Can an employer dock salaries due to load shedding?

By Tata Mokwayi

16 Jan 2023

With load shedding woes affecting all businesses and causing widescale disruption to work hours, employers have started asking whether they can dock employee pay if employees are not able to work as a result of load shedding. In this article, we unpack this question and give guidance on the legal position.

Image: Supplied

The primary duty of an employee is to place their personal services at the disposal of the employer, whilst that of the employer is to remunerate the employee regardless of the fact whether the employee performs on a particular day or not as a result of load shedding or any other reason that is beyond the control of any employee.

The parties to an employment contract are generally free to regulate their respective rights and duties in the contract, subject to the requirements of the law. For example, the parties could agree that an employee's salary payment may be daily, weekly, fortnightly or monthly, in cash, by cheque or by direct deposit into a bank account designated by the employee.

Legal deductions

In terms of section 34 of the Basic Conditions of Employment Act 75 of 1997 (BCEA) deductions from an employee's salary, for whatever reason, are prohibited unless the employee has agreed in writing to the deduction in respect of a specified debt, or unless deductions are required or permitted in terms of a law, collective agreement, court order or arbitration award.

However, deductions may be effected to reimburse employers for loss or damage caused by employees in the course of their employment, but only with the employee's consent, if the loss or damage was due to the employee's fault, if the employer has given the employee a reasonable opportunity to show why the deductions should not be made, and if the total amount of the debt does not exceed the actual amount of the loss or damage or one-quarter of the employee's salary in money.

Accordingly, should an employer contemplate docking an employee's salary without the employee's consent, regardless of the amount, this will violate section 34 of the BCEA and the employee can declare a dispute.

An employee earning below the earnings threshold, ie. R224,080.48 per year (R18,673 per month) as of 1 March 2022, may refer a dispute to the CCMA. Employees that earn above this threshold may institute a claim concerning the failure to pay their salary, or part thereof, in either the Labour Court, the High Court or, subject to their jurisdiction, the Magistrates' Court or the Small Claims Court.

Should an employer wish to dock employee salaries due to load shedding, the employer will therefore first have to obtain their employees' written consent before they can dock their salary and cannot unilaterally implement such a decision.

Altering operational times or requirements

Should the employee refuse to consent to this type of arrangement, employers may consider placing employees on short time or aligning their operating times or employees' working hours to load shedding schedules.

As a last resort, employers may also consider the retrenchment of employees due to operational requirements, the impact of load shedding and the need to keep the business running.

Should your business be affected by load shedding to the extent that you are looking into options like docking pay or retrenchment etc. it would be advisable to consult your labour specialist first to ensure that any action taken is legal and appropriate.

ABOUT THE AUTHOR

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