In South Africa, the Constitution and the law provide domestic workers with a number of important rights and legal protections. There are also a number of laws that set out what the basic conditions of employment are for domestic workers. These include the Basic Conditions of Employment Act and Sectoral Determination 7. The legal relationship between an employer and a domestic worker is also governed by an employment contract.

This factsheet explains what an employment contract is, what should be in an employment contract and when and how an employment contract can be changed. The information in this factsheet comes from the Socio-Economic Rights Institute of South Africa (SERI)’s Domestic Workers’ Rights: A Legal and Practical Guide, which can be downloaded here.

**What is an employment contract?**

An employment contract is a legal document that sets out the terms of an employment relationship between an employer and employee. Even though an oral contract can still be legally enforced, written contracts are preferable because they afford domestic workers more protection.

**What should be in an employment contract?**

An employment contract must set out the **terms of employment** of an employee. The terms of employment are the conditions that an employer and employee agree on with respect to job responsibilities, work days, meal breaks, leave, sick leave, pay, benefits and other issues. The terms of employment in the domestic employment relationship must meet the minimum rights domestic workers are entitled to as set out in the Basic Conditions of Employment Act 75 of 1997 (BCEA) and Sectoral Determination 7.

Before signing an employment contract a domestic worker and employer need to first discuss the terms of employment to make sure that they agree about what the employer and domestic worker’s responsibilities will be to each other. The terms that the parties agree on during the discussion should go into a contract.
In the context of domestic workers, the following should go into an employment contract:

- Full name and address of the employer,
- Full name of the domestic worker and a brief description of the work that he or she will be doing,
- Place of work,
- Date when employment will start,
- The domestic worker's days of work and ordinary hours of work,
- The domestic worker's wage rate and method of payment,
- The domestic worker's overtime work rate,
- Other cash payments or payments in kind to be given to the domestic worker (this includes any kind of benefit, including accommodation, unemployment insurance benefits, contributions to a provident fund, travel allowance or food allowance),
- How often wages will be paid (for example, daily, weekly or monthly),
- Any deductions to be made,
- How much leave the domestic worker is entitled to, and
- The period of notice needed to end the employment relationship or, if employment is for a specific period, the date when the employment relationship will come to an end.

Can changes be made to the terms of employment?

Neither an employer nor a domestic worker are allowed to change the terms of employment without consulting and getting the consent of the other party, even in the case of an oral contract. Any party that makes changes without the consent of the other, places themselves in breach of contract. This means they can be taken to court to have the contract enforced.

For example, it is reasonable for an employer to ask a domestic worker to change the time that he or she begins work in the morning to half an hour earlier so that the employer can let the domestic worker into the house in the morning before leaving for work, with the understanding that the domestic worker will be leaving work half an hour earlier as well. The employer would not need to discuss this change in working hours with the domestic worker first because changing the starting time is changing a work practice. However, if an employer decided to increase the number of hours a domestic worker works without consultation, then that would be unlawful. This is because changing the number of hours a domestic worker works changes the terms of employment.

What can a domestic worker do if their employer changes their terms of employment without their consent?

Domestic workers can approach the CCMA if their employer changes the terms of employment without their consent. However the domestic worker needs to make an effort to discuss and resolve the issue with the employer before approaching the CCMA.