

Many Farmers today are perplexed about what to do with farm workers who live on their premises once the employee's contract of employment has come to an end (be it for dismissals, retrenchments, pension, disability, etc.).

Labour Legislation Requirements

In terms of section 28 of the Sectoral Determination for Farm Workers (SD: 13 of the Basic Conditions of Employment Act no 75 of 1997) a Farmer may evict a farm worker from his premises upon lawful termination of his/her contract of employment or when the contract of employment naturally comes to an end (such as with retirement age).

However, certain conditions apply and the SD:13 requires that the Employer provides the farm worker with accommodation for a period of one month after the contract of employment has ended. Should the farm worker elect to remain in accommodation during this time, the Employer is entitled to deduct, from his final salary, an amount calculated in accordance with clause 8 of the Act (i.e. an amount not exceeding 10% of the employee's wage).

Where the farm worker keeps livestock on the land of the Employer, the Employer must grant the employee one month to make alternative arrangements or to remove his livestock.

A farm worker who has standing crops is entitled to tend to those crops and harvest and remove them within a *reasonable time* after they become ready for harvesting, unless the Employer pays the farm worker an agreed amount for the crops.

Extension of Security of Tenure Act 62 of 1997 (ESTA) Requirements

Even though labour legislation provides comprehensive guidelines in terms of eviction, the Extension of Security of Tenure Act 62 of 1997 (ESTA) also needs to be complied with.

ESTA was promulgated in November 1997 and its purpose is to define the rights that farm workers have to reside on the land and provides that no farm worker may be evicted from the farm without a court order.

The ESTA was designed to regulate the:

- conditions of residence on certain land, such as farms;
- conditions and circumstances under which the right of persons to reside on land is terminated.
- legal process which must be followed by the land owner, before a farm worker may be evicted.

Who is protected by ESTA?

ESTA applies to persons who have received verbal or written permission by a land owner to reside in a dwelling on the farm, **and** who receive a salary of less than R 5000.

Who may not be evicted?

Long-term occupiers who are protected by ESTA may not be evicted and can be defined as occupiers who:

- have resided on a farm for more than **10 years**; *and*
- is **over 60 years** of age; *or*
- who **cannot provide labour** to a land owner as a result of ill health, disability or injury. This type of incapacity does not only include incapacity caused in the course of the employee's duties (such as an Injury on Duty or occupational disease), but also to incapacity caused by factors outside of work (such as genetic diseases or HIV/AIDS).

Conditions and circumstances under which the right of persons to reside on land is terminated.

Long term occupiers' rights of residence may not be terminated *unless* they have:

- intentionally and unlawfully harmed any other person occupying the land
- intentionally damaged property of a farmer
- engaged in behaviour which threatens others occupying the land
- assisted other unauthorised people to establish new dwellings on the farm
- breached a condition or term of their residence with which they are able to comply but have not done so despite being given one month's notice to comply.
- committed such a fundamental breach of the relationship between the farmer and themselves that it is not possible to restore this relationship.

Given these restrictions it becomes crucial to regulate Employees' behaviour by means of a contract of employment and a disciplinary code of conduct.

Conditions of residence

1. Right of access to services

A farm worker has the right of access to basic services, such as electricity, water and sanitation, if this was agreed on with the owner or person in charge when they arrived on the farm. So, if a farm worker received express and/or tacit consent to reside on a farm in a house that had electricity and afterwards the farmer disconnects the electricity, then this is regarded as an unlawful act and the farm worker can seek for the service to be restored, either through mediation with the farmer and/or through obtaining a court order.

2. General rights available to farm workers

- Farm workers/occupiers have the **right to receive visitors**, subject to reasonable conditions imposed by the farmer, such as times of visits, gates through which visitors may enter. ESTA stipulates that the farm worker can be held liable for any damages caused by their visitors, if it can be found that the farm worker could have taken reasonable steps to prevent such damage occurring.
- Farm workers have the **right to receive postal or other communication**.
- Farm workers have the **right to family life**. For example, if X is an occupier, then he will be entitled to have his wife and children reside with him. ESTA further amplifies this right with "...the right to family life in accordance with the culture of that family...".

In essence, this *may* include parents of the occupier, his/her spouse and other extended family members, such as daughter-in-laws and grandchildren. The important criteria here is that these family members are dependent upon the occupier, or *vice versa*, and a court can be convinced that it is in "...accordance with the culture of that family..." that these family members are residing with the occupier. Each case is determined individually.

- Farm Workers have the right not to be denied **access to educational or health services**.

Legal Procedure for Eviction

1. The owner must terminate the right of residence of the occupier either by means of a fair dismissal or the expiration of a lease agreement.
2. The owner must provide the occupier, the relevant municipality and the Department of Land Affairs two months' notice of the intention to evict the occupier. This is in the form of a notice of motion and supporting affidavit and must be served by the sheriff. Although the Sectoral Determination indicates that one month's notice is sufficient, it must be noted that where ESTA stipulates that the notice period is 2 months, this is only applicable in planned eviction cases such as where the eviction is requested for reasons other than the termination of the employment contract or the expiration of a lease agreement.
3. a Probation Officer's Report must be requested from the local district office of the Department of Land Affairs. A Probation Officer will be appointed who will compile the report. The court will take this report into consideration whether to evict the occupier;
4. The occupier then has an opportunity to oppose the eviction and file answering papers;

5. The owner has a final opportunity to file replying papers;
6. Once the essential legal requirements have been complied with, a date for the hearing of the matter maybe requested from the court;
7. If the parties are unable to settle the matter before the court date, the matter will be argued at court who will decide on the matter.

Once an eviction has been granted, the eviction will only take effect once:

- The occupier's compensation has been paid (including final salary and payment for crops or improvements made to the residence)
- The court has set a date by when the occupier should leave
- If the occupier refuses to leave, he/she can be removed by the sheriff of the court or someone under their supervision.

What happens when a farm is sold?

When a farm is sold, the rights of occupiers do not change – the rights the old land owner had given to the occupier will pass on to the new land owner.

Conclusion

Labour legislation and ESTA provide comprehensive frameworks but can be a lot for Employers to manage and keep up with. Feel free to contact your relevant Labour Life consultant to consult with or who can take care of this on your behalf.

References

1. Basic Conditions of Employment Act no 75 of 1997, Sectoral Determination 13: Farm Workers
2. Lawyers for Human Rights; A guide to tenure security rights on farms
3. <https://www.evictionlawyers.co.za/extension-of-security-of-tenure-act/>
4. <http://www.passop.co.za/your-rights/housing-rights-esta>