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## FOKUS | FOCUS



WERKGEWERSORGANISASIE

EMPLOYERS ORGANISATION

LWO Fokus/Focus  
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Nuusbrief van die LWO Werkgewersorganisasie

Newsletter of the LWO Employers Organisation

## Years of service - payment?

By Christo Bester

Often employees request to be paid for the years of service they have rendered to the employer. An employee who receives a weekly / bi-weekly / monthly salary is compensated for their services when they receive their remuneration.

When an employee resigns, reaches retirement age or is dismissed (except for in the case of retrenchment), there is no obligation on the employer to pay the employee for years of service. If an employee resigns, reaches retirement age or is dismissed, the employee should receive the following:

- Salary up to the last working day;
- Accumulated leave; and
- Any other payment owed, for example overtime, pro rata bonus, etc.



It is at the employer's sole discretion to provide an ex gratia payment to the employee if they have been working together for several years and the employer wishes to compensate the employee for his/her loyalty.

The only circumstances when an employer has the obligation to compensate an employee for years of service, is when the employer retrenches an employee or restructures the business. This is referred to as severance pay and the employee will be entitled to the following:

- Salary up to the last working day;
- Accumulated leave;
- Severance pay of 1 week's salary for every year of completed service; and
- Notice pay if the employee is not required to work during the notice period.

Keep in mind that it is vital to follow the correct procedures when an employee's services are terminated whether it is by way of retirement, dismissal for misconduct or operational requirements. Failing to follow the correct procedures will be to the detriment of the employer and the business when the employee approaches the Commission for Conciliation Mediation and Arbitration (CCMA). Contact the LWO Employers Organisation to ensure that correct procedures are followed.

Contact the LWO at 086 110 1828 for any assistance and/or advice to ensure the correct procedure is followed when an employee's services are terminated. We are available 24/7.

### 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.

## Dagboek hierdie datum!!! LWO Lede Vergadering:



Die LWO is 'n lede-organisasie sonder 'n winsoogmerk en word bestuur deur 'n Raad wat uit lede bestaan. Elke twee jaar word 'n Lede Vergadering gehou waartydens belangrike aangeleenthede bespreek word, asook 'n nuwe Raad verkies word.

Dagboek asseblief 26 Julie 2018 vir die LWO Lede Vergadering. Jou teenwoordigheid is vir ons belangrik. Meer besonderhede sal volg en sal lede ook per e-pos gekontak word.

# Afleggings: wat gebeur na die konsultasies?

Deur Anneline Scriven

In terme van die Wet op Arbeidsverhoudinge is daar 'n streng prosedure wat gevolg moet word voordat die werkgever enige afleggings kan oorweeg. Konsultasies vorm 'n belangrike deel van hierdie proses, waartydens werknemers ook die geleentheid gegee moet word om voorstelle te maak oor hoe die afleggings vermy kan word. Die werkgever moet elkeen van hierdie voorstelle oorweeg en terugvoering gee aan die werknemers. Indien dit nodig geag word, kan die werkgever verdere konsultasies met die werknemers hou om alle noodsaaklike aspekte te bespreek.

## Wat is die volgende stap?

Na alle alternatiewe deur die werkgever oorweeg is en daar geen ander opsie as afleggings beskikbaar is nie, kan die werkgever voortgaan met die seleksie proses om elkeen van die werknemers wie deur die afleggingsproses geraak sal word, bekend te stel. Hierdie werknemers moet individueel in kennis gestel word en hulle skeidingsvergoeding moet bespreek word.

Die dienskontrak kan kragtens statutêre kennisperiodes beëindig word en spesifiseer die Wet op Basiese Diensvoorwaardes die volgende periodes:

- Een week kennis, indien die werknemer in diens was vir ses maande of minder;
- Twee weke kennis, indien die werknemer in diens was vir meer as ses maande,

maar minder as twaalf maande;

- Vier weke kennis, indien die werknemer in diens was vir langer as twaalf maande.

Let daarop dat hierdie kennisperiodes kan wissel van industrie tot industrie waar wetgewing van toepassing ander kennisperiodes voorskryf.

Indien die besigheid se operasionele vereistes dit nie nodig ag vir die werknemer om sy/haar kennistydperk te voltooi nie, is dit noodsaaklik vir die werkgever om die kennistydperk uit te betaal aan die werknemer saam met sy/haar finale betaling.

## Wat is die skeidingsvergoeding betaalbaar?

'n Werkgever moet 'n werknemer wat ontslaan word as gevolg van aflegging 'n skeidingsvergoeding betaal gelyk aan minstens een week se besoldiging vir elke voltooide jaar aaneenlopende diens. Buiten die skeidingsvergoeding, moet die werkgever ook die volgende gelde oorbetaal:

- Salaris tot en met die laaste werksdag;
- Opgehoopte verlof; en
- Betaling vir kennisperiode indien die werknemer nie vereis word om die kennisperiode te werk nie.

Skakel gerus die LWO vir bystand tydens hierdie konsultasie proses sodat u te alle tye prosedureel korrek optree.

**Skakel die LWO by 086 110 1828 vir enige bystand en/of advies wanneer aflegging oorweeg word in die werksplek om te verseker dat die korrekte prosedure gevolg word.**



## HET JY GEWEET???

**Een van die grootste voordele om lid te wees by die LWO is gemoedsrus:** wanneer jy wéét jou besigheid voldoen aan arbeidswetgewing, asook die 24/7 ondersteuning met praktiese advies oor hoe om enige werkgever-werknemer situasie in die werksplek te hanteer.

**Ons nommer een diens is natuurlik die 24/7 regsadvies hulplyn** waar jy as lid enige tyd en soveel keer as nodig, kan inbel en direk met 'n gekwalifiseerde regsadviseur praat.

**Wanneer jy 'n vraag het, wanneer jy onseker is hoe om 'n situasie te hanteer, wanneer jy jou optrede wil klank of wanneer jy die nuutste inligting van toepassing op jou industrie wil bekom: moenie wonder nie, bel en wéét.**



**086 110 1828**

Visit the LWO website at [www.lwo.co.za](http://www.lwo.co.za) for more information:

- Membership packages and benefits
- Practical solutions with regards to how the LWO can assist you
- Interesting articles

Like the LWO facebook page to receive continuous training regarding how to handle any labour related issues in the workplace: @lwo.labour

# Useful tips when dealing with a resignation

By Christo Bester

When an employer and employee enters into a contract of employment, one of the terms and conditions deals with the required termination period of the relationship. The Basic Conditions of Employment Act (BCEA) regulates and prescribes statutory notice periods depending on the length of service. The BCEA further dictates that a notice of termination of an employment contract must be in writing, unless given by an illiterate employee.

**But what if your employee resigns without doing it in writing and later submits a dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) for an “unknown reason for dismissal”?**

The resignation isn't invalid if the employee doesn't give proper notice. The employer can decide whether or not to waive compliance with the notice period or hold



the employee to the notice period. It is important that the employer records the resignation and the notice period.

## Useful tips when dealing with resignations:

- Always have the resignation in writing.
- Confirm the resignation and the acceptance of the resignation in writing to the employee. This will safeguard yourself against a possible CCMA award.
- Clearly record and advise the employee of the last working day, even in the event of the employment contract coming to an end immediately.
- The employee is entitled to receive a certificate of service, irrespective of the reason for termination of employment.
- If the employee resigns without giving

you notice as required by law or in terms of the employment contract, the employee is in breach of contract and the employer does not have to pay notice pay in such a situation. An employer can either hold the employee to

what is left of the contract or cancel and sue for damages.

- An employee cannot take leave during the notice period.
- An employer waiving the employee's notice period must pay the employee notice pay unless the employer and the employee agree otherwise. This can be successfully implemented to protect business information, client contracts and a potential risk of the disclosure of this confidential information.

**Contact the LWO at 086 110 1828 for more information and/or assistance in this matter.**

## Myth BUSTER Labour Law

### Myth:

"The employee 'fired' him-/ herself by absconding (desertion)"

### Fact:

A deserter is an employee who is absent from work for more than 5 days, without notifying the employer of the reason for the absence. It is

extremely important that the employer must be able to prove that the employee has no intention of returning to work and must attempt to contact the employee and have proof of these attempts. A hearing must be held and may proceed in absentia.

## Wat is 'n handelsbeperking en wat behels dit?

Deur Adv. Mishka Mars

### Wat is 'n handelsbeperking?

'n Handelsbeperking is 'n ooreenkoms tussen werkgewer en werknemer, wat 'n werknemer verhoed om sy werk, aanleg of opleiding te gebruik in dieselfde veld as sy werkgewer vir 'n spesifieke periode en in 'n spesifieke area, nadat diens by die huidige werkgewer verlaat is.

### Watter aspekte moet in ag geneem word voordat 'n handelsbeperking suksesvol afgedwing kan word?

- Wat: Wat is die spesifieke take, aanleg, werk of veld waarby 'n voormalige werknemer nie betrokke kan raak nie.
- Waar: Verwys na die geografiese gebied

en natuurlik moet daar 'n verbintenis met die spesifieke gebied wees.

- Tyd: Verwys na die tyd nadat die werknemer diens verlaat het, wat die handelsbeperking geldig gaan wees, dit moet 'n redelike tydperk wees.

### Wat poog 'n handelsbeperking om te beskerm?

Die handelsbeperking poog om die belange van die werkgewer te beskerm en dit kan opgesom word in hoofsaaklik drie faktore:

- ① vertroulike inligting;
- ② kliënte; en
- ③ klandisiewaarde, of altans die goeie naam van die besigheid.



**Skakel die LWO by 086 110 1828 vir enige bystand en/of advies wanneer enige ooreenkomste tussen die werkgewer en werknemer aangegaan word.**

# Kontak die LWO/Contact the LWO

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**Bestuurder: Finansies & Admin**

**Bestuurder: Regsdienste**

**Senior Regsadviseur**

**Regsadviseur**

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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

