



Ethical Employment according to the Basic Conditions of Employment Act (BCEA)

Employment contracts are a balancing act between providing a fair income and working conditions for employed therapists and ensuring that their employer is not left out of pocket.

The main determiners of a fair employment contract are the provisions of the Basic Conditions of Employment Act (BCEA) no. 75 of 1997 and the stipulations of the Health Professions Council of South Africa (HPCSA).

The focus of the BCEA is on fair working conditions. It limits the number of hours that may be worked, provides for paid annual, sick and family responsibility leave, and maternity leave, and controls termination of employment. The full provisions of the BCEA apply to all employees who earn less than R20 093 per month in 2023. Some provisions do not apply to employees who occupy management positions or who earn more than R20 093 per month.

- Section 9 of the BCEA limits ordinary working hours to a maximum of 45 hours per week and 9 hours, excluding a lunch break, per day. Section 10 stipulates that any hours worked over and above these are considered as overtime and must be paid at a higher rate; it is also at the employee's discretion not to work overtime, unless there is an agreement that overtime should be worked. No more than ten hours of overtime may be worked in a week, and no more than 12 hours may be worked in total in a day. Overtime must be paid at 1.5 times the normal rate, and double the normal rate on Sundays, unless Sundays are usually worked, in which case they must be paid at 1.5 times the normal rate.
- Section 14 stipulates a lunch break after five consecutive hours have been worked, although this may be reduced to half an hour by mutual agreement.
- Section 18 provides for public holidays to be paid at the normal rate, and for double pay if the employee works on the public holiday.
- Sections 20 and 21 provide for a minimum of 21 consecutive days of paid leave per year, which must be taken within six months of the end of that leave cycle. This means that even employees who work on a commission-only basis must be paid for three weeks of leave. It is allowable to limit the period when the leave may be taken to a time when the practice will be closed anyway, such as during school holidays.
- Sections 22-24 provide for six weeks of paid sick leave in a period of 36 months, with a sick note being required for sick leave in excess of two days, or for a second period of sick leave within eight weeks of a previous period of sick leave having been taken.
- Sections 25 and 26 provide for four months of maternity leave; however, they do not stipulate that this should be paid leave.
- Section 27 provides for three days of paid family responsibility per year for the illness of the employee's child, or the death of a close family member.



- According to Section 35, wages should be calculated according to the hours normally worked. If these vary greatly, the average of the preceding 13 weeks (or whatever shorter period a new employee has worked) should be used. This is the calculation that should be used for calculating the monthly salary, paid leave and overtime.
- Section 37 states that one week's notice of termination of employment must be given by either party if the employee has been employed for less than six months, two weeks if employed for between 6 months and one year, and four weeks if employed for longer than a year. Severance pay of one week for every year worked must be paid if the termination of service is a retrenchment, and not for disciplinary or retirement reasons.

The HPCSA's rules about employment are there to ensure that the employment contract does not encourage unethical business practices, such as overservicing, or creating perverse incentives, or anything else that could be to the patient's detriment. While the HPCSA doesn't disallow commission-based salaries, they must not encourage overservicing of patients to generate an income.

- Here rule 3.12.1., which states that "Health care practitioners shall not enter into a contract to work in a particular health establishment or service on the understanding that the health care professional generates a particular amount of revenue for such health establishment or service." It is important to balance encouraging productivity with adhering to the provisions of the BCEA.
- If the practice closes for in excess of the three weeks of paid leave, the employees must be allowed or encouraged to work during the additional weeks, unless they receive paid leave for the duration of the closure of the practice
- Rule 3.11, which states that "Healthcare practitioners shall not share fees with any person or health care professional who has not taken a commensurate part in the service for which the fees are charged" means that the practice owner must be actively involved in the provision of services at the practice, as well as the management of the practice.
- This ties in with Rule 3.10.3, which states that "Healthcare practitioners shall not charge or receive fees for services not personally rendered by either a healthcare professional himself or herself or by an unregistered person in his or her employ, except for services rendered by another healthcare practitioner or person registered in terms of the Health Professions Act (Act No. 56 of 1974), that regulates the particular profession, with whom the healthcare practitioner is associated as a partner, shareholder or locum tenens."

For those who take up **employment by the State**, either as Community Service therapists or as permanent employees, the possibility of working in a private practice to earn an additional income may seem attractive. Community Service therapists may not perform any clinical work outside their government jobs, as they are not registered as Independent Practitioners by the HPCSA; this means that they cannot work as locum tenens, either. Permanent employees may apply for permission to work outside their government jobs;

- however, Rule 3.14.1, which states that "Healthcare practitioners employed in the Public Service place their undivided attention, time and skills at the disposal of the Public Service as employer. Practitioners engaging in Remunerative Work Outside Public Service (RWOPS) shall do so in line with the approval by the executing authority;



and in so doing, practitioners place the health and wellbeing of their patients as first priority.” This means that they may not work privately during their official working hours unless they take leave to do so. An employment contract for part-time or locum work for a publicly employed therapist may thus not violate this stipulation.