure-incapacity-poor-performance>

IMPORTANT INFORMATION

The information on how to counsel an employee who fails to meet the required standards and how to conduct a disciplinary procedure appears in the “Ending the Domestic Employment Relationship” section of the guide. This information appears there to outline the requirements of “substantive and procedural fairness” in a dismissal.

While the issues of poor work performance and misconduct are addressed in depth in that section of the guide, employers should note that attempts to address poor work performance and disciplinary procedures are a part of *managing* an employment relationship; i.e. they are used to correct behaviour and improve work performance, and NOT used to punish the employee or as a stepping stone towards dismissal.

Please see page 36 for more information on poor work performance and page 39 for more information on misconduct.

5. Maintaining records

Having a contract, job description and payslips help to create a secure environment for both the employer and employee. Employers should create an employee file where they keep:

A copy of Sectoral Determination 7.

- A copy of signed employment contract.
- Copies of payslips (for 3 years).
- Notes of a) overtime worked; b) week-end work; c) deductions; d) sick leave taken; e) leave taken; and f) any other issues which arise which need to be recorded like written warnings or loans given to the domestic worker.

Employers should also provide their employees with a copy of Sectoral Determination 7, a signed employment contract and all original payslips.

Other administrative tasks employers need to manage are:

- Monthly contributions to the Unemployment Insurance Fund (UIF).
- Annual contributions to the Compensation Fund.
- Other contributions agreed to in the employment agreement.

Creating a Fair Workplace



Amy Tekié, /zwi

Meeting the *minimum* standards of employment in labour law is only the beginning; part of managing the domestic employment relationship is the creation of a fair workplace. The topics of unemployment insurance, compensation for occupational injuries and diseases and accommodation for live-in workers covered on page 24, 25 and 30, are based on labour laws. The rest of the section is drawn from labour laws and contains recommendations based on best practices by employers in the sector.

The responsibility to create a fair and equitable workplace lies with the employer. The domestic employment

relationship is unique and it is important for those who employ domestic workers to understand the dynamics which exist in the sector:

- The International Labour Organization (ILO) recognises domestic workers as a marginalised group of workers, frequently denied access to decent work, which is defined as “productive work undertaken in conditions of freedom, equity, security and human dignity”.⁸

Domestic workers deserve decent working conditions, which according to the ILO, includes “... a fair income, security in

⁸ International Labour Organization (ILO), Report of the Director General: Decent Work, ILO (June 1999), available at: <https://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm>

the workplace and social protection for families...”⁹

The domestic work sector is highly “feminised”; in South Africa the majority of the country’s 1 million domestic workers are black women.

- The relationship between employers and domestic workers is profoundly unequal with employers wielding more power. The power asymmetries in the domestic employment relationship are related to race, class, gender and nationality.
- Domestic workers’ vulnerability is intensified because their workplace is in the private home, hidden behind closed doors. This leaves many domestic workers vulnerable to exploitation and in some cases physical, mental and sexual abuse at the hands of employers.
- Although the sector is regulated by labour legislation, there are high levels of non-compliance amongst employers. In addition, the Department of Employment and Labour’s (DoEL’s) enforcement mechanisms are weak. Domestic work is therefore characterised by poor working conditions including long working hours without overtime pay and low wages.

Domestic workers make up a significant proportion of the workforce in South Africa and play an important role in allowing for the smooth running of households and for people to pursue their careers and earn a living.

The following are recommendations on fair wages, social protections and other benefits.

⁹ International Labour Organization (ILO), Decent Work, ILO (2021), available at: <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>

1. Fair wages

The experience of low-income earners worldwide has led to a debate about **minimum wage** versus living wage. A **living wage** is the amount necessary to meet the basic needs of an unskilled labourer with an average family size of four.

According to Statistics South Africa, the national poverty line is R1,558 per person per month.¹⁰

This amount includes the food poverty line, R760 per person per month, the amount of money that an individual will need to afford the minimum required daily energy intake. The national poverty line includes the average amount derived from non-food items of households whose food expenditure is equal to the food poverty line.

According to another study, it cost:¹¹

- R3,694.62 in March 2024 to feed a family of four a basic nutritional basket of food;
- R1,680 in March 2024 for public transport if one person (working on average 21 days a month) uses two taxis daily (based on transport prices in Pietermaritzburg).

This comes to a total of R5,374.62 and is not inclusive of other household expenses like school fees, water and electricity and other household costs.

An organisation called Open Up has developed a living wage calculator for

¹⁰ Statistics South Africa, National Poverty Lines, Statistics South Africa (2023), p. 3.

¹¹ Pietermaritzburg Economic Justice and Dignity Group, Household Affordability Index, March 2023. Although the research conversations, data collection and analysis are located in Pietermaritzburg, the Household Affordability Index provides a reasonable sense of the affordability crisis and inflationary pressures for working class households across South Africa.

employers to assist them in determining what is fair to pay their domestic workers, at living-wage.co.za.

Naturally, an employer will have a budgetary limit to how much they are able to spend on domestic work. For example, an employer might only be able to spend R3,000 on domestic work each month. There is nothing wrong with this. However it means that the employer would have to accept that the domestic worker can only be required to work for a limited number of hours per week, so that he or she is able to find other work to supplement their income.

PLEASE NOTE

The minimum wage for domestic workers in 2023 is R25.42 See page 7 for more information.

2. Social protections

Social protection, also known as social security, is a basic human right which responds to the universal need for protection against certain life risks and social needs,¹² for example medical aid, unemployment insurance, workmen's compensation and maternity benefits. Social protections are an important investment in the well-being of all employees and the community as a whole.

2.1 Unemployment Insurance

An employer of a domestic worker is required by law to contribute to the

Unemployment Insurance Fund (UIF). The purpose of the UIF is to give short-term relief to people when they become unemployed or unable to work due to illness, maternity leave or adoption leave. It also provides support to the dependents of a contributor who has passed away.

Quick facts about UIF

- The responsibility to register both employer and employee with the UIF lies with the employer.
- Once registered each month, the employer pays 2% of the domestic worker's wages to the Fund. 1% can be deducted from her wages as the workers contribution, and 1% is an additional contribution paid by the employer.
- Any domestic worker who works more than 24 hours a month for an employer is covered by UIF.
- Domestic workers employed by multiple employers are allowed to be registered for each of the jobs they do.
- Since 1 March 2018, employees who are foreign nationals are included in the Unemployment Insurance Contributions Act. This means both employers and foreign national employees are required to contribute towards UIF.

HOW TO REGISTER FOR UIF

Employers can register online on the Department of Employment and Labour's website, telephonically, in person at the nearest Labour Centre, through the post or via fax. They have to fill in the relevant forms which include information about both the employer and employee.

¹² ILO, International Labour Standards on Social Security, ILO (2021), available at: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/lang--en/index.htm>

They will then be given an employer's reference number.

Visit <https://www.ufiling.co.za/> to register online.

Visit http://www.labour.gov.za/ufif_how_toregister-with-the-ufif to find out about alternative ways to register for the UIF.

2.2 Compensation for Occupational Injuries and Diseases

The Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA) is a law that provides for the payment of compensation to employees who suffer injuries or contract diseases while performing their work duties. In the case of a death as a result of a work-related injury or disease, COIDA allows for the compensation to the deceased employee's dependents. Employers are required by the Occupational Health and Safety Act 85 of 1993 to provide and keep, as far as is reasonably possible, a working environment that is safe and does not put the employee's health at risk.

From 19 November 2020 employers of domestic workers are required to make contributions to the Compensation Fund. Their employee then can claim from the Compensation Fund if they become ill, are injured, disabled or die while performing their work duties. According to a report on the Fund by National Treasury, COIDA provides a system of "no-fault" compensation, which means that an employee does not need to prove that the injury is the employer's or any other person's fault in order to receive compensation. COIDA also prevents employees from suing their employers for

damages. Registering and contributing to the Compensation Fund protects both employer and employee.

Quick facts about COIDA¹³

- There are four main types of compensation payments under COIDA:
 - Payments for temporary disability (where the employee eventually recovers from the injury or illness);
 - Payments for permanent disability (where the employee never fully recovers);
 - Payments for death (paid to dependents of the employee); and
 - Payments for medical expenses and others.¹⁴
- Compensation to injured employees can come in the form of lump-sum payments, periodical payments or monthly pension payments depending on the circumstances of each case.
- Similar to the Unemployment Insurance Fund (UIF), it is the responsibility of employers to register their employees and make contributions to the Compensation Fund.

TO REGISTER EMPLOYERS MUST SUBMIT

- A completed CF-1E Form, found online (Application for the registration of the domestic worker);
- Proof of the employer's residential address; and

¹³ Luke Daniel, "Domestic workers' compensation: Here's how much employers are required to pay per year", Business Insider (12 March 2021), available at: <https://www.businessinsider.co.za/domestic-workers-compensation-heres-how-much-employers-will-need-to-pay-to-the-fund-2021-3>.

¹⁴ Labour Guide, "Injuries on Duty", Labour Guide, available at: <https://www.labourguide.co.za/injuries-on-duty/540-guidelines-for-claims>.

- A copy of the employment contract; physically at the nearest Labour Centre; to registrationCF@labour.gov.za or CFCallcentre@labour.gov.za or register online through the Department of Employment and Labour's [COIDA portal](#).

a) Return of Earnings

- Employers pay an amount to the Compensation Fund annually. Each year employers need to determine the annual payable amount, which is calculated according to the employee's annual earnings. Employers have to file Return of Earnings (ROE) report once a year before 31 March to the Commissioner, showing the amount of earnings paid to the employee from 1 March the previous year to 28/29 February the current year.¹⁵
- Earnings are defined as all regular payments made before deductions and include overtime of a regular nature and bonuses of any kind.¹⁶ See the [Return of Earnings](#) form for more information.
- The Return of Earnings is then used by the Compensation Fund within a standard assessment formula to determine the amount the employer should pay. Employers pay this amount directly to the Compensation Fund.
- Domestic workers are listed as Class M, subclass 2500 which has an assessment rate of 1.04. Employers can calculate their yearly payments by using the following formula: *annual earnings divided by 100 x 1.04 = annual assessment payable*.

¹⁵ Sage Business, "OID Detail", Sage Business (2020), available at: https://customerzone.sagevip.co.za/download/Tax%20Year%20End/OID_Report_Detail_2020_SBCPP.pdf

¹⁶ Department of Labour, "Government Gazette No. 42351", Department of Labour (March 2019), available at: https://www.gov.za/sites/default/files/gcis_document/201903/42351gon514.pdf

Generally, employers are required to register their employees within seven days of the first day of work, however given the recent inclusion of domestic workers in COIDA employers are required to register as soon as possible.



EXAMPLE

An employer who pays a domestic worker R3,750 per month between March and the next February will pay R468 to the Compensation Fund that year:

Annual earnings: $R3,750 \times 12 = R45,000$
 $R45,000 / 100 \times 1.04 = R468$

If an employee is given an annual bonus, then that needs to be included in the annual earnings. For example, if the employer gives the domestic worker a performance bonus of R2,000 then annual earnings would be calculated the following way:

$R3,750 \times 11 = R41,250 + R5,750 [R3,750 \text{ (Normal December salary)} + R2,000]$
 $= R47,000$

The employer would then need to pay the following to the Compensation Fund:
 $R47,000 / 100 \times 1.04 = R488.80$

b) Claiming from the Compensation Fund¹⁷

The six steps below describe the process for submitting claims physically, via fax or email, but can also be used to understand the [online](#) claiming process in which case claim forms are submitted online and documents uploaded, using an example of a domestic worker injured at work.

¹⁷ This section is adapted from Labour Guide, "Claiming procedure for injuries on duty", Labour Guide, available at: <https://www.labourguide.co.za/injuries-on-duty/177-claiming-procedure-for-injuries-on-duty>

The Department of Employment and Labour encourages online registrations and claims for faster turnaround and feedback.

Lerato Mogale works for five days a week as a domestic worker for Elaine Smith, who lives with her husband Greg and two children. Lerato's work includes cleaning, doing laundry, ironing and preparing food. On 15 March 2021 while carrying the laundry basket down the stairs, Lerato slipped and fell, injuring her ankle. Below is a step by step account of how Lerato and her employer Elaine dealt with the workplace injury.

1

The employee should give the employer written or verbal notice of the injury as soon as it happens.

It is advised that employees report the accident to the employer as soon as possible, before his or her shift ends, and avoid leaving the workplace until the report has been made. The employer should then complete the first form, the W.Cl.2 form (called the Notice of Accident and Claim for Compensation) within 7 days of the notice to the Compensation Commissioner. The form has two identical parts, A and B. The employer should fill out both parts and give part B to the medical practitioner where the employee is receiving treatment.

When Lerato's accident happened, Elaine and her husband Greg were home. After her fall, Lerato was in a lot of pain and told them that she thought that her ankle might be broken. Greg then rushed Lerato to the hospital where she waited to be seen by a doctor. While Lerato was at the hospital, Elaine began the paperwork to claim from the Compensation Fund. Elaine went to check up on her and gave her Part B of the W.Cl.2 form and told her to give it to the doctor and inform him or her that the injury happened at the workplace.

2

After completing the W.Cl.2 form, the employer should send it, along with a certified copy of the employee's I.D and the first medical report, the W.Cl.4 form, if it is available, to the Compensation Commissioner. It is good practice for the employer to prepare a list of witnesses to the accident to aid the investigation.

Later on 15 March, Lerato saw Dr Mazibuko who assessed her injuries and ordered an x-ray. The x-ray revealed that Lerato had a bone fracture and although she would not need surgery, she would need to be fitted with a plaster cast and use crutches to walk. Dr Mazibuko indicated that Lerato would not be able to return to work for at least 6 weeks. Lerato was fitted with a back slab cast, ordered to be on bed rest and asked to return on the 18 March to have her full plaster cast fitted.

After her doctor's visit Lerato informed Elaine of her conversation with Dr Mazibuko. Elaine then outlined the next steps to be taken to claim compensation. She assured Lerato that as an employer she was obliged to continue compensating her for the first 3 months of her absence from work, as this is required by the law (the Fund repays employers), and that she would print out all the forms the doctor would need to fill in and give them to Lerato to give to the doctor on the 18 March. Elaine also informed Lerato that she would be in touch to get more information and documentation from her, like a certified copy of her I.D, banking details and proof of residence, which would be needed at a later stage.

Elaine then sent the W.Cl.2 form and a certified copy of Lerato's I.D to the Compensation Commissioner on 16 March the day after the accident.

3

The medical practitioner should fill out the first medical report, the W.Cl.4 form, and hand it to the employee or send it directly to the employer within 14 days from the date of the first consultation. The employee is not responsible for medical costs; the medical practitioner claims from the Compensation Fund. If an employee seeks a second medical opinion however, then he or she is responsible for those costs.

On 18 March Dr Mazibuko filled out the first medical report (W.Cl.4 form), attached the x-ray report and gave it to Lerato. Lerato arranged to give the form to Elaine who immediately forwarded it to the Compensation Commissioner.

4

After receiving the forms the Compensation Commissioner will register the claim and send the employer the W.Cl.55 form (called the acknowledgement postcard).

A claim number will be provided on the postcard which should be used for all paperwork. After the Commissioner receives the doctor's report (W.Cl.4), he will make a decision about the claim: if the Commissioner accepts that the injury did indeed occur during the course of the employee's work, then he will send the employer another form, W.Cl.56, called the claim postcard. In the case that the Commissioner does not issue the W.Cl.56 form, it means that he has not accepted the claim and no payments will be made. If the employee disagrees with the decision, he or she can appeal the decision within 90 days by submitting the W929 form to the Commissioner.

In Lerato's case the Compensation Commissioner accepted liability for the injury and Elaine filled out the W.Cl.56 form.

5

If the injury lasts a long time, then the medical practitioner should fill in a progress medical report called the W.Cl.5 form. A progress report must be sent to the Compensation Fund on a monthly basis until the employee is able to return to work.

Lerato was booked off for 6 weeks in total until she was able to return to work. At the 4 week mark Lerato saw Dr Mazibuko, who submitted a progress medical report (W.Cl.5) as an update. Elaine forwarded this report to the Commissioner.

6

Once the medical practitioner is satisfied that the employee is fit to return to work then the medical practitioner will issue a final medical report.

The medical practitioner should fill out another W.Cl.5 form (the same form as the progress report) which should be sent to the Compensation Commissioner by the employer. In the report the doctor will state either that the employee is fit to return to work or that the employee is permanently disabled.

After 6 weeks, Dr Mazibuko was satisfied that Lerato was fit to return to work. She filled out the W.Cl.5 form and handed it to Lerato to give to Elaine, who then forwarded it to the Compensation Commissioner. Lerato then returned to work on 26 April 2021 after 6 weeks.

7

Once the employee resumes work, the employer should fill out the W.Cl.6 form, the resumption report, and submit it to the Compensation Commissioner.

The Commissioner will only make payments after all forms are submitted and will then close the case. By filling out the resumption report the employer is also able to claim back compensation he or she paid to the employee during the first three months the employee was away.

IMPORTANT INFORMATION ABOUT THE CLAIMING PROCESS¹⁸



- If the employee is off work for three days or less for a minor injury, this is not covered by the Compensation Fund.
- If the injury was caused by the employee's own misconduct or wrongdoing, no payment will be made unless the employee was seriously disabled or died from the accident.
- If the employee unreasonably refuses to have medical treatment, there may be no payment for as long as the employee refuses.
- The employer should keep all copies of the forms.
- COIDA states that an employer has to pay compensation to the injured employee for the first 3 months from the date of the occupational injury. The Compensation Fund will repay the employer.

People who do not have private pension or receive insufficient benefits are eligible to receive an “older person's grant” also known as the old age grant from the South African Social Security Agency. The maximum amount one can receive in 2020 is R1,860 (if a person is older than 75 years old they get R1,880). Drawing from the above discussion about living wages, while a state pension can provide support to a person through their old age, usually it is not enough to meet their basic needs. There are affordable options for provident or pension funds.

An employer should have a conversation about preparations for retirement with their employee. Both parties could agree to a deduction from wages to cover any provident or pension fund of which the domestic worker is a member.

3. Pension and other benefits

If a person is not a government employee, the ordinary retirement ages are usually 60 or 65 years of age. In terms of the domestic employment relationship, the employer and domestic worker need to collectively decide on the retirement age and put it in writing.

3.1 Other allowances

An employer may also provide their employee with benefits such as transport allowances, annual increases, food allowance and medical aid. It is important to have a clear discussion about each of these issues from the beginning.

There are a number of affordable insurance policies designed to insure and protect low-income workers like domestic workers.

¹⁸ This section is adapted from Labour Guide, “Claiming procedure for injuries on duty”, Labour Guide, available at: <https://www.labourguide.co.za/injuries-on-duty/177-claiming-procedure-for-injuries-on-duty>

3.2 Annual Increases

It is common practice that employees are granted annual wage increases in line with the annual increase in the Consumer Price Index reported by Statistics South Africa. This is usually an increase of between 8% and 10% per year.

3.3 Bonuses

An employer is not obligated to provide a domestic worker with a bonus at the end of the year. However domestic workers have come to expect a bonus as this is something widely practiced by domestic employers in South Africa when their domestic worker goes on leave during the Christmas holidays. Bonuses are generally based on the employee's performance during the year and whether the employer can afford to provide them with a bonus. To avoid a misunderstanding, employers should communicate as early as possible if they will not be providing an annual bonus.

3.4 Live-in domestic work

Domestic workers who live on their employers' properties in staff quarters or even in the home are particularly vulnerable to unfair treatment and exploitation because their accommodation is tied to their work, and therefore are at risk of homelessness should their employment end. They simply have more to lose and are less likely to speak out when employment standards are not upheld by their employers. Some employers exploit this.

Employers need to respect the laws related to ordinary working hours and overtime (see page 9) and may not unilaterally change the terms of employment, for example increasing workload and responsibilities without consulting their employee and coming to an agreement. This is an unfair labour practice and violates the domestic worker's constitutional right to fair labour practices.

Employers may not:

- Search the accommodation and property of a domestic worker under any circumstances. This is in violation of the domestic worker's constitutional right to privacy.
- Attempt to control the movement of the domestic worker. Live-in workers are entitled to freely go where they choose and associate with whom they choose outside of working hours.
- Prohibit the domestic worker from having visitors as this may infringe on their right to family life, and their children's constitutional right to family care or parental care, or to appropriate alternative care when removed from the family environment.

If an employer feels that their domestic worker's choices are significantly compromising security or other interests, the parties should consult and come to an agreement.

The body corporate rules in the case of employers living in sectional titles can be unfair and violate the constitutional rights of domestic workers living in the staff quarters. Many body corporate rules regarding domestic workers have not been

changed since apartheid, when domestic workers were considered “servants”.

Some examples of unfair and paternalistic rules include:

- “The flat owners washing takes priority over the servants’ private washing”.
- “Residents should ensure that their domestic staff do not store liquor on the property or in a section in excessive quantities; or behave in a drunken or disorderly manner, or allow the property or a section to be over-crowded with visitors...”
- “All residents must apply to the manager for identity badges for their permanently employed domestic workers and ensure that this badge is prominently displayed while the worker is in the Village”.
- “Residents must ensure that their servants do not loiter on the common property”.
- “All visitors to any staff quarter shall leave the confines of the complex by 11pm”.

a) Providing accommodation as an employment benefit

Some domestic workers live on their employer’s property as an employment benefit. A benefit is something extra, in addition to wages and it is often a term or condition of employment. A travel allowance and medical aid are examples of other benefits. When an employer provides accommodation as a benefit, it should go into the employment contract. If the employer provides accommodation as a benefit, then they cannot deduct more than 10% of the domestic worker’s wages for this purpose.

b) Renting out accommodation to domestic workers

If an employer rents out property to the domestic worker or deducts more than 10% of his or her wages to pay for accommodation, then in addition to an employment relationship, there is a tenant and landlord relationship. What determines whether this is the case is whether there is a **lease agreement**, where the rent and the rented property are identified in an agreement between both parties. It does not have to be a written agreement, but it is preferable to put it in writing.

This means that if, at the beginning of the employment relationship, an employer stated that the domestic worker would need to pay rent, then the relationship is governed by the Rental Housing Act.

To find out more about the obligations of landlords under the Rental Housing Act 50 of 1999, please download [SERI and Centre for Urbanism and Built Environment Studies’ rental housing guide](#).

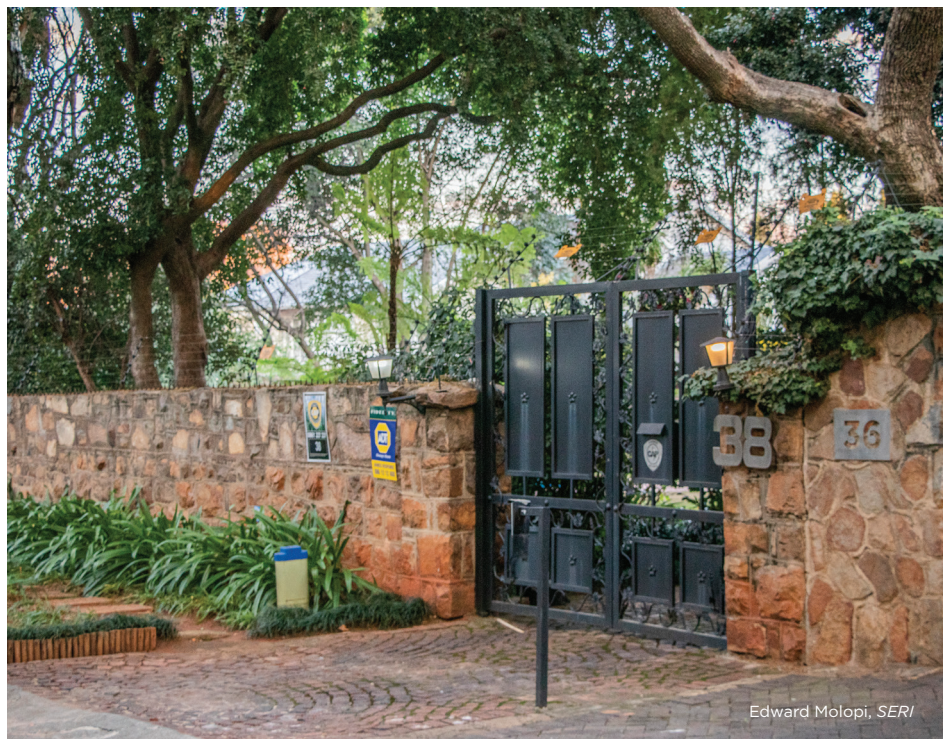
A lease agreement is a contract between two parties, where the lessee (the user) is required to pay the lessor (the owner) for use of a property. Given the complexity of managing two contractual relationships, it is preferable that accommodation is provided as an employment benefit.

The domestic worker's accommodation when the employment relationship ends.

If accommodation was provided as a benefit but then an employer ends the employment relationship before the agreed on date in the employment contract (written or spoken), then according to Sectoral Determination 7 employers are required to provide their former employee with accommodation for a period of at least one month or until the date the contract of employment would have finished, depending on which one is longer.

For example, if both parties had agreed that employment ends in December of a particular year, and the employer ends the relationship in October, then the domestic worker can choose to live in the employer's property until December.

During this period, under no circumstances can an employer or anyone else interfere with the domestic worker's use of the property or make him or her leave the property. Forcing the domestic worker out of the property will amount to an illegal eviction. An **illegal eviction** is any action taken to remove someone from a property without following the proper process. For an eviction to be legal, a court needs to grant an eviction order after considering all the facts of the case.



Edward Molopi, SERI

Ending the Domestic Employment Relationship



▲ Domestic worker staff quarters at the top floor of an apartment building in Killarney, Johannesburg

Having addressed starting and managing the relationship, the guide now turns to ending it. There are different ways in which the domestic employment relationship can come to an end: 1) the employee resigns; 2) the employee retires and; 3) the employer dismisses the employee.

1. Resignation

Domestic workers may resign from their jobs for a number of different reasons. For example, they may find more favourable employment elsewhere, may relocate with their family or may resign due to other personal circumstances.

When resigning:

- A domestic worker needs to give their employer notice of at least 1 week if he or she has been employed for 6 months or less, and notice of at least 4 weeks if he or she has been employed for more than 6 months.

REMEMBER:

It is important to always keep a record of any major decisions made by both parties.

It is unlawful to force an employee to resign. This is unfair dismissal. See page 42 for information on unfair dismissal.

2. Retirement

People who are not employed by the government ordinarily retire at 60 or 65 years of age. An employer cannot force his or her employee to retire unless it is a condition stated in the written agreement.¹⁹ It is therefore advisable for both parties to agree on the retirement age and include it in the written agreement. See page 29 for information about pensions.

3. Dismissal

There are different types of dismissal: an employer could dismiss his or her employee for 1) operational reasons (this is called a retrenchment); 2) poor performance; 3) the reason that the employee has been rendered incapable of continuing his or her work (this is called incapacity or disablement) and; 4) misconduct. In all instances dismissal needs to be substantively and procedurally fair.

- **Substantively fair:** There must be a valid reason for the termination of the

¹⁹ Legal Wise, “Resignation and retirement”, *Legal Wise*, (2021), available at: <https://www.legalwise.co.za/help-yourself/quicklaw-guides/resignation-and-retirement>

contract of employment, and the facts of the case must warrant that dismissal is a fair penalty or solution.

- **Procedurally fair:** The dismissal must be effected in a procedurally fair manner.

IMPORTANT INFORMATION

Regardless of the reason, to meet the requirements of procedural fairness, employers should ensure that dismissal is preceded by:

- A consultation in the case of dismissal due to retrenchment. See page 34-35.
- An inquiry in the case of dismissal due to poor performance or incapacity. See page 37.
- A disciplinary hearing in the case of dismissal due to misconduct. See page 39.

3.1 Retrenchment

Retrenchment means that the employer needs to dismiss the employee for operational reasons. Operational reasons include relocating, no longer being able to afford to pay for a domestic worker, no longer needing a domestic worker, or requiring a domestic worker with specific skills or someone to “live-in”. The Labour Relations Act sets out the substantive and procedural obligations placed on employers to carry out a fair retrenchment.²⁰ Below is adapted from a CCMA factsheet on retrenchments.²¹

²⁰ Adapted from CCMA, “Retrenchment”, *CCMA* (January 2002), available at: <https://www.ccma.org.za/Services/Individual-Employee-Employer/Dealing-with-Retrenchment>

²¹ Ibid.



a) Consultation

An employer should consult with the employee as soon as he or she begins to think about retrenchment. The parties should try to reach consensus on the following issues:

- Avoiding dismissal altogether by finding alternatives, for example working hours could be adjusted.
- Timing of the dismissal.
- Ways to lessen the effects of the dismissal on the domestic worker.
- Severance pay.

When proceeding with the retrenchment, the employer should provide the domestic worker with the following in writing:

- The reasons for retrenchment.
- The reasons for rejecting alternatives.
- Timing of retrenchment.
- Severance pay proposed.
- Assistance that the employer will be offering, for example the employer could allow the domestic worker afternoons off so that the domestic worker can go to interviews; or offer to reach out to acquaintances to see whether they want to hire a domestic worker.
- Possibility of future re-employment.

b) Payments

In a retrenchment the following payments need to be made:

Severance pay equal to at least one week's full pay for each completed year of continuous service with that employer. Severance pay is calculated using the most recent wage rate.

EXAMPLE

For example, if a domestic worker was employed for 5 years and received R4,000 per month at the time they were retrenched, then the domestic worker has the right to R4,615.42 severance pay:

$$4,000/4.3333 = R923.08 \text{ per week} \\ \times 5 \text{ years} = 4,615.42$$

Notice pay instead of the employee working during the notice period. The employer should give at least 1 weeks' pay if he or she has been employed for 6 months or less; and at least 4 weeks' pay if he or she has been employed for 6 months or more. See page 42 for more information on notice periods.

The employer should provide the domestic worker with a **certificate of service** when he or she leaves. See page 64 for a template. The Certificate of Service does not have to include reason for termination except on request from the worker.

Outstanding pay for any time off the employee is entitled to that he or she did not take like Sunday work and overtime exchanged for time off. Employers also need to pay for leave not taken, however this only applies to employees who were employed for four months or more.²²

²² Sectoral Determination 7, "Payment on Termination", Department of Labour, available at: http://www.saflii.org/za/legis/consol_reg/sd7dws457/

IMPORTANT INFORMATION

A domestic worker who unreasonably refuses to accept an employer's offer of alternative employment with that employer or any other employer, is not entitled to severance pay. A CCMA commissioner or labour consultant would be able to offer advice on what constitutes an "unreasonable" refusal of employment.

See page 42 for more information about what other procedures employers must follow in a dismissal.

3.2 Dismissal due to poor performance

Sometimes domestic workers do not perform their work to the standards set by the employer when they were employed. The standards set by employers, of course, need to be lawful, reasonable and relevant to the specific workplace.²³ They also need to be communicated to the employee at the outset of the employment relationship and included in the employment agreement.

Poor performance is not the same as misconduct- where a rule or standard which has been set by an employer has been broken. Issues which have to do

²³ Fadia Arnold, "Protocol for dismissing an employee for poor work performance", *Go Legal* (14 January 2021), available at: <https://www.golegal.co.za/dismissal-work-performance/#:~:text=It%20must%20be%20noted%20that,of%20performance%20in%20the%20workplace>

with poor performance are therefore not addressed through a disciplinary procedure; but rather should be addressed during regular check-ins where problem areas are identified and the parties have a consultation about how they can be rectified.

If an employee does not meet the set standard, the employer should:²⁴

- Inform the employee that his or her work performance does not meet the required standard.
- Discuss with the employee possible causes of the poor performance and how they can be rectified.
- Consult about the ways in which the work performance can be improved, for example through further guidance.
- Set realistic timeframes for improvement.
- Create a programme for regular feedback sessions.

The employer should document this process. See page 18 for more information on check-ins and evaluation.

If after a reasonable period, the employee fails to improve, the employer should inform the employee that the expected standard has still not been met and the employee should be given the opportunity to respond and provide an argument to prove that there has been improvement if he or she wishes.²⁵

²⁴ CCMA, "Poor Work Performance", CCMA (2018), available at: <https://www.ccma.org.za/Advice/Information-Sheet>

²⁵ Ibid.

a) Inquiry

Where further action is required, the employer should hold a poor performance inquiry to determine:

- Whether or not the employee failed to meet the required standard.
- Whether or not the employee could reasonably be expected to have been aware of the required work standard.
- Whether or not the employee was given a fair opportunity to meet the required performance standard.
- Alternatives short of dismissal.²⁶

The CCMA suggests that employers explore alternatives short of dismissal in the spirit of corrective and progressive approaches to poor performance.²⁷ For example, changing some aspects of the work, offering the employee another position or appointing a mentor for the employee. Domestic employers would have to think of alternatives that suit the context of the environment. The parties also have the option of requesting by mutual consent the CCMA to conduct an inquiry, the outcome of which is binding and reviewable only by the Labour Court.²⁸

Should an employer dismiss an employee without providing guidance and a reasonable amount of time for the employee to improve work performance, they open themselves up to an unfair dismissal dispute by the employee at the CCMA. The prospects of success for the employee at the CCMA would be reasonably high in such a case.

However, an employer may find that even after providing guidance and a reasonable timeframe for improvement, the employee's performance remains poor. In that case, the employer may proceed to dismiss the employee.

See page 42 for more information about what other procedures employers must follow in a dismissal.

3.3 Dismissal due to incapacity

In some cases, an employer is faced with the decision to dismiss his or her employee because the employee is not able to perform their work due to illness or injury, i.e. the employee is "incapacitated". Dismissal on these grounds can be fair provided that it meets the requirements of substantive and procedural fairness above.

a) Inquiry

The employer should hold an inquiry to investigate the extent of the injury and potential action to be taken to save the employment relationship. The employer should consider all alternatives short of dismissal:

- When the employer is considering alternatives, he or she should think about a) the nature of the job, b) the period of absence, c) the seriousness of the illness or injury, d) the possibility of securing a temporary replacement for the ill or injured employee.²⁹
- In terms of temporary incapacity, the employer should investigate the extent

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ South African Labour Guide, "Discipline and Dismissal", *South African Labour Guide* (2021), available at: <https://www.labourguide.co.za/discipline-dismissal/71-misconduct>

of the incapacity or injury. If it looks like the employee will be absent for a time that is unreasonably long in the circumstances, the employer should investigate all the possible alternatives short of dismissal.³⁰

- If incapacity is permanent, the employer is obligated to look into the possibility of securing the employee alternative employment, or adapting the work duties or circumstances to accommodate the employee's disability.³¹

EXAMPLE

Yvonne's employee, Lebogang, was involved in a car accident which resulted in a back injury. Lebogang's doctor advised her that she should avoid any manual labour and that the injury would take 2 months to fully heal.

In this case, the period of absence is reasonable and it is possible for Yvonne to secure a temporary replacement. Yvonne should go back to her employee records to see how much sick leave Lebogang has accumulated and she should grant her the paid sick leave which she is entitled to. If Lebogang does not have enough sick leave days to cover the full two months, then the rest of the time could be unpaid time off.



During Lebogang's period of absence, Yvonne has the option to find a temporary replacement for two months if she can afford it. Therefore in this case it would be unfair of Yvonne to dismiss Lebogang, since there are reasonable alternatives.

Further, upon Lebogang's return, the two parties would need to consult on adaptations to Lebogang's work, if her injuries caused long-term conditions. For example, if her back injury makes it such that she should avoid carrying heavy objects, then Yvonne would have to accommodate her condition. An example of this, is instead of asking Lebogang to carry the laundry basket from the bedroom, down the stairs to the laundry area, Yvonne could take the laundry basket to the laundry area before she leaves for work.

Sometimes, however, the injuries or an illness may make it impossible for a domestic worker to perform his or her work duties.

EXAMPLE

If Lebogang's injuries from the car accident were such that she would never be able to do manual labour and continue with her work duties, Yvonne would be faced with the decision to dismiss Lebogang.



³⁰ Ibid.

³¹ Ibid.

Yvonne could consider other alternatives- for example if Yvonne has small children who need a baby-sitter after school, then Lebogang's work responsibilities could change from cleaning tasks to caring for the children. The employment agreement would need to be amended to accommodate the new circumstances.

However, Yvonne may not have any alternatives to offer Lebogang, and in this case she would have to dismiss the Lebogang due to incapacity.

It should be noted that the financial resources an individual domestic employer possesses are significantly less than those of a small business or organisation. When considering adjustments for an injured domestic worker, employers should do so carefully and see what is possible, but employers are not expected to overextend themselves financially.

An employer is allowed to dismiss an injured or ill employee only in the event that it is not possible to adapt the domestic worker's duties or find alternatives.

See page 42 for more information about what other procedures employers must follow in a dismissal.

3.4 Dismissal due to misconduct

Misconduct is where a rule or standard which has been set by an employer has

been broken,³² for example, late-coming, working while under the influence of alcohol or unauthorised absence from work. Issues of misconduct need to be dealt with through disciplinary procedures.

a) Disciplinary Procedure

The purpose of a disciplinary procedure is to regulate standards of conduct, to correct unacceptable behaviour and to adopt a progressive approach in the workplace.³³ Sectoral Determination 7 does not make recommendations on disciplinary procedures for domestic workers specifically, however schedule 8 of the Labour Relations Act states in section 3 that "all employers should adopt disciplinary rules that establish the standard of conduct required of their employees." This means that it is the responsibility of an employer to ensure that the employee is aware of all rules and standards of behaviour required in the workplace.

If an employee breaks a rule, the employer should meet with them and explain the nature of the broken rule. The employee should be given the chance to explain themselves and both parties should try to address the misconduct without taking disciplinary action if possible.³⁴

³² South African Labour Guide, "Counseling Procedure – Incapacity - Poor Performance", *South African Labour Guide* (2021), available at: <https://www.labourguide.co.za/poor-performances/233-counseling-procedure-incapacity-poor-performance>

³³ CCMA, "Disciplinary Procedure", *CCMA* (2018), available at: <https://www.ccma.org.za/Services/Individual-Employee-Employer/Disciplinary-procedures>

³⁴ Ibid.

b) Taking disciplinary action:³⁵

- Depending on how serious the matter is, an employer can take the following forms of discipline in order of seriousness:
 - A verbal warning for minor transgressions.
 - A written warning for serious and consistent misconduct.
 - A final written warning for persistent misconduct.
 - Suspension without pay.³⁶
 - Dismissal
- A disciplinary procedure, like any procedure to do with employees, must be **fair**. This means an employer's aim in beginning a disciplinary procedure should be to correct behaviour, not to punish or with the aim of dismissing the employee.
- The law does not specify the number of types of warnings to be given. For example it does not state that three verbal warnings should be followed by a written warning. This means dismissal could follow as a first offence in the case of serious misconduct, for example, physical assault.
- According to the CCMA a written warning for consistent misconduct is valid for 3 to 6 months and a final written warning for a year. Further, a warning for one type of wrongdoing does not apply to another type of wrongdoing. For example, a first written warning for late-coming cannot lead to a second written warning for insubordination.

³⁵ This section is adapted from: CCMA, "Disciplinary Procedures", CCMA (2018), available at: <https://www.ccma.org.za/Services/Individual-Employee-Employer/Disciplinary-procedures>

³⁶ This action may not apply to the context of the domestic employment relationship.

- An employer can ask an employee to sign warning letters as acknowledgement of receipt. However they should be given an opportunity to state their objections, should there be any, and both parties could come up with a solution which would result in the warning not being issued.

An employer may not under any circumstances force a domestic worker to sign written warnings.

- Many employers force employees to sign warnings which contain false claims to justify an unfair dismissal should the employee take them to the CCMA. This is unlawful.
- However, when undergoing a fair procedure, should a domestic worker refuse to sign a warning letter, this does not make the warning invalid. The employer should record this and get a witness to sign.

A disciplinary procedure does not have to end in a dismissal. In fact, the purpose of a disciplinary procedure is to correct behaviour. However, dismissal may follow a disciplinary procedure.

Employers need to consider the following questions before deciding to dismiss an employee:³⁷

- Did the employee break a rule or standard?
- Is the rule reasonable?
- Was the employee aware of the rule or should he or she have been reasonably aware of the rule?
- Is the rule consistently applied by the employer?

³⁷ CCMA, "Misconduct", CCMA (2018), available at: <https://www.ccma.org.za/Advice/Information-Sheet>

- Is dismissal appropriate in this instance?

The CCMA also recommends that an employer consider other factors before deciding to dismiss an employee. The CCMA refers to these as mitigating (justifying) factors and aggravating (worsening) factors, and include the employee's disciplinary record, length of service and personal circumstances.³⁸ For example, a domestic worker experiencing domestic violence could be caused to miss work or arrive late for work. The employer will need to consider this circumstance and explore alternatives with the employee.

If the employer comes to the decision to dismiss, through a fair process (i.e. meeting the requirements for substantive dismissal), the employer must then follow a fair procedure before dismissing an employee. According to the CCMA, the following requirements must be met:³⁹

- The employer should investigate the alleged misconduct, inform the employee about the allegations in clear terms, and allow for the employee to respond to the allegations (the employee has the right to be assisted by a trade union representative or co-worker). The CCMA states that dismissal should be preceded by a **disciplinary hearing** although it is not clear how it looks in the context of the domestic employment relationship.⁴⁰

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ According to CCMA the following should be present at the hearing: a chairperson, a management official, the employee, the employee's representative, any witnesses for either party and an interpreter if necessary. This scenario does not apply to the domestic employment context, and therefore employers should follow the recommendations as

The CCMA states that the employer should give the employee not less than three days' written notice of the hearing and the letter should include:

- The date, time and venue of the hearing;
 - Details of the allegations against the employee;
 - The employee's right to representation at the hearing by either a fellow employee or a representative of the union the domestic worker belongs to;
 - The employee's right to an interpreter, if needed; and
 - The right to call relevant witnesses in support of his or her case.⁴¹
- After both parties have been given their versions of the allegations, the employer should notify the employee, preferably in writing, of the decision.⁴²
 - If the employee is dismissed, the employer should inform the employee of his or her right to refer the matter to

far as reasonably possible and/or seek the advice of a CCMA official or legal advisers.

⁴¹ CCMA, "Disciplinary Procedures", CCMA (2018), available at: <https://www.ccma.org.za/Services/Individual-Employee-Employer/Disciplinary-procedures>

⁴² According to the CCMA the employer leads the evidence in the hearing, and the employee is then given an opportunity to respond. The chairperson may ask any witnesses questions of clarity. At the end, the chairperson decides whether the allegations against the employee have been proved on balance of probability. If guilty, the chairperson must ask both parties to make submissions on the appropriate disciplinary sanction. The chairperson must then decide what disciplinary sanctions to impose and inform the employee accordingly (CCMA, "Disciplinary Procedures", CCMA (2018), available at: <https://www.ccma.org.za/Services/Individual-Employee-Employer/Disciplinary-procedures>). The above description of how a hearing should be run does not fit the context of a domestic employment relationship- therefore employers should seek the advice of a CCMA official or private labour law practitioners.

the relevant Bargaining Council or the CCMA within 30 days of receiving the final decision to dismiss.

The parties can also request, by mutual consent, the CCMA or a Bargaining Council to appoint an arbitrator to conduct a final and binding disciplinary hearing. The employer would be required to pay a prescribed fee.⁴³

See the box below for more information about what other procedures employers must follow in a dismissal.



IMPORTANT INFORMATION

- If, after meeting the requirements for substantive and procedural fairness, an employer follows through with a dismissal, he or she should:
 - Give at least 1 weeks' notice (or equivalent pay) to the employee, if he or she has been employed for 6 months or less;
 - Give at least 4 weeks' notice (or equivalent pay) to the employee, if he or she has been employed for 6 months or more;
 - Provide the domestic worker with a notice of termination of contract of employment in writing. When it is given to someone who cannot read or write, provide them with the letter and in addition the employer must explain verbally in a language the domestic worker understands;

- Pay for any time off the employee is entitled to that he or she did not take, like leave, Sunday work and overtime exchanged for time off (this only applies to employees who were employed for four months or more);
- Provide the domestic worker with a certificate of service when he or she leaves. See page 64 for a template. The Certificate of Service does not have to include reason for termination except on request from the worker.
- Live-in domestic workers have the right to stay in provided accommodation for at least 1 month after receiving notice or until the date the employment contract ends, whichever is longer.

4. Unfair dismissal

An employer may not dismiss a domestic worker because:

- She is pregnant or intends to fall pregnant.
- On the basis of race, gender, sex, ethnic or social origin, citizenship, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility.
- He or she refused to accept a substantial change in the terms of employment when the purpose of the dismissal is to force the employee to accept the change.

⁴³ CCMA, "Disciplinary Procedures", CCMA (2018), available at: <https://www.ccma.org.za/Services/Individual-Employee-Employer/Disciplinary-procedures>

- He or she took or planned to take a dispute to the Commission of Conciliation, Mediation and Arbitration (CCMA) or is representing a fellow employee in a disciplinary enquiry.
- The two parties got into an argument, or the employer is angry with or annoyed by the domestic worker.

There are other ways that employers can try to dismiss domestic workers. The Department of Labour considers the following as unfair dismissal:

- When an employer does not renew the job contract as agreed, or offers to renew it on less favourable terms.
- When an employer does not allow the domestic worker to return to work when they return from maternity leave.

- When a domestic worker resigns with or without notice because the employer made working circumstances difficult. This is called a **constructive dismissal**. Examples of constructive dismissal include an employer creating a hostile working environment for their domestic worker by being unfriendly and aggressive, or making dramatic changes to their workload or even delaying pay, all with the purpose of pushing the domestic worker to resign.
- Dismissing an employee because the employer dislikes her or him.

If a domestic worker is unfairly dismissed, he or she can take the dispute to the CCMA.



Kelebogile Khunou, SERI

Frequently Asked Questions



Edward Molopi, SERI

Q What happens if my domestic worker overstays her leave?

My domestic worker's brother passed away and we gave her five days of family responsibility leave to attend the funeral in Zimbabwe. At the end of the period she did not return and we couldn't reach her by phone. We hired someone else because we urgently needed the childcare. After an additional two weeks she returned and is expecting her job back. Do we have to take her back?

Your employee has broken a rule. However, simply dismissing her outright would be considered unfair dismissal because the

correct procedure has not been followed. Meet with your employee and go through the terms of her employment concerning leave. Ask her what happened while she was away and why she did not contact you. Make it clear that she only has five days of annual Family Responsibility Leave, not 15. (See page 13). You could discuss whether the additional 10 days of absence should be taken from her annual leave, or counted as unpaid leave. Depending on the context and reasons for her absence, you may issue her with a verbal or written warning. Record this meeting in her employee file. Should there be subsequent (or previous) repeated problems with her conduct, you would need this paperwork

to justify dismissal. See page 16 for tips on how to have healthy and respectful communication between you and your employee; and page 20 information on disciplinary processes.

Q Do we really need a written contract?

Our domestic worker has worked for us for 3 years. She makes a good salary that she is happy with and we have a great relationship. Do we really need a written contract as both parties are happy with the current arrangement?

It is important to acknowledge that a contractual agreement already exists between an employer and domestic worker, even if it is not written down in a document. The terms and conditions agreed upon by both parties in the verbal contract are binding and need to be upheld by both parties until such a time that both parties agree upon changes or the employment relationship is terminated. What is required in writing however is a “written particulars of employment” when a domestic worker begins his or her work. A “written particulars” is a truncated document, and can be seen as forming the foundation of the employment contract; which could include additional terms and conditions of employment not listed in the written particulars. Contracts are encouraged because they serve to protect both employers and employees. A contract provides your domestic worker with a sense of security, and she may need it (as well as payslips) in order to rent a flat, open a bank account, or apply for a loan. Sometimes domestic workers

may be reluctant to sign a contract. Employers should make an effort to explain the benefits of having a contract to both parties. See page 14 for more information about the written particulars of employment.

Q My domestic worker seems unhappy lately, what should I do?

My domestic worker has been grumpy lately when she is at work. She is doing the bare minimum and it is not pleasant to have her around the house. I asked her if something is wrong and she said no. What should I do?

If the problem persists, sit down with her and have a check-in session (see page 18) to discuss any concerns she has about her working conditions. You may want to give her advance notice of the meeting so she has time to prepare. Be respectful and open-minded and ask questions. If she does not express any concerns or frustrations with the work environment, it may simply be personal challenges weighing on her at the moment. You are not required to try to assist with her personal problems. However, you do need to accept that we all go through difficult periods that keep us from being cheerful. If her work is getting done, and she is comfortable with the working conditions, there is nothing more you need to do. If her work is not getting done properly, then the poor work performance will need to be addressed (See page 36).

Q My domestic worker seems to have a health condition we did not know about when we hired her. What should we do?

My domestic worker has high blood pressure and has to collect medication from the clinic once a month during the week. She didn't explain this when we hired her as a full-time nanny. Do I have to pay her for those days she is away?

Technically, no. However, you do need to meet with her to discuss how that time away should be handled. You may want to agree on a fixed day that is more convenient for you as the employer. If she is only away for a few hours, then perhaps she can still get her work done and you can continue to pay her wages for that time. If she is gone for a full day each month and you are not happy to pay her for that time, you could organise for her to make up those hours at another time. Alternatively, you can agree to count it as unpaid leave. If it is a long term arrangement, you may want to re-negotiate your employment contract to reflect the change. (Note: your employee has the constitutional right to privacy and does not have to disclose to you any details of her condition if she does not choose to.)

Q I have recently found out that my domestic worker, originally from Malawi, is living in South Africa without a work permit. Should I dismiss her?

Once an employment relationship has been established, that is, a service has been rendered, then that relationship is regulated by the law, regardless of the legal status of either party. There is a commonly held misconception that foreign migrant workers, documented or undocumented, are not protected by the law in South Africa. This is false. Whatever the legal status of a foreign migrant worker, as a person residing in South Africa, they enjoy the protection of a number of constitutional rights which apply to “everyone”, and are also covered by international human rights law.⁴⁴

Section 23 of the Constitution states, “Everyone has the right to fair labour practices”. This right applies to everyone living in South Africa regardless of their status and it means that undocumented workers enjoy the same labour protections as South African citizens and documented migrant workers. Therefore it would not only be unlawful to dismiss your domestic worker on the basis of his or her undocumented status, it would also be unlawful to deny him or her of employment rights all other domestic workers enjoy under the Labour Relations Act, Basic Conditions of Employment Act, Sectoral Determination 7 and

⁴⁴ International Commission of Jurists, *Promoting non-citizens' right to work in South Africa- Briefing paper*, International Commission of Jurists (April 2020), p. 7.

other labour laws which cover domestic workers. Furthermore, the Commission for Conciliation, Mediation and Arbitration (CCMA), will assist any worker who approaches it with a labour dispute regardless of their status.

Several international human rights instruments, many of which the South African state has signed on to, protect every human being's right to work, regardless of nationality. The International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by South Africa in 2017, protects migrants' *right to work* including the freedom from forced labour and the free choice of employment, and *rights at work* including fair and equal remuneration, adequate conditions of employment, protection from unfair dismissal and reasonable working hours.⁴⁵



What if my domestic worker has “an attitude”? Can I fire her?

My domestic worker does not listen to the instructions I give her for what work needs to be done. Sometimes she is rude and disrespectful. We got in a big fight and I want to dismiss her. Is that allowed? Why should I have to employ someone who I don't like?

You cannot dismiss someone simply because you do not like them. Dismissal is a last resort and you have to prove that your domestic worker's performance has been poor or that there has been misconduct. See page 34 for more information on dismissal.

Disagreements often arise out of misunderstandings, or misaligned expectations. These might be due to language and cultural differences, the use of a certain tone, or differing assumptions. Domestic workers are usually hesitant to raise complaints with their employers, for fear of anger or dismissal. This can lead to growing frustration on their part, which might be reflected in their work. After cooling down, invite your domestic worker for a check-in conversation and ask her about what parts of her work she likes and what aspects might frustrate her. Remember to be respectful and professional in your communication - this can make or break your working relationship. A general rule of thumb is that you should treat your domestic worker how you would want your employer to treat you. See page 16 for practical tips about how to enhance communication.

If she is not listening to instructions, make a point to write down the exact date and details of each instance of poor performance or insubordination. Then meet with her to discuss why she is not performing or following rules. If there is misconduct, you may issue a warning. (See page 20 for disciplinary procedures). If the situation does not improve or worsens after a disciplinary procedure, then you may have grounds for dismissal. See pages 36 and 39 for information about poor work performance and misconduct.

⁴⁵ Ibid. p. 15.

Q I have not yet registered my domestic worker, who has been working for me for the last 6 years, for UIF. What happens if I register her now? Will I be required to pay arrears?

I have a good relationship with my domestic worker but never registered her for UIF because I figured that because I pay her well over minimum wage it would not be necessary. I even paid her throughout her maternity leave. Recently she asked me to register her for UIF; I was taken aback but she explained that even though we have been together for so long, she wants to be covered in case I move away or she finds herself unemployed for some reason. I want to register her, will I be required to pay arrears?

Employers of domestic workers who work 24 hours or more a month are obligated to register and make contributions to the Unemployment Insurance Fund each month. This is the responsibility of the employer. Once registered each month, the employer pays 2% of the domestic worker's wages to the Fund, 1% is deducted from her wages as the workers contribution, and 1% is an additional contribution paid by the employer.

Employers who do not register their employees from the beginning are able to register for UIF at any point but will be required to pay arrears for the years they have not paid. Non-payment is an offence therefore the UIF will levy a 10% penalty on the back contributions and the UIF

finance department will calculate a daily amount of interest owing.⁴⁶

To pay arrears an employer should take the following steps:⁴⁷

- Register for their employee and themselves with the UIF and get a reference number. Registration can be done through uFiling.
- Submit the information for the periods they did not submit or pay UIF. Only one form per year will be needed for back-log periods; after that, employers need to submit a form every month.
- Once the information for the back-log periods have been submitted the finance department will calculate the interest amount. While back payments can be done through uFiling, the interest and penalty have to be paid into a separate account number. Employers should contact the UIF directly for this information.

Q I have not registered my domestic worker for UIF because I believe the UIF system is slow and inefficient. I have however set aside money which I will give as a lump sum when our relationship ends. Is this okay?

I have not registered my domestic worker for UIF because I believe the UIF system is slow and inefficient. I have heard about many domestic workers who have

⁴⁶ GroundUp, "My domestic worker wants to claim UIF but I have never made a UIF payment. What do I do?", GroundUp (24 November 2020), available at: <https://www.groundup.org.za/qanda/321/>

⁴⁷ See information at: <https://payroll4sa.co.za/>

struggled to access benefits and so I prefer to put aside money per month for my domestic worker and will give her a lump sum when our employment relationship ends. Is this okay?

Unemployment insurance is a form of social protection for workers. Social protections are policies or programmes designed to enhance people's ability to manage economic and social shocks, for example- illness, disablement, old age and unemployment. An employer of a domestic worker is required by law to contribute to the Unemployment Insurance Fund (UIF). The purpose of the UIF is to give short-term relief to people when they become unemployed or unable to work due to illness, maternity leave or adoption leave. It also provides support to the dependents of a contributor who has passed away.

While it might seem like a good idea to set aside money on behalf of your domestic worker to avoid dealing with a system which can be inefficient and difficult to navigate, in the long run this does not benefit your domestic worker. This is mainly because social insurance systems can also be used by governments to provide a financial cushion for people and their dependents during economic downturns, as was experienced by South Africa during the COVID-19 pandemic and lockdown.

In order to support businesses and employers temporarily closed due to the lockdown and unable to pay workers' salaries, the Department of Employment and Labour set up the COVID-19 Temporary Employer/ Employee Relief Scheme (TERS) administered through

the UIF. Initially this benefit was only available to employers who had registered their employees for UIF and kept up with contributions. Domestic employers have low rates of compliance with UIF payments and according to a study by Women in Employment: Globalizing and Organizing (WIEGO) and the Social Law Project at the University of Western Cape, only 20% of domestic workers are registered by their employers under UIF. During the COVID-19 pandemic, domestic workers whose employers asked them not to work due to safety guidelines, but could not afford to keep paying them during this period were left without an income for months. Later, TERS was opened to unregistered workers, but the damage to livelihoods in the initial months was significant.

The desire to put aside money for your domestic worker is commendable, however benefits like these should be seen as a "top up", complimenting basic employment entitlements afforded to domestic workers.

Our domestic worker is staying with us during the COVID-19 pandemic. How do we reduce the risk of infection while not violating labour laws?

Our domestic worker is living with us. During the COVID-19 crisis we have asked her not to leave our complex, as we want to protect her health and ours. It is a risk for all of us if she goes out to the shops or goes to visit her family. This is an unprecedented global pandemic - Isn't it fair that there should be unusual restrictions?

While it is understandable that each household will be concerned about risk of infection during the COVID-19 crisis, your relationship with your domestic worker is still governed by Sectoral Determination 7 and other labour laws, as well as the national regulations on COVID-19. You cannot put in place restrictions on your domestic worker's movement over and above the law. Preventing your domestic worker from leaving your complex violates her right to freedom of movement under Section 21 of the Constitution. If the national regulations permit people to go to the shops and purchase essential goods, then you cannot take that right away from your domestic worker. That being said, you can consult with your domestic worker about your household situation, especially if you are living with anyone with co-morbidities, and agree together on household guidelines to reduce risk.

Do employers have the right to know their employee's HIV status and/or other health conditions?

No. An employee is not obligated to reveal his or her HIV status to their employer; they have the right to keep this information confidential. An employer cannot legally force a domestic worker to be tested for HIV. These rules apply to other diseases as well, such as Tuberculosis. Employers feel entitled to know their domestic workers' HIV status, fearing that they are putting themselves and their family members in danger of contracting the virus if their domestic worker is HIV positive.

It is therefore extremely important for both employer and employee to educate themselves on the virus and how is transmitted and what safety measures need to be taken in the context of the household. The following is some information about how HIV is transmitted.

How is HIV transmitted?

According to UNAIDS, HIV can only be transmitted when certain bodily fluids (that are capable of containing high concentrations of the virus like blood, semen, pre-seminal fluid, rectal fluids, vaginal fluids and breast milk) from an HIV positive person come into contact with a mucous membrane (rectum, vagina, penis and mouth) or damaged tissue (cuts or open sores) of another person; or are directly injected into the bloodstream of another person, for example using a needle or syringe.⁴⁸

This means that:

- HIV is not easily transmitted; it is primarily contracted through sexual intercourse and breastfeeding.
- HIV cannot be transmitted through saliva, sweat, tears or closed mouth kissing. It is not transmitted through sharing toilets, food or drinks.
- HIV does not live on the skin therefore casual contact like hugging, holding hands or sitting next to someone with HIV will not transmit the virus.
- The virus cannot be spread through food handling.
- Separate dishes or eating utensils are not needed. Dishes used by a person

⁴⁸ UNAIDS, *HIV and AIDS- Basic Facts*, UNAIDS (2021), available at: <https://www.unaids.org/en/frequently-asked-questions-about-hiv-and-aids>

infected with HIV do not require special methods of cleaning.

A domestic worker who is HIV positive therefore poses very little health risk or threat to the health of those around them, and can perform his or her occupational duties.

If a domestic worker does become sick, starts coughing incessantly, vomiting or having frequent diarrhoea, they need to seek medical attention as they would in other instances of illness before returning to work.



HEALTH AND SAFETY MEASURES TO BE PRACTICED IN ALL HOUSEHOLDS*

Universal hygienic practices like washing hands with soap after using the toilet and before preparing food need to be observed when there is someone in the household living with HIV, as well as the following preventative steps to avoid transmission:

- Cover any cuts, sores, or breaks in your exposed skin.
- Always wear disposable gloves if you may have contact with blood or body fluids.
- Wash your hands with soap and water after any contact with blood, even if you wear gloves.

- If your domestic worker is caring for someone who is injecting medicine, he or she needs to handle needles carefully to avoid sticking themselves. When handling used syringes, pick them up by the barrel and carefully drop them into a puncture-proof container. If your domestic worker does stick themselves with a used needle, wash the wound thoroughly with soap and water. Contact a doctor as soon as possible to get further evaluation and perhaps treatment with antiviral medications. The risk of developing an HIV infection is slight (about 1 in 300), but this risk can be greatly reduced if the domestic worker gets treatment right away, preferably within 1 to 2 hours.

*Information obtained from <https://www.mottchildren.org/health-library/hw191334>

IMPORTANT CONTACT DETAILS AND ADDITIONAL RESOURCES



Kelebogile Khunou, SERI

1. Government and agencies

Department of Employment and Labour

Telephone: 012 309 4000 (Head Office)

Website: <http://www.labour.gov.za>

Facebook: <https://web.facebook.com/Department-of-Employment-and-Labour-113046118723012>

Twitter: [@deptoflabour](https://twitter.com/deptoflabour)

For satellite offices and Labour Centres, please visit: <http://www.labour.gov.za/Contacts/Labour-centres/Pages/default.aspx>

Unemployment Insurance Fund

Email: uifcomplaints@labour.gov.za

Telephone: 012 337 1680

Website: <https://www.ufiling.co.za/uif/>

Facebook: <https://web.facebook.com/UIFza>

Twitter: [@UIFBenefits](https://twitter.com/UIFBenefits)

Compensation Fund

Email: cfcallcentre@labour.gov.za

Telephone: 0860 105 350

Website: <https://cfonline.labour.gov.za/onlineSubmissions/?jsessionid=BB1D444060215A005448675EE4C85090.CFONLINEI1S2?0>

Compensation Fund Claims Management System:

<https://compeasy.labour.gov.za:44328/fiori>
Facebook: <https://web.facebook.com/Compensation-Fund-102954694687808>

CCMA National Office

Email: info@ccma.org.za
Telephone: 011 377 6650/01/00
Website: <https://www.ccma.org.za>
For CCMA regional offices: <https://www.ccma.org.za/Contact>
Twitter: [@CCMA_SA](https://twitter.com/CCMA_SA)

2. Unions and domestic worker organisations

National Employers Association of South Africa (NEASA)

National Hotline: 0860 163 272
Email: info@neasa.co.za

South African Domestic Service and Allied Workers Union (SADSAWU)

Johannesburg and Cape Town
Telephone: 021 447 3607
Website: www.sadsawu.org
Facebook: <https://web.facebook.com/South-African-Domestic-Service-Allied-Workers-Union-Sadsawu-665981087122056>

United Domestic Workers of South Africa (UDWOSA)

Telephone: 073 291 2244

Izwi Domestic Workers Alliance

Telephone: 061 633 5561
Email: info@izwi.org.za
Website: <https://www.izwi.org.za/>

Socio-Economic Rights Institute of South Africa (SERI)

Telephone: 011 356 5860
Email: info@seri-sa.org
Website: <http://www.seri-sa.org>
Facebook: <https://www.facebook.com/SocioEconomicRightsInstitute/>
Twitter: [@SERI_RightsSA](https://twitter.com/SERI_RightsSA)

Please note: for updated contact details, consult the relevant websites.

3. Other useful resources

All about Domestic Workers

<http://www.labour.gov.za/DOL/find-more-info/all-about-domestic-workers>

Department of Labour- How to pay UIF (Banking details):

<http://www.labour.gov.za/DOL/legislation/acts/how-tos/unemployment-insurance-fund-uif/how-to-pay-the-uif>

Living Wage Calculator for employers

<http://living-wage.co.za/>

Rental Housing Guide

<http://seri-sa.org/images/SERI%20Tenants%20FINAL%20TO%20PRINT%20res.pdf>

APPENDIX:

LEGAL FRAMEWORK AND SAMPLE DOCUMENTS



Jonathan Torgovnik, Getty Images

1. Legal Framework Governing Domestic Work

This section discusses the legal framework applicable to the domestic work sector. Having read it, employers should be familiar with the laws that the employment relationship is bound by. The preceding sections of the guide have been located within this legal framework, ensuring that the guidelines conform to the law. The section addresses each of the following laws in turn: the Constitution; the Basic Conditions of Employment

Act and Sectoral Determination 7; the Labour Relations Act; the Unemployment Insurance Act; the Employment Equity Act; the Occupational Health and Safety Act; the Compensation for Occupational Injuries and Diseases Act; and the National Minimum Wage Act. The section begins with the concept of the right to work, enshrined in international human rights instruments, which informs domestic legal frameworks.

1.1 International Covenant on Economic, Social and Cultural Rights

The right to work is enshrined in the Universal Declaration of Human Rights which states in article 23:

- Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- Everyone, without any discrimination, has the right to equal pay for equal work.
- Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- Everyone has the right to form and to join trade unions for the protection of his interests.⁴⁹

The [International Covenant on Economic, Social and Cultural Rights](https://www.ohchr.org/en/udhr/doc-international-covenant-economic-social-cultural-rights) (ICESCR) brings the force of law to the rights declared in the Universal Declaration of Human Rights. It commits signatory state parties to work toward the granting of economic, social, and cultural rights including labour rights. South Africa ratified ICESCR in 2017. As party to the Covenant, South Africa:

- Recognises... “the right to work, which includes the right of everyone to the opportunity to gain [her or his] living by work which [she or he] freely chooses or accepts, and will take appropriate steps

to safeguard this right.”⁵⁰

- Recognises... “the right of everyone to the enjoyment of just and favourable conditions of work.”⁵¹
- Will ensure: (a) The right to everyone to form trade unions and join the trade union of [her or his] choice...(d) the right to strike...⁵²

The rights granted by ICESCR are enjoyed by everyone, including foreign migrants. This means that the rights of foreign migrants to work in South Africa, regardless of legal status, are protected by ICESCR.

1.2 The Constitution

The [Constitution](#) is the supreme law of South Africa. Chapter Two of the Constitution, the Bill of Rights, sets out the civil, political and socio-economic rights of all people in South Africa and is binding on government. Some provisions also apply to the private sector and private persons. The following rights, including labour rights, are enshrined in the Bill of Rights and are relevant to the domestic employment relationship:

- Everyone is equal before the law and has the right to equal protection and benefit of the law. No one may unfairly discriminate directly or indirectly against anyone... on any ground, including race,

⁵⁰ Article 6(1) of the International Covenant on Economic, Social, and Cultural Rights, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

⁵¹ Article 7 of the International Covenant on Economic, Social, and Cultural Rights.

⁵² Article 8 of the International Covenant on Economic, Social, and Cultural Rights.

⁴⁹ Universal Declaration of Human Rights, Article 23, available at: https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf

gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth (Section 9).

- Everyone has the right to human dignity and to have their human dignity respected and protected (Section 10).
- No one may be subjected to slavery, servitude or forced labour (Section 13).
- Everyone has the right to freedom of association (Section 18).
- Everyone has the right to fair labour practices; every worker has the right to form and join a trade union, to participate in its activities and programmes, and to strike; every employer has the right to form and join an employers' organisation and to participate in the activities of the organisation (Section 23).
- Everyone has the right to access the courts or another independent and impartial tribunal or forum to resolve any dispute that can be resolved by the application of law (Section 34).

In 1994 new labour laws were drafted to harmonise with the new constitutional order.⁵³ These laws apply to all employees who ordinarily work in South Africa, regardless of the nationalities of either the employer or employee. An employee cannot contract out of the employment protections afforded to them by labour laws, except in the case where the law specifically permits it. Labour laws are

supplemented by codes of practice: in terms of domestic work, non-statutory codes of practice are issued by the Commission for Conciliation, Mediation and Arbitration (CCMA).

Below is a summary of each of these laws and what they mean for the domestic employment relationship.

1.3 Basic Conditions of Employment Act 75 of 1997

The [Basic Conditions of Employment Act](#) (BCEA) applies to all employers and employees. It sets the basic standards for employment with respect to working hours, leave, pay and dismissal. This law also gives the Minister of Labour the power to make sectoral determinations, a type of regulation that establishes the basic conditions of employment for people who work in a certain sector or geographical area.

The sectoral determination that deals with domestic workers is called Sectoral Determination 7.

a) Sectoral Determination 7

[Sectoral Determination 7](#) builds on the BCEA and sets out the minimum standards of employment for domestic workers in an effort to improve their working conditions. It deals with subjects like hours of work, leave, and when and how domestic workers' employment may be lawfully terminated or ended. The sectoral determination applies to all domestic workers, including those employed by an agency and those employed independently in private households. It

⁵³ This paragraph draws from Urmila Bhoola, *National Labour Law Profile: South Africa*, International Labour Organization (March 2002), available at: https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158919/lang-en/index.htm

does not apply to domestic workers who are employed and live on farms (these domestic workers are covered by another sectoral determination, called Sectoral Determination 13, and the Extension of Security of Tenure Act 62 of 1997).

Domestic workers who work less than 24 hours per month for an employer are considered part-time workers. This means that if a domestic worker works for less than 24 hours a month for a particular employer, for example if he or she works 2 days per month (in total 16 hours), that employer is not legally required to uphold the standards of work set out in the sectoral determination regarding things like leave days and UIF contributions. However these employees are covered by the NMW Act and employers must therefore comply with the Act.

1.5 Labour Relations Act 66 of 1995

The [Labour Relations Act](#) (LRA) deals with relationships between employers and employees and gives effect to the constitutional right to join a trade union and participate in its activities. It also facilitates **collective bargaining** in the workplace and for different sectors. The LRA sets out **dispute resolution mechanisms** that can be followed when an employer and employee are involved in a dispute or disagreement. The LRA also provides for the creation of the **Commission for Conciliation, Mediation and Arbitration (CCMA)**.

1.6 Unemployment Insurance Act 63 of 2001

Since 2003 domestic workers have been covered by the [Unemployment Insurance Act](#) (UIA). The UIA provides for the creation of the Unemployment Insurance Fund (UIF), and governs how and when employers and employees should make contributions to the UIF as well as the benefits that can be paid out to employees. The purpose of the UIF is to give short-term relief to employees when they become unemployed or unable to work due to illness, maternity leave or adoption leave. It also provides support to the dependents of a contributor who has passed away. It is the responsibility of employers to register domestic workers with the UIF. Only domestic workers who work more than 24 hours a month for an employer are covered by the UIA and can claim benefits from the UIF. Employees cannot claim from UIF if they resign from their jobs.

1.7 Employment Equity Act 55 of 1998

The [Employment Equity Act](#) (EEA) promotes equal opportunities and fair treatment in the workplace and aims to eliminate unfair discrimination. According to the EEA, an employer cannot deny an employee a job because of his or her race, age, marital status and family responsibility. An employer also cannot deny an employee a job because she is pregnant or he or she is HIV positive. If an employer has more than one employee in his or her employment, the employees must be paid equal wages for work of

equal value. This means that two domestic workers performing tasks that have the same amount of responsibility and require the same skill and effort should be paid the same amount.

1.8 Occupational Health and Safety Act 85 of 1993

The [Occupational Health and Safety Act](#) (OHSA) aims to promote health and safety at work and requires every employer to provide and keep, as far as is reasonably possible, a working environment that is safe and does not put the employee's health at risk. Employers are required to take steps to do away with actual and potential hazards to their employee's health and safety. Employers are also required to provide information, instruction, training and supervision necessary to ensure, as far as reasonably possible, that the workplace remains healthy and safe.

1.9 Compensation for Occupational Injuries and Diseases Act 130 of 1993

From November 2020 domestic workers are covered by the [Compensation for Occupational Injuries and Diseases Act](#) (COIDA), which provides for compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment, or for death resulting from such injuries or diseases. Employers are obligated to register their employees with the Compensation Fund and make annual assessment contributions. By contributing to the Compensation Fund,

in the unfortunate event that an employee gets injured while working compensation is sought from the Fund and not the employer. Employees covered by COIDA cannot sue employers for injuries, diseases or death arising from their work.

1.10 National Minimum Wage Act 9 of 2018

The purpose of the [National Minimum Wage Act](#) (NMW Act) is to advance economic development and social justice by improving the wages of lowest paid workers, protecting workers from unreasonably low wages, preserving the value of the national minimum wage, promoting collective bargaining and supporting economic policy. The NMW Act applies to all workers and their employers with the exception of some specific sectors.

2. Sample documents

2.1 Sample Written Particulars of Employment by the Department of Employment and Labour

Download sample [here](#).

Written Particulars of Employment, given by:

.....

(Herein after referred to as “the employer”)

Address of employer:

.....

.....

to

(Herein after referred to as “the employee”)

1. Commencement

Employment will begin on and continue until terminated as set out in
Sectoral Determination 7.

2. Place of work

.....

3. Job title

(E.g. Domestic worker, child minder, gardener, etc.)

.....

4. Job Description

.....

.....

.....

.....

5. Duties

.....

.....

.....

.....

6. Hours of work

6.1 Normal working hours will be hours per week, made up as follows:

		Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Start Time								
Meal Interval	Start							
	End							
End Time								
Other Breaks								

6.2 Overtime will only be worked as agreed from time to time and will be paid at the rate of one and a half times of the total wage as set out in Sectoral Determation 7.

6.3 Standby will only be done if agreed from time to time whereby an allowance will be paid of at least R30.00 per standby shift.

7. Wages

7.1	The employees wage shall be paid in cash on the last working day of every week/month and shall be	R
7.2	The employee shall be entitled to the following allowances/other cash payments/payment in kind:	
7.2.1	A weekly/monthly transport allowance of	R
7.2.2	Meals per week/month to the value of	R
7.2.3	Accommodation per week/month to the value of	R
7.3	The following deductions are agreed upon:	
		R
		R
		R
7.4	The total value of the above remuneration shall be	R

7.5 The employer shall review the employee’s salary/wage on or before 1 November of every year.

8. Termination of employment

Either party can terminate this agreement with one week's notice during the first six months of employment and with four weeks' notice thereafter. Notice must be given in writing except when it is given by an illiterate domestic worker. In the case where the domestic worker is illiterate notice must be explained orally by or on behalf of the employer.

9. Sunday work

Any work on Sundays will be by agreement between parties and will be paid according to Sectoral Determination 7.

10. Public Holidays

Any work on holidays will be by agreement and will be paid according to clause 8 of the guidelines.

11. Annual Leave

The employee is entitled to three weeks paid leave after every 12 months of continuous service. Such leave is to be taken at times convenient to the employer and the employer may require the employee to take his/her leave at such times as coincide with that of the employer.

12. Sick leave

- 12.1 During every sick leave cycle of 36 months the employee will be entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.
- 12.2 During the first six months of employment the employee will be entitled to one day's paid sick leave for every 26 days worked.
- 12.3 The employee is to notify the employer as soon as possible in case of his/her absence from work through illness.
- 12.4 A medical certificate may be required if absent for more than 2 consecutive days or has been absent on more than two occasions during an eight-week period.

13. Maternity leave

- 13.1 The employee will be entitled to month's maternity leave without pay;

Or

- 13.2 The employee will be entitled to months maternity leave onpay

14. Family responsibility leave

The employee will be entitled to five days family responsibility leave during each leave cycle if he or she works on at least four days a week.

15. Accommodation

- 15.1 The employee will be provided with accommodation for as long as the employee is in the service of the employer, and which shall form part of his/her remuneration package
- 15.2 The accommodation may only be occupied by the worker, unless prior arrangement with the employer
- 15.3 Prior permission should be obtained for visitors who wish to stay the night. However where members of the employees direct family are visiting, such permission will not be necessary.

16. Clothing (Delete this clause if not applicable)

Sets of uniforms will be supplied to the employee free of charge by the employer and will remain the property of the employer.

17. Other conditions of employment or benefits

.....

.....

.....

.....

18. General

Any changes to the written particulars will only be valid if agreed to by both parties.

EMPLOYER:

.....

ACKNOWLEDGEMENT OF RECEIPT BY EMPLOYEE:

.....

Date:

.....

2.2 Sample of payslip

Download sample [here](#).

Name of Employer			
Name of Employee			
ID Number			
Basic Wage			
Manner of Payment	Per Hour Per Week Per Month	Per Day Per Fortnight	
	Rate	Number of Hours	Rand earned
Ordinary hours worked			
Overtime worked	R		R
Sundays Worked	R		R
Public Holiday time worked	R		R
Payment in kind			
Standby	R		R
Allowances	R		R
			R
Subtotal			R
Deductions	e.g. Union		R
	UIF		R
	Pension		R
Total Amount Due			R

2.3 Sample of Certificate of Service

Download sample [here](#).

I,
(Full Name of Employer)

residing at,
(Employer Address)

.....
declare that
(Full Name of Employee)

.....
(I.D. Number).....

was in my employment for the period of
..... to
as
(State Job Title or Type of Work or Occupation)

On termination of service this employee was earning per month/week

R per (.....)
(Month/week/day) (Amount in words)

.....

Employer’s signature Date

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