HRTorQue Reporter

July 2023

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Should you require any further info on any of these topics, please contact us at info@hrtorque.co.za.

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1) Understanding the Code of Good Practice on Harassment

Author: Nicky Hardwick

To promote a culture of respect and prevent any form of harassment or discrimination, Government implemented the Code of Good Practice on the Elimination and Prevention of Harassment in the Workplace in March 2022. This code, in conjunction with the Employment Equity Act, provides clear guidelines for employers on how to create a safe and supportive working environment for all employees.

The Code of Good Practice on Harassment is a comprehensive set of guidelines that outlines the responsibilities of employers in preventing and addressing harassment in the workplace. It includes:

1) Harassment policy: The first requirement for employers is to establish a clear and robust harassment policy. This policy should explicitly define harassment, provide examples of unacceptable behaviour, and outline the consequences of violating the policy. The policy must be communicated to all employees and be easily accessible within an organisation.
2) Risk assessment: Risk assessment involves identifying and evaluating factors that could contribute to the occurrence of harassment incidents within an organisation. The purpose of this assessment is to proactively identify potential risks and take appropriate measures to prevent and address harassment effectively.
3) Training and awareness: Employers must provide regular training to all employees, supervisors and management on the prevention of harassment. Training sessions should raise awareness about the different forms of harassment, the negative impact on individuals and the organisation, and how to report incidents. By educating employees, employers empower them to recognise and prevent harassment effectively.
4) Reporting mechanism: Creating a safe environment for reporting harassment is crucial. Employers must establish a confidential and accessible reporting mechanism that allows employees to report harassment incidents without fear of retaliation. The process should be fair, impartial, and include appropriate procedures for handling complaints.
5) Appoint designated person: Management should designate a person outside line management where employees can obtain confidential advise and/or counselling. This person must be adequately trained and given the appropriate resources to adequately do their job.

Creating a workplace free of harassment is both a moral and legal obligation, and failure to actively promote equality in the workplace and avoid any form of unfair discrimination could land employers in the CCMA.

Any employers who have unfair discrimination awards against them at the CCMA will not be eligible for their Employment Equity Compliance Certificate. This certificate may be required for tenders, BBBEE and/or work with government organisations.

Our HR team is ready to assist you with compliance in both employment equity and harassment in the workplace. Contact us today for more information.

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2) Reference guide to leave types

Author: Meagan Cesare

For your convenience, we have put together a comprehensive leave reference guide to keep handy.

A. Annual leave

The minimum entitlement to annual leave according to Section 20 of the Basic Condition of Employment Act, Act 75 of 1997, states that an employee is entitled to annual leave from an employer if they work for the same employer for more than 24 hours a month.

Employees should then be granted 21 consecutive days annual leave on full remuneration during each leave cycle, or by agreement, one day of annual leave on full remuneration for every 17 days worked or entitled to be paid (this latter is equivalent to 15 days per annum). This could also, by agreement, be an hours leave for every 17 hours worked. This method of determining leave is often used when dealing with temporary employees or employees on a fixed term contract. Note that this is the minimum, but both parties can by contractual agreement arrange for different levels of leave in excess of the minimum requirement.

- An annual leave cycle is calculated for 12 months. This starts from commencement of employment or directly after the previous leave cycle ends.
- If an employee works a five day week, the employee will be entitled to 15 working days leave.
- If an employee works six days a week the accrual rate for annual leave would be 18 working days in a leave cycle.
- A working 'day' is defined as the particular employee's normal working day (i.e. an eight hour period or a five hour period, or a shift worker of 12 hours).
- Annual leave must be granted to an employee on request, within six months of a leave cycle ending, or by agreement during the leave cycle. Many employers accrue annual leave at a rate of one twelfth of an annual leave entitlement per month, i.e. 15 days would accrue at 1.25 days a month and 18 days would accrue at 1.5 days a month.
- Some organisations have an annual shutdown period for which employees are required to use their annual leave. Ensure this is included in the employment contract and manage employees so that enough leave is retained to cover the closure period. Unpaid leave would apply if there was insufficient leave to cover the obligatory closure period or the employee may retain a negative balance to be offset by monthly accrued leave. However this can be problematic if an employee leaves their employment with a negative leave balance.
- Public holidays that occur during a leave period are not counted as a leave day.
- Annual leave must be applied for by the employee and approved by the employer, and that approval should not be unreasonably withheld.
- An employee may take their annual leave as consecutive days (i.e. an employee does not have to break it into smaller tranches of leave if they don't want to).
- Leave records must be kept.
- If an employee has a change in their leave allocation, they must be issued with written notification of the new status.
- An employer may not pay out annual leave except upon termination of the employee's contract.
- Ensure employee agreements and company policies are clear on the management and accrual of annual leave in previous leave cycles, so that an employee is allowed to utilise their leave entitlement and leave accruals do not increase to unrealistic levels. In the absence of agreements, the leave accumulated in a previous leave cycle may be retained by the employee.

- If an employee has resigned an employer may not force the employee to take their leave during the notice period and it is viewed that the employee is therefore prohibited from taking leave during their notice period.

B. Sick leave

The sick leave entitlement for an employee is 30 days over a three year period for employees who are working a five day week. If an employee is working a six day week they are entitled to 36 days sick leave over a three year period.

The entitlement is the equivalent of the number of days worked in a six week period.

- The 30 / 36 day entitlement as a lump sum or portion thereof over a three year period only occurs from the seventh month of employment.
- During the first six months of employment the employee is entitled to one day of sick leave for every 26 days worked.
- The full quota of sick leave is available from day one of the seventh month of employment - i.e. if an employee falls ill any time after month seven they can take their full sick leave allocation.
- Sick leave is not calculated at 10 days per year.
- A 'day' is a normal working day for the employee.
- The balance of unused sick leave at the end of the three year sick leave cycle (which begins on the first day of employment; with the two scenarios, i.e. the rules for the first six months and then the rules from month seven onwards), is forfeited and a new sick leave cycle begins.
- If, as an example, an employee utilises all available sick leave in the first year of their employment, they must then use annual leave or unpaid leave for any further time off for being ill.
- On termination any unused sick leave is forfeited.
- If a person has an income that fluctuates (such as a commission earner), they would be paid according to the average remuneration earned in the previous 13 weeks or a representative time period.

Medical certificate requirements:

- The Basic Conditions of Employment Act allows an employee to be absent from work for more than two consecutive days or on more than two occasions during an eight week period, without a medical certificate.
- Sick leave for more than two days requires a medical certificate.
- An employee does not have to produce a medical certificate if they are off sick on a Friday or a Monday, or the day before or after a public holiday.
- A medical certificate is one which is issued and signed by a medical practitioner or any person entitled to diagnose or treat patients, and who is registered with a professional council established by an Act of Parliament.
- Failure to produce a medical certificate when required allows an employer to treat the absence as unpaid leave.

C. Family responsibility leave

An employee is entitled to three days per annum of family responsibility leave and must have been in the present employer's employment for longer than four months to qualify.

- Family responsibility leave is granted to an employee who has a sick child.
- The death of any of the following family members also entitles an employee to FRL: a child (including adopted children), a spouse or life partner, parents or adoptive parents, grandparents, grandchildren or siblings.
- The employer can request proof of such absence by way of a medical attendance note or a death certificate.
- Family responsibility leave may be taken as a portion of a day or in hours.
- Leave not taken is automatically forfeited at the end of the leave cycle.

D. Unpaid leave

Unpaid leave is not considered to be an official class of leave and to implement this it is easier to work on the premise that deductions from the salary of an employee are allowed under certain situations.

The BCEA makes provision for the remuneration of employees when they are on annual leave or sick leave. When there is no valid reason for an employee's absence, the employee cannot produce proof of incapacity for the period of absence, and if there is no annual leave entitlement, it is not considered unfair for the employer to withhold remuneration for days not worked.

Under common law, statute law and the employment contract, there is an expected obligation for the employee to be at work in order to be remunerated. This therefore cannot be viewed as a deduction from the salary, merely that the employee is paid for days worked and not for days that were not worked.

- Employees can negotiate with employers for unpaid leave if they find themselves in a situation where they need time off and have no annual leave.
- Employees who stay away from work without authorisation or fail to produce the required medical certificates must expect there to be disciplinary action taken against them in addition to not being paid for the days that are absent.
- Annual leave continues to accrue when an employee is on unpaid leave.

E. Maternity leave

- An employee is entitled to at least four consecutive months unpaid maternity leave for the birth of a child.
- Maternity leave may commence at any time from four weeks before the expected date of birth, unless otherwise agreed, or on a date specified by a medical practitioner or midwife.
- Unless certified fit by a medical practitioner or midwife, the employee may not return to work for at least six weeks after the birth of her child.
- An employee who has a miscarriage during the third trimester of pregnancy or bears a still-born child is entitled to maternity leave for six weeks after the miscarriage or still-birth.
- An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to commence maternity leave as well as the date they are expected to return to work after maternity leave.
- Notification must be given at least four weeks before the employee intends to commence maternity leave or as soon as is reasonably practical to do so.
- The employer is not obliged to pay maternity leave.
- The employee may claim directly from UIF subject to the provisions of the Unemployment Insurance Act, 2001, for any benefits due in this regard.
- Annual leave continues to accrue to an employee while on maternity leave.
- The employer must hold the employee's job open for the duration of their maternity leave.

F. Parental leave or paternity Leave

An employee who becomes a parent can apply for parental leave. The terminology of parental leave takes into account that traditional family arrangements have evolved and now includes a 'paternity leave applicant', thereby making provision for same-sex couples, single parents and co-parenting families.

- The employee applying for parental leave may take 10 consecutive days from the first occurring date when the child is born.
- The employee must submit a calendar months' notice in writing to their employer of the date they expect to commence parental leave and the date they will be returning to work at the conclusion of their parental leave.
- If the employee is not able to provide the dates, they should do so as soon as can be reasonably expected.
- The employer has no obligation to pay the employee for the parental leave.
- The employee may claim directly from UIF subject to the provisions of the Unemployment Insurance Act, 2018, for any benefits due in this regard.
- A father can apply for parental leave as many times as he fathers a child - there is no limitation period. UIF obliges the father's name to be on the birth certificate.

G. Adoption leave

An employee who is an adoptive parent of a child below the age of two is entitled to 10 consecutive weeks of leave or parental leave. If there are two parents to the adopted child, one parent may take 10 weeks of adoption leave and the other parent may take 10 days of parental leave - the parents can choose who takes which leave type.

- An employee may commence adoption leave on the first occurring date between the date the adoption order is granted, or the date that a competent court places an adoptive child in the care of a prospective adoptive parent, pending the finalisation of an adoption order in respect of that child.
- An employee who intends to take adoption leave must submit a calendar months' notice in writing to the employer of this intention as well as the intended return date.
- If they are unable to give notice of the intention due to uncertainty of the date, they must do so as soon as it can reasonably be expected.
- The employer has no obligation to pay the employee for the adoption leave.
- The employee may claim directly from UIF subject to the provisions of the Unemployment Insurance Act, 2018, for any benefits due in this regard.

H. Commissioning parents leave

An employee who is a commissioning parent in a surrogate motherhood agreement is entitled to at least 10 weeks unpaid commissioning parental leave. If there are two parents in the surrogate motherhood agreement, one parent may take the 10 weeks of commissioning parents leave and the other parent may take 10 days of parental leave - the parents can choose who takes which leave type.

- An employee may commence commissioning parents leave on the day of the child's birth.
- An employee who intends to take commissioning parents leave must submit a calendar months' notice in writing, to the employer of this intention as well as the intended return date.
- If they are unable to give notice of the intention due to uncertainty of the date, they must do so as soon as it can reasonably be expected.
- The employer has no obligation to pay the employee for the commissioning parents' leave.
- The employee may claim directly from UIF subject to the provisions of the Unemployment Insurance Act, 2018, for any benefits due in this regard.

I. Study leave

Labour legislation does not cater for study leave. An employer and an employee can negotiate and subsequently include it in their employment contract, or study leave could be provided as a benefit governed by the company's own internal policies. Where there is no provision made for study leave, an employee would apply for normal paid annual leave.

J. Religious and public holidays

South African public holidays are granted to all employees who are entitled to these holidays as paid time off. Many retail employers in particular will negotiate and contract with employees to work on public holidays, but this must be by agreement of the employee.

If a religious holiday is a public holiday, then all employees are entitled to that holiday regardless of their religion. If the religious holiday is not a public holiday, the employee can apply to their employer for paid annual leave.

K. Injury on duty (IOD) leave

If an employee is injured on duty and sent to a medical practitioner or hospital for an injury that occurred on duty, the following principles apply as per Section 22(2):

- If an employee is booked off for three days or less, the employee may not claim a 'periodical payment' from the compensation commissioner. The employer must grant time off and that time off does not come from the employee's sick leave allocation.

- For temporary total disablement (where an employee is booked off due to an IOD for four days or longer, but less than three months), the employer must pay the injured employee at a rate of at least 75% of their earnings (including items such as the value of any food or quarters, any overtime payments of a regular nature for work ordinarily performed, or any other payments by virtue of their contract of service including commission, cost of living allowances and incentive or other bonuses), from the first day, until the employee returns to work. The employer can claim this back from the Compensation Commissioner.
- For an injury where the employee is booked off work for longer than three months, the rate as noted above applies and after the three month period the employee must claim their money from the Compensation Commissioner.

If you require assistance or have any questions regarding the different leave types, please contact us - we would love to help.

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3) What is emotional Intelligence and why is it important to understand (and develop it in yourself)? Part 2

Author: Celia Denton

Editor's comment: Over the next few months, we will been running a series of articles on emotional intelligence (EQ) by PTES Consulting's Celia Denton, our go-to expert for professional psychometric testing services.

Why is it important to build emotional intelligence?

Today's reality is that the skills that used to spell success are now no longer enough. As technology evolves, we are beginning to realise that it is our humanness, and not what we know, that is actually our competitive advantage.

Speak to any thriving organisation and they will agree - the role of 'soft skills' plays an important role in their success. Soft skills are the building blocks of emotional intelligence, and while some may refer to it as the 'fluffy stuff', in reality it is the essence of our humanity. It differentiates us from artificial intelligence and other modern technologies. For centuries we have been educated and moved into the workforce by robotically completing task after task. Now however, it is our empathy, awareness, creativity and social intelligence that is critical for our success in the world of work.

EQ has to do with the essence of how you communicate, your ability to adapt, and your capacity for working with those in your team, clients, and anyone you meet. And this is a very good thing! Employees are now being recognized for their humanity and individuality, and being valued for their thoughts and feelings. Their opinions and influences count, because each person's authentic self is key to the growth of a healthy business.

Benefits of emotional intelligence in the workplace

- Stronger leadership skills (active listening, empathy, and being emotionally aware of your own state of equilibrium)
- Improved negotiation skills and team performance
- Development of greater self-awareness
- Increased levels of inner resilience and personal wellbeing
- Reduced stress
- Greater work-life balance and job satisfaction

How to develop EQ

So how do we actually 'walk the talk' and go about creating emotional intelligence or an emotional quotient in our lives? Here are some pointers to keep in mind.

Take the time to listen
When you are able to listen to a colleague or client's point of view, it builds better communication. What's more, you learn to relate to one another. This empathy in turn leads to harmony and trust, which is key to building better work relationships.

Put personal boundaries in place
While it is good to be amiable and relate positively to people in the workplace, it is also imperative to create boundaries. For your own benefit, find ways to filter negative emotions and toxic influences. Without clear boundaries, it will be hard to maintain your equilibrium.

Take the time to build your own happiness
When you are not working, make sure to find ways to feed your soul. Invest time in doing the things that make YOU happy.

Practice gratitude
The ability to build a genuine source of joy comes directly from having a sense of gratitude. Make it a daily practice to write down things that you are grateful for. Over time, you will see how this positively influences your entire state of mind and being.

Enrol in an emotional intelligence course
If you feel you could use some extra guidance on how to build your own (or others) EQ, then enrol in a course. The benefits will be life-changing! Inquire about our emotional intelligence test and workshop here.

If you are in need of a tried, tested and trusted psychometric solution for your staff, then look no further. Contact us on info@hrtorque.co.za for more information.

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4) Schools – what is a Cost to Company package and why you should consider moving to it

Author: Jonathan Aitken

School's often struggle with a complex employee and payroll environment. As a first step to simplifying this process, we recommend introducing a Cost to Company package as this goes a long way to making life a lot easier for everyone involved.

Typically, within the school environment, employees operate with different hats on, whether they are teachers, heads of departments, house masters, sports coaches... the list goes on. In order to compensate employees for their roles and attract the right talent, schools tend to offer a variety of different allowances and incentives. This makes it very difficult to keep track of employee remuneration, bonuses and increases, and also creates significant compliance risk. Is each item being taxed in the right way? Are all benefits being considered? What if SARS or the Department of Labour undertakes an audit?

As an alternative, let's take a look at a 'Total Cost to Company Compensation (TCTC) package'.

TCTC is a different way of viewing remuneration. It moves away from the traditional, 'add-on' approach of determining a basic pay to which a number of benefits are added. With TCTC, the starting point is the Total Cost to Company remuneration figure from which employees have a choice to exchange cash for benefits relevant to their circumstances, and within current legislation.

But why change the way the employer manages pay?

The change benefits the employer in a number of ways:

- It is easier to perform market comparisons and work out what fair and equitable remuneration is for different employees.
- It is easier to offer employees a variety of employee benefits at their election of how they wish to structure these benefits.
- It is easier to manage the annual increase process as the increase is driven off the TCTC and doesn't have to be applied to all the payroll elements.
- The remuneration for each employee is referenced to one TCTC figure, making the budgeting process far simpler.
- It is easier to compare packages across different elements and skill sets, and to have add-on components only where these reflect very different work and responsibilities.
- It is easier to show new recruits exactly what to expect on their payslips.

How do employees benefit from this approach?

- Employees benefit from greater transparency on their full employment cost.
- TCTC packages can be combined with different employee benefit options to give the employee the choice of whether they would prefer to take home more pay or take advantage of the benefits offered (depending on how the employer structures this).

In other words, employees benefit by being able to use the flexible structure to optimise their take-home pay both now and in the future. Or they are able to better meet their lifestyle requirements – for example a person may wish to increase their pension fund contributions (within the existing rules of the fund) once their medical aid dependents decrease.

Does a move to TCTC increase payroll costs?

The simple answer is it shouldn't. However, if done badly then it may very well lead to increased costs. For example, it is important to understand contractually what one's obligation is for contributions to insurers for post-retirement and risk benefits. An increase to TCTC may trigger an increased payroll cost even if this is contractually not required.

It is important to work through a proper process to make this change, including consulting directly with employees and making sure contracts of employment are aligned. We also recommend showing your staff the impact on them personally from the change, with a pre- and post-payslip or similar illustration.

The move to TCTC can also be used as a way to introduce employee benefits (such as life cover, post-retirement benefits, dread, disability and other cover) into your organisation, without increasing payroll costs.

If managed properly, the move to TCTC does not add anything to existing payroll costs, and has the ability to protect the employer from future legislative payroll surprises.

If you would like to talk to an expert about a TCTC move or any of the other ways HRTorQue can help your school or business, please contact us on info@hrtorque.co.za.

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5) COID news

Author: Dave Beattie

On the 30th May, the Department of Employment and Labour published some important information pertaining to COID in Government Gazette No. 48673.

Firstly, the deadline to file a Return of Earnings was extended to the 30th June 2023 (the 31st May is usually the annually extended deadline).

The second notification was the confirmation of the annual earnings threshold of R 568 959 (which had been reported incorrectly by the Department of Employment and Labour previously). However, this confirmation has come far too late for the majority of employers who have already submitted their returns containing provisions with the incorrect threshold amount.

This Gazette also finally confirmed that domestic employees are now included in the definition of 'employee' in terms of the Compensation for Occupational Injuries and Diseases Act (COIDA), and that they receive the same protection and benefits all other employees currently receive. While this change has only recently been signed into law, the Compensation Commissioner has been processing domestic registrations and accepting Return of Earnings declarations for over a year already.

In terms of the new Act, an 'employer' is anyone, including the state, who employs at least one employee. This will now include private citizens who employ a domestic worker.

If an employee's services are 'let, lent or temporarily made available' to someone else, that person is considered the employer for that period. So, in the context of domestic workers, whoever pays the domestic worker in question is regarded as the employer for purposes of the fund, for whichever duration, and will be required to comply with the Act.

A reminder to employers that the minimum COID assessment for the 2023 Return of Earnings submission is R 1 443. For domestic employers it is R 498.

While the inclusion of domestics in the definition of 'employee' is a long time coming and is to be congratulated, the change is going to increase the administration burden on the employers of domestic workers. We have seen a very low compliance rate in terms of UIF registrations in the domestic employer space and expect even fewer of these employers to register for COIDA purposes. This places both employees and employers at significant risk should there be a death, injury or illness in or as a result of the work environment.

In other COID-related news the Compensation Commissioner's Office is stepping up legislative compliance initiatives. This includes the appointment of external auditors to look at the previous submissions, and in particular, how the employer arrived at 'COID earnings'. We are aware of cases where large assessments have been raised due to a differing interpretation of 'regular earnings'. This interpretation will be less of an issue when the definition of 'earnings' is officially changed to 'remuneration' as defined in the Fourth Schedule to the Income Tax Act. This will be a positive step towards getting uniformity in treatment of the definition of 'earnings' between the various Acts that govern payroll. Until then, there will be an unacceptable level of uncertainty which will make the completion of any audits significantly more challenging.

Finally, the COID issue that has caused the most unhappiness is the following clause relating to the maximum earnings threshold:

MAXIMUM EARNINGS

A Maximum Earnings is applied annually at the end of the assessment period (28 February 2023) to the individual employee's annual total earnings, not per month. Full annual maximum earnings of R529 264.00 will apply irrespective of the number of months the employee was employed in the 2022 ROE Season.

Examples:

1. If an employee has earned a total earnings of R600 000.00 from the employer during the period as stated above, the amount should be capped at R529 264.00 and be declared as such.
2. if an employee has earned total earnings of any amount below R529 264.00, the total earnings must be declared as is, regardless of whether the said employee worked for a full year or part year.

Payroll systems are all designed to apply a monthly amount of R 44 105 as COID earnings in cases where employees earn above the annual COID threshold of R 529 264 (the 2022 threshold). This amount would be applied evenly through the year to ensure that the COID earnings for the employee does not exceed the threshold.

The challenge that the above-mentioned declaration raises is explained in example 2. If an employer only worked for a couple of months for company 1 and was then transferred to another company in the group, the COID earnings that should be declared on the original payroll for the year is the actual earnings, limited to the earnings threshold of R 529 264. As an example, an employee earning R 150 000 per month for three months would have COID earnings of R 450 000 for the year instead of the projected R 132 315 earnings that payroll systems would reflect. That employee may then only work for company 2 for three months and then move onto company 3 for the balance of the year. The COID earnings for that employee between the three payrolls would far exceed the R 529 264 that would be applied if that employee had stayed on one payroll.

The application of the annual threshold in this manner has created massive risk for employers where this movement of employees may have happened. The COID earnings will be considerably understated, and the employer would be exposed to an additional payment, a penalty and interest, should there be an audit. The Payroll Authors Group of South Africa (PAGSA) has sent an urgent letter to the Compensation Commissioner's Office stating that it is unfair to make such a notification after the end of the year of assessment and explained that it would be extremely difficult for employers to manually make such corrections before the deadline on the 30th June 2023. For those employers who have already submitted their Return of Earnings this would require the submission of a revision form, redeclaring the COID earnings for the year and adjusting the provision for the 2023 year. This revision process is no easy task, and in our experience can take over a year to resolve.

Any change in application of this threshold would require payroll changes. As we are already four months into the new year of assessment it is quite late to be even making changes for the 2023 COID year of assessment. We are hoping that the Compensation Commissioner will see the error of their ways and postpone the application of this amended clause. We will publish any further amendments as soon as we receive them.

For assistance with any COID-related matters, contact us today.

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6) PAYE Administrative Penalties update

Author: Dave Beattie

During June 2021, SARS introduced the concept of administrative penalties in cases where employers failed to submit EMP501 reconciliations on time. Phase 3 of this three-phase process will be implemented by SARS from the 23rd June 2023. This phase includes:

Admin penalty imposition
If the total amount of employees' tax deducted or withheld, or which should have been deducted or withheld for the period described in subparagraph (3) is known, the Commissioner may estimate the total amount based on information readily available and impose the penalty under subparagraph (6) on the amount so estimated.

Admin penalty adjustment
When determining the actual employees' tax of the person in respect of whom the penalty was imposed under subparagraph (7), it appears that the total amount of employees' tax was incorrectly estimated under subparagraph (7), the penalty must be adjusted in accordance with the correct amount of employees' tax with effect from the date of the imposition of the penalty under subparagraph (6).

It is important to note that the effective date of the enhancement of the admin penalty imposition and adjustment will be from the date of promulgation, namely the 19th January 2022. These legal changes will accordingly not be applicable to any reconciliation period prior to the 19thJanuary 2022, and will therefore take effect from the reconciliation period 2022 02 and onwards.

For the latest up to date advice, chat to one of our tax experts.

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7) Things to take note of this July

Author: Candice Zulu

1. **Personal tax filing season** started on the 1st July 2023 and is in full swing. For assistance send an email to tax@hrtorque.co.za . View our full Newsflash here.

2. **Income tax number:** We can assist you with the registration of your employees for income tax purposes, managing the process from start to finish. Our consultants will obtain the employee's personal information from your payroll administrator and complete the necessary applications. The turnaround time for this process is 24 hours and the cost per application is R 150 plus VAT. A volume discount will be negotiated in cases where there are more than 20 applications at a time. Should you need assistance please contact Dave Beattie on 031 582 7410 or dave@hrtorque.co.za.

3. **New SARS PAYE BRS published for 2023/2024.** The requirements, as defined in this version of the BRS (Business Requirement Specification), became effective from the 1st March 2023 for payroll suppliers, and will be implemented on SARS systems in September 2023.

   The changes include amendments to source code validations such as:

   Lump sum codes

   - 3903 (Pension/RAF (PAYE))
   - 3905 (Provident (PAYE))

   Employee remuneration information

   - 4150 (Reason for non-deduction of tax)

   To view the details in the BRS, follow this link.

4. HRTorQue hosts a variety of weekly, online, **HR-focused mini workshops**, covering various topics to assist and guide your managers to perform more optimally. View our list of trainings available or email us for more information.

5. For our latest recordings from our **free Wednesday webinars** check out our YouTube channel filled with informative HR, payroll and legislation webinars. If you are not receiving our weekly invites you can subscribe to our Reporter list here.

For all your HR, payroll, tax and accounting needs contact us today.

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8) KENYA - Finance Bill and NHIF Regulations, 2023

Source: CRS (www.crs.co.za)

It is important that employers note the following:

The Finance Bill, 2023
The Finance Bill, 2023 was tabled before the National Assembly on the 4th May 2023 for consideration and enactment into the Finance Act.

The proposed changes to the Income Tax Act include:

- Changes to the taxation of branches of companies
- Introduction of digital assets tax
- Withholding tax (WHT) to be paid and accounted for within 24 hours
- Introduction of WHT on marketing services and digital content monetisation
- Reduced rate of residential rental income tax
- Mortgage refinance companies classified as financial institutions
- Tax-free treatment of mileage reimbursements for employees
- Allow the tax treatment of club entrance and subscription fees paid by employers on behalf of employees to be considered as deductible expenses in the employer's income calculation
- Deferral of taxation of shares awarded to employees of eligible start-ups
- Introduction of tax relief on post-retirement medical fund contributions
- An introduction of a 3.0% levy on the employee's gross monthly income, with a matching contribution from the employer that will be remitted to the National Housing Development Fund (NHDF)
- An introduction of a 35% PAYE rate

Proposed individual tax rates	
On the first Ksh 288,000	10%
On the next Ksh 100,000	25%
On the next Ksh 5,612,000	30%
On all income over Ksh 6,000,000	35%

The proposed changes are expected to take effect on the 1st July 2023 after assent by the President.

To view the Finance Bill, 2023, follow this link.

National Health Insurance Fund (NHIF) Regulations, 2023

Following the public participation held on the draft regulations in 2022, NHIF has taken into account the feedback received and consolidated the draft regulations. The draft National Health Insurance Fund Regulations, 2023 were published on the 1st May 2023 and form part of the draft NHIF Amendment Act.

The following areas are stipulated in the regulations:

- Registration of Contribution and Beneficiaries
- Contributions to the Fund
- Access to Benefits by Contributor and Beneficiaries

- Empanelment
- Claims and Benefits
- Centralised Health Care Provider Management System
- Renovation and Saving Provisions
- First Schedule (Forms)
- Registration Forms
- Amendment Forms
- Empanelment as Healthcare Provider
- Second Schedule (Services Rendered by Empanelled and Contracted Healthcare Providers)

To view the draft regulations follow this link.

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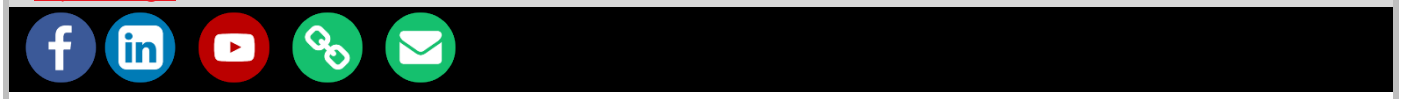

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