Basic conditions of employment for a body corporate employee
By Carol Tissiman

There are very few sectional title schemes in South Africa that do not have at least one full- or part-time employee working for them. Amongst others, these include gardeners, cleaners, security guards, and for larger schemes; supervisors, caretakers, and even in-house management teams. Employees play a vital role in the effective upkeep of a scheme, but very often, because sectional title schemes are not businesses aimed at making a profit, employees are left to their own devises and are not managed in line with applicable legislation.

The Basic Conditions of Employment Act determines minimum standards that apply to any contract of employment. An employer cannot decide that these provisions will not apply, even with the agreement of the employee. The following article is a basic overview of some of the provisions of the Act applicable to any body corporate that has employees.

Definition of an employee

The Act includes a very broad definition of an employee, including any person who assists in carrying out or conducting the business of an employer or who works for another person and receives any remuneration. An employee who works more than 24 hours per month is automatically protected by minimum standards set out in the Act. Employers should be careful of words such as “casual’ and “temporary” when categorising an employee, as the Act does not recognise these descriptions.

Working hours and pay

Normal working hours (excluding overtime)
An employee may not be made to work more than 45 hours a week (Monday to Saturday). If an employee works a five-day work week, they may not work more than nine hours per day. If an employee works a six-day work week, they may not work more than eight hours per day.

Overtime
Overtime work is voluntary. But if an employee has agreed in terms of the employment contract to work overtime when necessary, then the employee is obliged to work that agreed overtime. If the employee refuses to work the agreed overtime, they will be in breech of contract and the employer can take disciplinary action against him/her. Overtime must be paid at 1.5 times the employer's normal wage, or an employee may agree to receive paid time off. A worker may not work more than three hours of overtime per day or 10 hours per week.

Sunday work
In this sector, work on Sundays is generally voluntary and a worker cannot be forced to work on this day. If the employee works on a Sunday he/she must be paid double the daily wage. If the employee ordinarily works on a Sunday by agreement he/she must be paid one and one-half times the wage for every hour worked. The employer and employee may agree to the equivalent paid time off in return for working on a Sunday.

Public holidays

The days mentioned in the Public Holidays Act must be given as leave, but the parties can agree to alternative days off in lieu of a public holiday. Work on a public holiday is entirely voluntary - a worker cannot be forced to work on such a day. If the employee does work on a public holiday, or any portion thereof, they must be paid double the normal day's wage for the period worked.

Breaks and rest periods

Meal breaks
A worker is entitled to a one-hour break for a meal after working not more than five hours. Such interval may be reduced to 30 minutes by agreement between the parties. If an employee is required or permitted to work during this period, remuneration must be paid at the normal rate.

Daily and weekly rest periods
An employer must allow an employee a daily rest period of at least 12 consecutive hours and a weekly rest period of at least 36 hours. The weekly rest period must include a Sunday unless it is otherwise agreed. The daily rest period may, by agreement, be extended to 60 consecutive hours for every two weeks or be reduced to eight hours in any week if the rest period in the following week is extended equivalently.

Leave

Annual Leave
Annual leave must be at least 21 consecutive days for full time workers or, by agreement, one day for every 17 days worked or one hour for every 17 hours worked. The leave must be granted not later than 6 months after the completion of a period of 12 consecutive months of employment. The leave may not overlap with any period of sick leave, nor with a period of notice of termination of the contract.

Sick leave
During every sick leave cycle of 36 months, an employee is entitled to paid sick leave equal to the number of days the employee would normally work during a period of six weeks. During the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked.

Maternity leave
An employee is entitled to at least four consecutive months maternity leave. An employer is not obliged to pay the worker for the period for which she is off work due to her pregnancy. When on maternity leave a worker may claim maternity benefits from the Unemployment Insurance Fund (UIF). The employer may agree to pay part of or a full salary/wage during maternity leave, but the employee will then not be entitled to the UIF benefit unless the remuneration she receives is less than one third of her salary.

Family responsibility leave
Employees who have been employed for longer than four months and for at least four days a week are entitled to take three days paid family responsibility leave per year of employment. This applies only to situations including when the employee's child is born, or when the employee's child is sick or in the event of the death of an employee's spouse, life partner, parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

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