

Cobalt Solutions
For Business Owners



THE OBLIGATION TO WORK OVERTIME

Question: *May employees be forced to work overtime? What if they refuse?*

Answer: Employees can be required to work overtime if there is an agreement to that effect. A refusal to work agreed overtime amounts to misconduct.

Brief explanation: Section 10 of the Basic Conditions of Employment Act ("the BCEA") states that an employer may not require or permit an employee to work overtime unless there is an agreement to work overtime. Such agreement does not have to be in writing, but in order to avoid disputes it is advisable to record such agreement in writing. The contract of employment may contain an agreement to work overtime if the need arises. If an employee refuses to work agreed overtime, it amounts to a breach of contract and disciplinary action can be taken against the employee. If employees collectively refuse to work agreed overtime it amounts to industrial action and the relevant provisions pertaining to strike law would apply. (Note: Some Bargaining Council Agreements may contain specific provisions that regulate overtime in a particular industry or sector)

It is worth noting that section 6 of the BCEA provides that the normal requirement that overtime must be by agreement does not apply in cases where "work is required to be done without delay owing to circumstances for which the employer could not reasonably have been expected to make provision and which cannot be performed by employees during their ordinary hours of work". If these circumstances exist and employees refuse to work overtime they may be subjected to disciplinary action.

Article written by Jan Truter (www.labourwise.co.za)