

## Wanneer is oortyd wetlik afdwingbaar?

Deur Marelize Roets

Die Wet op Basiese Diensvoorwaardes ("WBDV") stipuleer dat werknemers en werkgewers 'n ooreenkoms moet aangaan ten opsigte van die werk van oortyd, soos byvoorbeeld in piektye of seisoenale tye. Werkgewers moet die nodige beplanning doen om te verseker dat hierdie ooreenkoms tussen die partye voorsiening maak vir alle oortyd ten einde die besigheid in staat te stel om aan operasionele vereistes te kan voldoen.



**Die dienskontrak is die basis van die verhouding tussen die werkgever en werknemer en vervat die bepalings en voorwaardes van diens soos op ooreengekom.**

Die werkgever kan in die dienskontrak op die werk van oortyd ooreenkoms, of 'n oortydbeleid implementeer. Dit is belangrik om te bevestig dat slegs werk wat buite normale werksure met die werkgever se toestemming verrig word as oortyd geag sal word. Werk wat vrywillig buite normale werksure gelewer word sal nie as oortyd geag word nie.

Indien 'n werknemer weier om oortyd te werk ten spyte van 'n ooreenkoms tussen die werkgever en werknemer ten opsigte van die werk van oortyd, kan die werkgever dissipline toepas volgens die dissiplinêre kode. Indien werknemers kollektief weier om oortyd te werk soos ooreengekom tussen die partye, sal die aksie as 'n industriële aksie geag kan word en kan die werkgever voortgaan met 'n dissiplinêre verhoor wat moontlik kan lei tot ontslag. Die weiering om oortyd te werk moet billik wees en 'n werknemer moet kan staaf hoekom hy/sy weier om oortyd te werk.

Selfs al is daar nie 'n ooreenkoms bereik tussen die werkgever en

### Wie is die LWO?

Die LWO is gedurende 1990 as werkgewersorganisasie tot stand gebring, ten einde werkgewers binne die Suid-Afrikaanse besigheidsgemeenskap te bedien met regsdiens, asook verwante dienste op die gebied van arbeidsreg.

Die LWO is 'n lede-organisasie sonder winsbejag en word bestuur deur 'n Raad wat uit lede bestaan. Die LWO beskik oor die nodige infrastruktuur waardeur lede effektief op 'n nasionale basis bedien kan word.

### Die doel van die LWO

Die LWO het ten doel om die werkgewersorganisasie van uitnemendheid te wees vir werkgewers gegrond op die professionele wyse waarop lede van die LWO met arbeidsregtelike dienste bedien word.

### Who is the LWO?

The LWO was established during 1990 as an employers' organisation in order to assist employers with legal services within the field of labour law.

The LWO is a non-profit members' organisation and is managed by a board consisting of members. The LWO has the necessary infrastructure to assist members effectively on a national basis.

### The purpose/goal of the LWO

The LWO aims to be the employers' organisation of excellence for employers based on the professional manner in which members of the LWO is served with labour law services.

werknemer ten opsigte van die werk van oortyd nie, is die werknemer verplig om oortyd te werk in geval van 'n noodsituasie.

**Die WBDV stipuleer dat die vereiste om 'n ooreenkoms in plek te hê tussen partye ten opsigte van oortyd wat gewerk moet word, nie sal geld in gevalle waar die situasie as 'n noodsituasie geag kan word nie.**

Indien daar dus 'n veldbrand uitbreek op 'n plaas, 'n kliënt dien 'n bestelling in wat nie tydens normale werksure voltooi kan word nie of masjinerie breek onverwags, dan sal dit regverdig wees om van 'n werknemer te verwag om oortyd te werk. Indien 'n werknemer in so 'n geval weier om oortyd te werk, kan dit moontlik lei tot ontslag tydens 'n dissiplinêre verhoor.

**Die werknemer behoort te alle tye in die beste belange van die werkgever op te tree. Kontak die LWO by 086 110 1828 om te verseker dat werksure binne die riglyne gestel deur arbeidswetgewing geskied.**

# What do I owe my ex-employee?

By Anneline Scriven



The employment contract can come to an end when the employee resigns, reaches retirement age, is dismissed or is retrenched. Depending on the circumstances, the employer has the following obligation:

## The employee resigns

When an employee resigns, it must be in writing. If the employee refuses to work the required statutory notice period, the employer does not have to remunerate the employee for the notice period and may claim any damages suffered as a result thereof. If the parties come to a mutual agreement that the employee is not required to work the notice period, the employer still has to remunerate the employee for the notice period. The employer must also remunerate the employee for accumulated leave due to the employee.

## The employee reaches retirement age

The employment contract will terminate when the employee reaches the retirement age as agreed upon and stipulated in the employment contract. The employer must

also remunerate the employee for accumulated leave due to the employee. Any ex gratia (out of goodwill) payment is solely at the discretion of the employer and is not a legal requirement.

## The employee is dismissed

Under no circumstances can an employee be dismissed prior to holding a disciplinary hearing. Once the employee has been found guilty and there are sufficient grounds to proceed with a dismissal, an employee can be dismissed. The employee is entitled to his/her salary up to the last working day, including the finalisation of the disciplinary hearing. The employer must also remunerate the employee for accumulated leave due to the employee.

It is important to determine whether the dismissal is with or without a notice period. If a notice period is applicable, the employer has to decide whether the employee is required to work the notice period. If not, the employer has to pay the employee for

the notice period.

## The employee is retrenched

A retrenched employee is entitled to remuneration for accumulated leave, notice pay (if applicable) and severance pay of at least one week's remuneration for every completed year of service.

The employer has an obligation to provide an employee with a certificate of service and final payment form upon termination of employment. A UI19 form has to be completed and submitted to the Department of Labour. It is advisable to provide the employee with a copy of the UI19 form.

**Contact the LWO at 0861 101 828 when an employment contract is terminated to ensure the correct procedure is followed.**

## Ons kan met trots meld dat ons lede arbeidswetgewing nougeset volg!

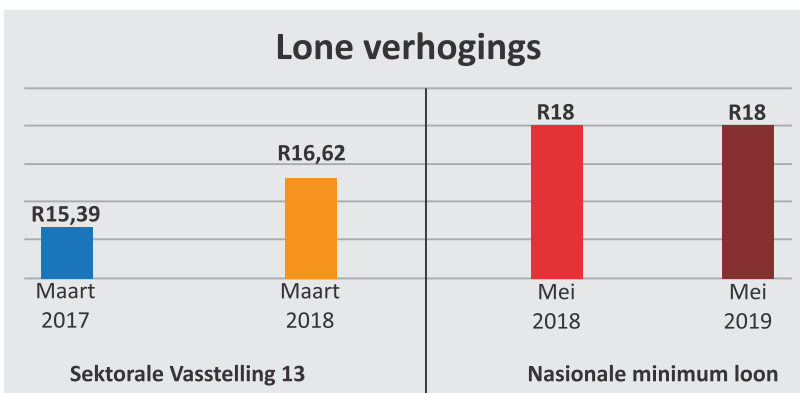


1 Maart 2017 tot 30 Junie 2017:

- 362 dissiplinêre verhore hanteer namens LWO lede
- 165 sake is verwys deur werknemers na die KVBA vir bemiddeling
- Die KVBA het in 99,99% van die verwysings beslis dat LWO lede voldoen het aan arbeidswetgewing, billike prosedure en substantiewe redes vir optrede

# Nasionale minimum loon: is jy gerat?

Deur Christo Bester



Die lang verwagte minimumloon vir Suid-Afrika is deur adj.-pres. Cyril Ramaphosa bekend gemaak. Dit volg ná twee jaar van onderhandelinge wat op verskeie vlakke plaasgevind het.

Die aankondiging oor die nasionale minimum loon wat op 1 Mei 2018 in werking tree, is

R18 per uur en huiswerkersektor R15 per uur moet betaal. Hierdie tariewe sal geld tot die jaar 2020 waarna dit weer geëvalueer sal word.

Volgens Sektorale Vasstelling 13 (wat van toepassing is op die landbousektor) betaal landbou reeds vanaf Maart 2017 R15,39 per

gebaseer op 'n uurlikse tarief van R20 vir alle werknemers. Die landbousektor sal vir eers 90% van dié loon moet betaal en die huiswerkersektor 75% van dié loon. Dit kom daarop neer dat die landbousektor

uur. Die outomatiese verhoging volgens die Sektorale Vasstelling sal steeds plaasvind op 1 Maart 2018, maar sal dié uurlikse loon weer aangepas word op 1 Mei 2018 in terme van die nasionale minimum loon.

Die voorgestelde wetgewing het verreikende gevolge vir die arbeidsomgewing. Jy as werkgewer moet nou reeds bepaal of jy in 'n finansiële posisie gaan wees om die lone te kan bekostig. Sou jy nie in 'n posisie gaan wees om die verhoging te bekostig nie, kan werkgewers aansoek doen om vrystelling. Hierdie vrystelling sal egter slegs vir 'n 12 maande tydperk oorweeg word.

Die aanduiding is dat geen verdere vrystelling na 'n tydperk van twee jaar, dus die jaar 2020, toegestaan sal word nie.

**Kontak die LWO by 0861 101 828 indien jy herstrukturering oorweeg ten einde die nasionale minimum loon te kan betaal.**

# The Employment Equity Act

applies to all employers, but “designated employers” (who meet the minimum requirements) have additional responsibilities. Make sure you know what is expected of you and that you comply with this act.

## Are you a “designated employer”?

A “designated employer” is any employer with **50 or more employees, OR an annual turnover of:**

• Agriculture	R6 million
• Mining and Quarrying	R22.5 million
• Manufacturing	R30 million
• Electricity, Gas and Water	R30 million
• Construction	R15 million
• Retail, Motor trade and Repair services	R45 million
• Wholesale trade, Commercial agents and Allied trades	R75 million
• Catering, Accommodation and other Trade	R15 million
• Transport, Storage and Communications	R30 million
• Finance and Business services	R30 million
• Community, Special and Personal services	R15 million

The Employment Equity Act aims to eliminate unfair discrimination in the workplace by promoting equal opportunities and fair treatment.



## Obligations of a “designated employer”:

1 →

**Appointing a Senior Employment Equity Manager and establishing a committee**

“developing, implementing and monitoring the plan; hold regular consultations”

2 →

**Drafting an analysis (EEA12)**

“what are the challenges and action measures in the workplace”

3 →

**Drafting an Employment Equity plan (EEA13)**

“how does the employer propose to establish employment equity in the workplace”

4

**Submitting Employment Equity reports (EEA2 and EEA4)**

“reporting information on progress made regarding the implementation of the plan”

**Deadlines:**

*Per hand:*  
2 October 2017

*Electronically:*  
15 January 2018



**Take note:** Should a “designated employer” fail to comply with these requirements, a fine of up to R2.7 million or 10% of the employer’s annual turnover (whichever is the greatest) can be imposed.

## The LWO can assist you as follows:

**R548.00 per hour  
R4.50 per km  
(including VAT)**

### Consultation and facilitation

During consultation the LWO assists with the drafting of an analysis, an employment equity plan and other applicable documentation, as well as all other aspects to ensure compliance with the Employment Equity Act.

The LWO can also act as facilitator to establish a committee and holding consultations to ensure that you follow the correct procedure.

**R2 600.00  
(including VAT)**

### Drafting Employment Equity reports (EEA2 and EEA4)

The LWO assists with the processing and compiling of information, as well as submitting of reports. We have also prepared documentation to assist you with the process. This documentation can be sent to you via e-mail or fax should you require the LWO to assist you to process and compile the information and submit the reports.

# Kontak die LWO/Contact the LWO

Tel: 086 110 1828 | Faks/Fax: 012 664 2703 | E-pos/E-mail: info@lwo.co.za | Web: www.lwo.co.za

Adres/Address: Privaatsak/Private bag x121, Centurion, 0046 | Eenheid/Unit 16, Central Office Park, Jeanlaan 257/257 Jean Avenue, Centurion

## HOOFKANTOOR

Voorsitter

Hoof Uitvoerende Beampte

Bestuurder: Bemarking

Bestuurder: Finansies & Admin

Bestuurder: Regsdienste

Senior Regsadviseur

Regsadviseur

Regsadviseur

Regsadviseur

Regsadviseur

Pieter Muller

Pieter Breytenbach

Ansofie van der Walt

Daniel van der Vyver

Christo Bester

Mariëtte Redelinghuys

Elmari Lemmer

Maryna Theron

Mishka Mars

Zandré Maritz

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## LWO bedieningspunte / service points

Nota: dienste sal gelewer word vanaf die naaste bedieningspunt / Note: services will be rendered from the closest service point

