

Leave accrual – first four months

Question : Is an employee who leaves employment within the first four months entitled to be paid for annual leave accrued during that period?

Answer : No, in the absence of any agreement or law to the contrary, an employee is only entitled to a leave pay-out if the employee has been employed for more than 4 months.

Brief explanation:

The Basic Conditions of Employment Act (BCEA) states that an employee is entitled to 21 calendar days' paid leave in respect of every 12 months leave cycle. Alternatively, the parties may agree that the employee is entitled to one day/hour of annual leave for every 17 days/hours on which the employee worked or was entitled to be paid.

The first impression one gets when reading the above, is that, if an employee's services should be terminated at any time, the employee is automatically entitled to be paid out for leave accrued as from the first month of employment. But the provisions of Section 40 of the BCEA are often overlooked. Section 40(c) states upfront that the entitlement to be paid arises if the employee has been employed for more than 4 months. (On this premise, Section 40(d) spells out how such leave pay must be calculated.) It follows that employees are not by law entitled to any leave pay-out if their services are terminated within the first four months of employment, unless the contract of employment, Bargaining Council Agreement or Sectoral Determination provides otherwise.

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