In South Africa, the Constitution and the law provide domestic workers with a number of important rights and legal protections. Domestic workers are covered by a law called the Basic Conditions of Employment Act 75 of 1997 (BCEA), which sets out the minimum conditions of employment. This law also gives the Minister of Labour the power to make sectoral determinations. There is a sectoral determination that deals specifically with domestic workers. It is called Sectoral Determination 7. This sectional determination sets out the minimum standards of employment for domestic workers (or the minimum rights that domestic workers are entitled to) in an effort to improve their working conditions.

The BCEA and Sectoral Determination 7 deal with how many hours domestic workers can be required to work, what wages domestic workers should be paid, when and how domestic workers’ employment may be lawfully terminated or ended, and how much leave domestic workers are entitled to.

This factsheet explains what the law says about how much and what types of leave domestic workers are entitled to. It explains the different types of leave, when each type of leave may be taken and how many days of leave the law sets as the minimum amount. 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.

REMEMBER:
The BCEA and Sectoral Determination 7 set out the minimum days of leave that a domestic worker is entitled to. However, employers can give their domestic workers more leave than is provided for in the law if they want.
What is leave and how much leave are domestic workers entitled to?

Leave is a period of time that a worker has special permission to be away from his or her job. Domestic workers who work for more than 24 hours per month for an employer have the right to different types of leave, including annual leave, sick leave, family responsibility leave and maternity leave. Leave can be paid leave (this is when you still get paid for the days that you take leave) or unpaid leave (this is when you do not get paid for the days that you take leave).

What do domestic workers need to know about annual leave?

Annual leave is paid time off work that employees are entitled to. In South Africa, domestic workers have the right to:

• 21 back-to-back days of leave per year on full pay for each year of employment; or
• 1 day of leave for every 17 days worked; or
• 1 hour for every 17 hours worked.

Domestic workers and employers should come to an agreement about when a domestic worker will take his or her annual leave. If you cannot agree with your employer, it is up to the employer to decide (but the employer cannot be unreasonable). Employers may not ask domestic workers to work during their leave and employers may not pay a domestic worker instead of granting paid leave (except if the employer terminates the domestic worker’s contract).

If a domestic worker does not take any leave for a whole year, his or her employer must give him or her leave within the 6 months that follows that year. Employers may not grant annual leave at the same time as sick leave or during a notice period if a contract is terminated (comes to an end).

What do domestic workers need to know about sick leave?

Sick leave is time allowed away from work because of illness. In South Africa, sick leave is not calculated per year, instead it is calculated for every 3 year period (this is called the leave cycle). The law says that for every 3 years a domestic worker is employed by the same employer, he or she has the right to an amount of paid sick leave that is equal to the number of days that he or she would normally work during a period of six weeks. For example, if a domestic worker works 5 days per week for an employer, he or she is entitled to 30 days of sick leave over the three years of his or her employment (5 days per week x 6 weeks).

If a domestic worker has taken sick leave for more than 2 days in a row or has taken sick leave more than twice in 8 weeks, an employer can ask the domestic worker to provide a medical certificate or sick note. A medical certificate may be provided by a medical practitioner, a clinic nurse, a traditional healer, a community health worker or a psychologist. These professionals must be registered with a professional council.

During the first six months of employment, domestic workers are entitled to one day’s paid sick leave for every 26 days worked.
What do domestic workers need to know about family responsibility leave?

Family responsibility leave is a period of time off a worker has the right to when his or her children are born; children are sick; or when their spouse, life partner, parent (or adoptive parent), grandparent, children (or adoptive children), grandchildren or siblings passes away. Only domestic workers who have been employed for longer than 4 months and work at least 4 days a week for at specific employer are entitled to family responsibility leave.

Domestic workers have the right to 5 days of family responsibility leave during each 12 months of employment. Family responsibility leave is paid leave. This means that domestic workers should still be paid their normal wages even if they take family responsibility leave.

What do domestic workers need to know about maternity leave?

Maternity leave (or parental leave) is a period of time that women (or primary caregivers) are allowed to be away from work while they are pregnant and after they have given birth (or their spouse or life partner has given birth). In South Africa, domestic workers who are women have the right to at least 4 back-to-back months of unpaid maternity leave. Maternity leave can begin at any time from 4 weeks before the expected date of the birth.

Domestic workers should inform their employers in writing (if they are able to) to let them know when they want to start their maternity leave and when they intend to return to work. Domestic workers may not be required to work for 6 weeks after the birth of the child.

A domestic worker who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is also entitled to maternity leave. If a domestic worker has had a miscarriage or bears a stillborn child, they are entitled to six weeks of maternity leave after their miscarriage or stillbirth (this is the case even if maternity leave has already commenced at the time of the miscarriage or stillbirth).