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**No. 24889**



**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

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**GOVERNMENT NOTICE**

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**DEPARTMENT OF LABOUR**

No. 691

23 May 2003

**BASIC CONDITIONS OF EMPLOYMENT ACT, 1997**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, after consulting the Employment Conditions Commission and NEDLAC, hereby under section 35(5) of the Basic Conditions of Employment Act, 1997 (Act No 75 of 1997) publish the Schedule hereto. The Schedule comes into operation with effect from 1 July 2003.



MMS MDADLANA, MP

MINISTER OF LABOUR

**SCHEDULE****CALCULATION OF EMPLOYEE'S REMUNERATION  
IN TERMS OF SECTION 35(5) OF THE BASIC  
CONDITIONS OF EMPLOYMENT ACT, 1997 (ACT 75 OF 1997)**

1. The following payments are included in an employee's remuneration for the purposes of calculating pay for annual leave in terms of section 21, payment instead of notice in terms of section 38 and severance pay in terms of section 41 -
  - (a) Housing or accommodation allowance or subsidy or housing or accommodation received as a benefit in kind;
  - (b) Car allowance or provision of a car, except to the extent that the car is provided to enable the employee to work;
  - (c) Any cash payments made to an employee, except those listed as exclusions in terms of this schedule;
  - (d) Any other payment in kind received by an employee, except those listed as exclusions in terms of this schedule;
  - (e) Employer's contributions to medical aid, pension, provident fund or similar schemes;
  - (f) Employer's contributions to funeral or death benefit schemes.
  
2. The following items do not form part of remuneration for the purpose of these calculations -
  - (a) Any cash payment or payment in kind provided to enable the employee to work (for example, an equipment, tool or similar allowance or the provision of

transport or the payment of a transport allowance to enable the employee to travel to and from work);

- (b) A relocation allowance;
  - (c) Gratuities (for example, tips received from customers) and gifts from the employer;
  - (d) Share incentive schemes;
  - (e) Discretionary payments not related to an employee's hours of work or performance (for example, a discretionary profit-sharing scheme);
  - (f) An entertainment allowance;
  - (g) An education or schooling allowance.
3. The value of payments in kind must be determined as follows -
- (a) a value agreed to in either a contract of employment or collective agreement, provided that the agreed value may not be less than the cost to the employer of providing the payment in kind; or
  - (b) the cost to the employer of providing the payment in kind.
4. An employee is not entitled to a payment or the cash value of a payment in kind as part of remuneration if -
- (a) the employee received the payment or enjoyed, or was entitled to enjoy, the payment in kind during the relevant period; or
  - (b) in the case of a contribution to a fund or scheme that forms part of remuneration, the employer paid the contribution in respect of the relevant period.
5. This schedule only applies to pay for annual leave accrued from the date of operation of this Schedule.
6. If a payment fluctuates, it must be calculated over a period of 13 weeks or, if the employee has been in employment for a shorter period, that period.
7. A payment received in a particular period in respect of a longer period (e.g. a thirteenth cheque) must be pro-rated.
8. This Schedule only applies to the minimum payments that an employer is required to make in terms of the Basic Conditions of Employment Act, 1997.
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