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MUST A CONTRACT OF EMPLOYMENT BE SIGNED?

Question: How valid is a contract of employment that has not been signed?

Answer: The validity of a contract of employment does not depend on whether the parties have signed it. A verbal contract may also be valid.

Brief explanation: The process of establishing an employment relationship is normally initiated when a prospective employer offers to remunerate a prospective employee at a certain rate for making his or her services available to the employer as from a certain date. A contract of employment comes into being when the employee accepts the offer. This may be a verbal exchange. The contract of employment depends further for its validity on the normal requirements for contracts, in terms of the common law relating contracts.

The Basic Conditions of Employment Act (BCEA) does not require the employer and employee to actually sign a contract of employment. Although it is better to have signed contract, the BCEA simply requires the employer to supply the employee with "written particulars of employment" when the employee commences employment. There are 16 items that have to be covered - see Section 29 of the BCEA. Not supplying such particulars does not render the contract of employment invalid, though.

The best way of establishing clarity and avoiding disputes is for both parties to sign a contract of employment before employment commences. However, where an employee has already started working and refuses to sign a contract of employment or refuses to sign for acceptance of the written particulars, it would suffice for the employer to explain the written particulars in the presence of a witness, hand a copy to the employee and for both the employer and the witness to confirm in writing that this has been done. There are circumstances where an employer may take action against an employee who refuses to sign a contract, but these are rare (see previous article on "Refusal to sign a contract").

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www.labourwise.co.za is an on-line labour relations service aimed at assisting employers with the implementation of effective labour relations. They can be contacted via the website or info@labourwise.co.za.