

HOW IS REMUNERATION CALCULATED UNDER S41 OF THE BASIC CONDITIONS OF EMPLOYMENT ACT?

Definition of remuneration (BCEA):

“remuneration” means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State, and “remunerate” has a corresponding meaning;

Severance Pay (BCEA):

(2) An employer must pay an employee who is dismissed for reasons based on the employer’s operational requirements severance pay equal to at least one week’s remuneration for each completed year of continuous service with that employer, calculated in accordance with section 35.

Of importance, is that the remuneration must be calculated in accordance with section 35.

Section 35(5) (BCEA):

(5) For the purposes of calculating an employee’s annual leave pay in terms of section 1, notice pay in [ems of section 38 or severance pay in” terms of section 41. an employee’s remuneration— (a) includes the cash value of any payment in kind that forms part of the employee’s remuneration unless the employee receives that payment in kind; but (b) excludes— (i) gratuities; (ii) allowances paid to an employee for the purposes of enabling an employee to work; and (iii) any discretionary payments not related to the employee’s hours of work or work performance.

The above section was amended for further clarity on calculating remuneration in terms of section 35(5) of the BCEA. In the Government Gazette No.24889 published 23 May 2003.

The following payments are included in an employee’s remuneration for the purposes of calculating pay for annual leave in terms of section 21, payment instead of notice in terms of section 38 and severance pay in terms of section 41 –

- (a) Housing or accommodation allowance or subsidy or housing or accommodation received as a benefit in kind;
- (b) Car allowance or provision of a car, except to the extent that the car is provided to enable the employee to work;
- (c) Any cash payments made to an employee, except those listed as exclusions in terms of this schedule;
- (d) Any other payment in kind received by an employee, except those listed as exclusions in terms of this schedule;
- (e) Employer’s contributions to medical aid, pension, provident fund or similar schemes;**
- (f) Employer’s contributions to funeral or death benefit schemes.

In the Government Gazette No. 1402 published 19 December 2018, the following is stated in terms of s35(5):

7 Calculation of remuneration and wages :
Section 35

4.7.1 Wages are calculated by the number of hours ordinarily worked. 4.7.2 Monthly remuneration or wage is four and one-third times the weekly wage.

4.7.3 If calculated on a basis other than time, or if the employee's remuneration or wage fluctuates significantly from period to period, any payment must be calculated by reference to remuneration or wage during - (a) the preceding 13 weeks; or (c) if employed for a shorter period, that period.

4.7.4 Employers and employees should consult a schedule published in the Government Gazette to determine whether a particular category of payment forms part of an employee's remuneration for the purpose of calculations made in terms of this Act.

In Government Gazette No.42965 published 22 January 2020, the above clause remains the same. The above Gazette's do not give an amended schedule of what forms part of remuneration. The schedule published in Government Gazette is the schedule of 2003.

It therefore, follows based on the above and as per the schedule in Gazette No.24889 outlined above, an employer's contributions to medical aid, pension, provident fund or similar schemes is included in an employee's remuneration for the purposes of calculating severance pay in terms of section 41.