

Are extended notice periods enforceable?

You've just received your dream job offer, but there's a catch. You need to start the new job in a month's time, but your current employer requires you to give three months' notice.



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Do you have to serve the full three months or is there a way out?

According to the Basic Conditions of Employment Act (BCEA), employers are limited to minimum periods by three categories of notice periods:

- Not less than one week if the employee has been employed for six months or less;
- Not less than two weeks if the employee has been employed for more than six months but less than one year;
- Not less than four weeks if the employee has been employed for more than one year, or is a farm worker or domestic worker who has been employed for more than six months.

So where do three-month notice periods fit in?

Nicol Myburgh, Head: HCM Business Unit at CRS Technologies explains: “An extended notice period is when employees are required to work additional notice over and above the minimum requirements prescribed by the BCEA – such as three

months. This is usually reserved for employees who hold key positions in the company, have a high level of responsibility and are critical to company operations.”

But while an employer has the right to insist on a longer notice period from any of its employees, this must be agreed to in writing by both parties, Myburgh adds.

“Equally important to consider,” he points out, “is that an extended notice period works both ways and can also hold significant consequences for employers over the long term.

“For example, in the event of company retrenchments, an employer would be required to adhere to the same agreed-upon period or compensate the employee accordingly if their services are no longer required.”



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Justin Hattingh 30 Aug 2023



A way out

Of course, nothing prevents an employee who is contractually bound to an extended notice period from asking their employer to waive it, Myburgh continues.

“However, if this request is denied and the employee decides to not serve the notice period anyway, the employer can refer the matter to a civil court. The onus is then on the employer to prove damages incurred owing to the employee’s breach of contract.

“It must be remembered, however, that pursuing legal action is a costly endeavour, and employers must weigh up the cost of damages incurred against the expenses associated with litigating the matter in court.”

Extended notice periods need not be a sentence of doom, nor should they be viewed as an insurmountable challenge, Myburgh concludes. “Prospective employees who are unhappy with any term longer than the minimum legal requirements should not hesitate to express their reservations to their employer when discussing their employment contract.

“It’s in the interests of both parties to rather negotiate more agreeable terms at the outset of the relationship and thus avoid unnecessary – and costly – legal disputes later on.

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