

What do we need to know about the legalities of overtime and after-hours work?

 By [Shan Raddiffe](#)

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Many South Africans are unaware of their basic rights when it comes to working hours and overtime. As we head into the holiday season, the hospitality and retail industries gear up for their busiest period, often extending hours to allow customers more time to sit or shop. With any number of staff expected to work overtime during this period, what should they, as well as HR, know about their legal rights in this regard?



Aadil Patel

We chat with Aadil Patel, the national practice head and director of Cliffe Dekker Hofmeyr's employment practice, about what employers and employees alike should know about working after hours and overtime.

What are South African employer and employee rights regarding overtime and working after hours?

The Basic Conditions of Employment Act 75 of 1997 as amended (BCEA) has its purpose in creating the basic conditions of employment for employees in South Africa. Chapter 2 of the BCEA regulates various aspects of employment including [overtime](#) and [work after hours](#).

Chapter 2 of the BCEA does not apply to employees who earn above the annual earnings threshold (published by the Minister of Labour from time to time). The current annual earnings threshold is set at R205,433.30 per annum. The chapter also does not apply to senior managerial employees or to employees who work less than 24 hours per month.

Therefore, employees who do not fall under the categories above ("qualifying employees") are entitled to the full protections afforded to them under the BCEA.

Overtime may only be worked by agreement between the parties (ie. the employer and qualifying employee). Overtime is defined by the BCEA as the 'time that an employee works during a day or a week in excess of ordinary hours of work'.

Ordinary hours of work depend on the agreement between the employer and qualifying employee. However, section 9 of the BCEA provides that the employer may not require the employee to work more than 45 hours in a week. In terms of remuneration for overtime work, a qualifying employee who works overtime has a legal right to demand payment for overtime worked at a rate of at least 1.5 times his or her normal wage rate. The qualifying employee may also enter an agreement with the employer where the employer agrees to waive overtime pay in exchange for providing the qualifying employee with time off work.

Qualifying employees are within their rights to refuse more than 45 hours per week (normal time) and 10 hours per week (overtime).



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■ ***How are SA businesses managing overtime when working with a flexi-time offering?***

In general, SA businesses (or employers) manage overtime with due regard to the requirements of the BCEA.

Employers who offer flexi-time offerings to its employees can avoid the requirements of the BCEA if the employees in question fall into one or more of the categories discussed above.

■ ***What are some examples of global legislation and best practice in this regard?***

In terms of best practice, one could have regard to international labour standards on overtime. These standards are set by the International Labour Organisation.

In terms of other African countries, the following countries provide similar protections to South Africa to qualifying employees: Botswana, the Democratic Republic of Congo and Namibia.

To answer this question further, additional research will need to be conducted.

Will it be necessary for South Africa to adopt similar legislation in the future?

At this stage, our current legislative framework regulating basic conditions of employment is comprehensive. The BCEA has its purpose in ensuring that employees in South Africa are not exploited.

The provisions of the BCEA discussed above are currently not under review.

ABOUT SHAN RADCLIFFE

Shan Radcliffe is the editor of Bizcommunity HR, Education and Legal.

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