HRTorQue Reporter

March 2021

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

1) Use of Polygraphs by Employers – a word of caution

Author: Meagan Cesare

Employers, particularly those that are in high risk industries such as the security sector, often use polygraphs or the "lie detector test" to ascertain an employee's truthfulness. Many businesses have incorporated the necessary permissions to utilise the test as a standard part of their employment contract and an obligatory polygraph test is performed as common practice during the on-boarding process. In this category of use as a support tool to combat crime in the workplace, the polygraph can play a significant part in decreasing business risk and discouraging misconduct as well as curbing incidences of economic crime.

A polygraph test can best be described as a tool in the "truthfulness" toolbox that the employer has access to. In South Africa there is no legislation that governs the use of the test. The Constitution upholds a person's right to not be compelled to take the test unless they consent to it.

Prior to a test being performed:

An employee must consent in writing to the test and must also be informed of the following:

- The examination is voluntary.
- Questions to be used in the polygraph must be discussed prior to the test.
- The employee may request an interpreter should it be necessary.
- The person undergoing the test has the right to have another person present during the test. That person may not interfere with the test at all.
- No abuse of the circumstances is permitted.
- No discrimination is allowed.
- No threats or bullying is allowed.

An employer is permitted to use a polygraph to investigate a specific incident.

- The employee being investigated must have had access to property where the incident occurred.
- There is a reasonable suspicion that the employee was actually involved.
- There has been an impact to the employer's business in terms of loss or injury.
- The employer is seeking to establish honesty where this would be relevant to the business incl. establishing fraudulent behaviour in the Company.
- The employer is verifying abuse of alcohol or other substances whilst an employee is on duty.

The polygraph test is inadmissible in court or at CCMA as evidence of guilt, the reason being that the test is not viewed as having the capacity to verify the falsity of a statement. The machine can only detect physiological changes to a

person's blood pressure, heart rate and perspiration response. Whilst voice stress analysis can also be used and this can be a significant indicator that someone is deceitful, there may very well be other reasons that certain stresses are recorded.

An example of this would be a polygraph test where this was conducted on an employee relating to the theft of money in an office. The question asked was "did you steal the money?" The answer was "no" and deception was indicated due to the recorded physiological changes to the person taking the test. On investigation into this particular case it was found that the employee had left the office without permission and the theft had occurred in their absence; the stress noted on the polygraph was due to the fear of being found out that they had in fact left the office early without permission. This was subsequently discovered whilst checking CCTV footage.

South African courts and CCMA have accepted that a polygraph cannot prove guilt; it can merely reflect that deception is indicated. If an employer fails to adhere to the rules relating to polygraphs this may well prejudice the case of an employer to prove guilt of an employee and if the employer subsequently acts on that information and institutes disciplinary processes or dismisses them, they could lose their case unless they have a decent raft of other evidence in support of the polygraph results.

The right to fair labour practices is built into South African labour law and included in that is the right to respect and dignity. In addition everyone has the right to privacy and freedom which includes the right to physical security.

Unauthorised use of a polygraph test would flout those rules and could potentially land an employer in hot water as was recently demonstrated in the CCMA case of a supermarket guard who was dismissed for failing a voice stress analysis test with his employer, (Mahlangi vs Corporate Investigating & Veracity Assessment (Pty) Ltd).

In the employment contract there was a pledge stating that it was an inherent requirement of the conditions of employment that the employee had to pass the test successfully. Following incidents of theft at the supermarket, tests were conducted on a number of guards; the employee failed the test and was dismissed. This was in breach of the Labour Relations Act and the Constitution and was unlawful; the arbitrator stated that the guard should instead have been given a hearing and any other corroborating evidence the employer had should have been presented at that time. The reliance solely on the testing system was considered unreliable.

The Commissioner found that the test alone could not justify termination of employment as a polygraph test or voice stress analysis test was inadmissible as guilt. This would mean the guard had been dismissed on a suspicion alone and this was both procedurally and substantively unfair. Compounding this case, the employer had tried to engage the employee in a mutual termination contract after the fact. The employee had continually declared his innocence.

The Commissioner awarded the employee a full year's salary as recompense.

2) The importance of the Basic Conditions of Employment Act Earnings Threshold change

Source: Dave Beattie

On 8 February 2021, the Minister of Employment and Labour issued a notice via Gazette No. 44137 that increases the BCEA (Basic Conditions of Employment Act) earnings threshold to R211 596,30 per annum with effect from 1 March 2021.

What does the BCEA Earnings Threshold apply to?

In a nutshell, the BCEA earnings threshold governs the sections of the BCEA that regulate the hours of work. The notice states:

"... all employees earning in excess of R211 596,30 (two hundred and eleven thousand, five hundred and ninety-six rand, thirty cents) per annum [must] be excluded from sections 9, 10, 11, 12, 14, 15, 16, 17(2) and 18(3) [of the BCEA]".

This means that employees who earn more than the BCEA earnings threshold are excluded from sections of the BCEA and are therefore not entitled to the automatic protection and rights provided by the following sections:

- Section 9 (Ordinary hours of work)
- Section 10 (Overtime)
- Section 11 (Compressed working week)
- Section 12 (Averaging of hours of work)
- Section 14 (Meal intervals)
- Section 15 (Daily and weekly rest period)
- Section 16 (Pay for work on Sundays)

- Section 17(2) (Night work)
- Section 18(3) (Public holidays not ordinarily worked)

It is only employees that earn below the BCEA threshold that enjoy the protection of these sections of the BCEA, and for example, are entitled to overtime pay at a rate of 1.5 times the normal hourly wage rate.

Employees that earn above the threshold are precluded from these automatic protections (e.g. they are not automatically entitled to overtime). These provisions of the BCEA must then be provided for in the employment contract.

What is 'BCEA Earnings'?

The notice defines 'Earnings' to be:

"... the regular annual remuneration before deductions, i.e. income tax, pension, medical and similar payments but excluding similar payments (contributions) made by the employer in respect of the employee: Provided that subsistence and transport allowances received, achievement awards and payments for overtime worked shall not be regarded as remuneration for the purpose of this notice."

In the BCEA remuneration is defined as "... any payment in money or in kind, ...made ...in return for that person working for any other person." BCEA remuneration is a complex subject and is not discussed in this article.

In short, excluded from BCEA remuneration are:

- Allowances
- Benefits that are not granted in return for 'work done' (in other words, benefits that are granted in return for 'work done' are BCEA remuneration).

"... before deductions..."

This part of the definition specifies what could be termed 'gross' remuneration i.e. remuneration before deductions, but the wording starting from "but excluding" is clumsily drafted and easily misinterpreted. It is clear that remuneration is not reduced by employment taxes (PAYE, SDL and UIF), and employee-paid contributions to medical schemes, retirement funds ,etc.

What is not clear is that the wording following "but excluding" appears to specify that remuneration must also be reduced by employer-paid contributions to medical schemes, retirement funds etc. This is not correct -employer-paid contributions to medical schemes, retirement funds ,etc. must be included in BCEA remuneration.

The Department of Employment and Labour has confirmed this by kindly providing the PAGSA with their interpretation that states that employer-paid contributions to medical schemes, retirement funds, and similar, are BCEA earnings and the value of the amount contributed must be included.

"... subsistence and transport allowances..."

As pointed out above, all allowances are excluded by definition from BCEA remuneration. However, to reduce queries and prevent misunderstandings, the notice specifically excludes two commonly used allowances that in tax law have special tax rules, being the subsistence allowance and the travel allowance.

"... achievement awards..."

For the purpose of the notice, 'achievement awards' are not BCEA earnings, and include:

- Bonuses
- Commissions
- Incentive payments, etc.

"... overtime ..."

As stated above, only employees earning below the threshold are subject to the provisions of BCEA section 10 that provides the overtime rules.

This means that if an employee works overtime and earns –

- Below the threshold, then the overtime must be paid by the employer,
- Above the threshold, then the overtime may be paid (the employer can choose whether or not to pay).

In the past, when calculating the value of an employee's BCEA earnings, only 'occasional' overtime was excluded from BCEA earnings, a nonsensical requirement. How does one decide which overtime hours are 'regular' and which are 'occasional'? Overtime is an irregular (or occasional) payment by nature.

The PAGSA submitted comments on this impractical requirement for many years until finally the wording in the notice was changed to what we have now - all overtime payments are excluded from BCEA earnings.

So where else would a change to the BCEA Earnings Threshold have an impact?

The BCEA earnings threshold impacts on the LRA (Labour Relations Act) and the EEA (Employment Equity Act). These impacts are:

Labour Relations Act

Employees that earn above the earnings threshold:

Are not subject to the LRA provisions that deem casual workers and employees placed by labour brokers who are not performing a temporary service, to be employees of the client.

Fall outside the scope of the LRA provisions relating to fixed-term employees who are deemed to be employed indefinitely after three months (in the absence of justifiable reasons for fixing the term of the contract).

Employment Equity Act

An employee who earns above the earnings threshold and who has a dispute under Chapter II of the EEA (unfair discrimination) is not permitted to refer the dispute to the CCMA for arbitration (unless the dispute relates to alleged unfair discrimination on the grounds of sexual harassment, or the parties agree to arbitration) and is obliged to refer the dispute to the Labour Court for adjudication.

Should you require any assistance with the interpretation of this legislation or its impact on your business please do not hesitate to contact our HR Team.

3) Injury on Duty – Occupational Disease – what is it and how to report

Author: Harusha Naidoo

What is an Injury on Duty?

"An unexpected occurrence, at a specific date, time and place and arising out of and in the course of the employee's employment, resulting in personal injury or death, or when an occupational disease is contracted due to exposure at the workplace."

The Compensation Fund pays compensation to permanent and casual workers, trainees and apprentices who are injured or contract a disease in the course of their work and lose income as a result.

You can claim if you are:

- permanently employed
- a domestic worker in a boarding house or employed in a business set-up
- an apprentice or trainee farm worker
- a worker paid by a labour agency.

You cannot claim if you are:

- a member of the South African National Defence Force
- a member of the South African Police Service
- a worker who doesn't work under the control of an employer, for example a sub-contractor. Employees who are in the employ of the sub-contractor are covered.
- a worker who worked outside South Africa for more than 12 months without entering into an agreement with the Director General of the Department of Labour

- found guilty of wilful misconduct (unless you are seriously disabled or killed)

Note: If you, as an employee, die from work-related disease or injury, your dependents can claim from the fund.

Compensation benefits will not be paid if:

- you reported the accident to the employer more than 12 months after the accident or death, or after the disease was diagnosed
- you are off work for three days or less, when the Fund will only pay medical expenses
- the accident resulted from your own negligence or wrong-doing (unless you are seriously disabled or die in the accident, then the Fund will still pay compensation)
- you unreasonably refuse or wilfully neglect to have medical treatment.

Registration of a claim:

The employer is responsible to register all accidents with the Compensation Fund within seven (7) days of receiving notice of the accident or 14 days in the case of an occupational disease. All documents related to an IOD and OD should be kept safe and must be provided on request.

Documents required for reporting an Injury on duty (IOD):

- A duly completed Employer's Report on an Accident (W.CI. 2) (Electronic or manual)
- Valid identity (Certified) information issued by the Department of Home Affairs (Including Foreigners): Identity document, driver's license, passport, birth certificate, work permit
- Relevant questionnaires related to the specific incident, if and where applicable. E.g. transport questionnaire, assault questionnaire
- First Medical Report (W.CI. 4) or a valid medical report with a full clinical description by a medical practitioner registered in terms of the Health Professions Act and registered with the relevant medical association(s)
- For claims related to Post Traumatic Stress claims, a First Medical Report by a Psychiatrist (W.CI. 303) is required
- Any other medical report or comments /information should be provided which can have an influence on the consideration of liability of a claim.
- In the case of Needle prick/exposure to blood injuries by health workers: Pathologist reports

Documents required for reporting an Occupational disease:

- A duly completed Employer's Report on an Occupational Disease (W.CI. 1) (Electronic or manual)
- Valid identity information issued by the Department of Home Affairs (Including Foreigners) Identity document, driver's license, passport, birth certificate, work permit
- Notice of an Accident and Claim for Compensation (W.CI. 14) must be completed (more specifically in the case where the employee is not in the service of the employer anymore)
- Relevant questionnaires /report related to the specific condition, if and where applicable
- First Medical Report (W.CI. 22) and /or valid medical report with a full clinical description by a medical practitioner registered in terms of the Health Professions Act and registered with the relevant medical health council including practice number.
- Biopsy / Histology Results / Cytology Report where necessary
- Radiologist reports confirming a diagnosis, Chest X -Ray reports
- Lung Function tests in the case of a lung condition
- Laboratory Investigations confirming the diagnosis
- In the case of Noise Induce Hearing Loss:
    1. Baseline audiograms, pre -employment report (Medical Services advice on adjudication) and exposure report.
    2. Two diagnostic audiograms.
    3. Ear, Nose and Throat Specialist Report (ENT) where necessary
- A full medical report detailing symptoms and signs and a specific diagnosis, together with reports of any special investigations that support the diagnosis, together with detail of treatment administered and / or planned.

Employer online Registration Process:

The new CompEasy system can be accessed only by users registered to the relevant employer. Therefore, only users registered on CompEasy for the particular employer can report new claims and follow up on progress of the claim.

Registration of users must be done online and the application will be vetted by officials of the Compensation Fund.

Note: If you do not intend registering yourself, you should appoint someone else (like HRTorQue) to report accidents for you. It is an offence to fail to report workplace accidents and diseases within the stipulated time (7 and 14 days respectively).

What we will need from you?

These documents will be needed to complete the employer registration process. We will follow up with you to get these items, but if you have them ready it will speed the process up.

- CIPC documents
- Proof of business residence
- Proof of director (or equivalent) residence
- Proof of residence of designated people
- ID of director (certified in last 3 months)

For more info on how we can help you with compliance in this area contact us on info@hrtorque.co.za.

4) Domestic Workers – benefits applicable to domestic workers in terms of the COID legislation

Author: Dave Beattie

Following a landmark ruling by the Constitutional Court, which ordered that domestic workers be included in and protected by the Compensation for Occupational Injuries and Diseases Act (COIDA), revised rules were published in Government Gazette No. 44250 on 10 March 2021.

This Gazette confirms that domestic workers will now be afforded cover by three main compensation measures as determined by the COIDA. These include:

- Temporary total disablement, when an injured employee is booked off for four days or more by a treating doctor to recuperate from the injuries or condition. The maximum period payable is 24 months.
- Permanent disablement lump sums, which are paid on a medical report indicating that the employee has reached maximum medical improvement, limited to 30% of the benefit.
- Permanent disablement pensions, which use the same criteria as lump sums, but can run to 100% of a benefit payment.

Benefits, and minimum and maximum compensation limits, are based on the type and extent of an injury or disability.

The Compensation Fund will cover "reasonable" medical expenses following on-the-job incidents. If the employee requires chronic medication, as a direct result of an injury or illness contracted while at work, the Compensation Fund will cover these costs too. The Compensation Fund will also pay for assistive devices such as wheelchairs and prosthetics, along with rehabilitation, reintegration and return to work programs.

Funeral expenses are payable to dependents of a deceased employee. If the death occurred before April 2019, funeral expenses already incurred by the dependents will be refunded up to a defined maximum. For those who died after 1 April 2019, the benefit is R18,251 paid as a lump sum.

Surviving spouses will be paid compensation which includes either a once-off lump sum award or pension award. A child pension is also offered, which pays children of the deceased up until the age of 18. This pension may be extended for children who are still going to school after turning 18 years.

If there is no surviving spouse or child, a wholly dependency award may be granted to the parents or siblings of the deceased employee who were dependent on the income of the deceased employee.

5) Domestic Workers and the Compensation Fund – what next to be compliant

Author: Dave Beattie

So, what is the next step for the employers of domestic employees?

Employers are traditionally required to register with the Compensation Fund within 7 days of employing their first employee. Besides being subject to a fine for non-compliance if they don't, employers will also be open to civil claims if an employee is injured on duty or becomes sick as a result of their employment. Interestingly enough, the 7-day rule does not apply to the current COIDA change to include domestic workers. Domestic employers have merely been "encouraged to register with the Compensation Fund without delay". The Department of Employment and Labour will be undertaking a nationwide campaign to inform both employers and employees of the changes in legislation concerning domestics.

To register, employers must submit the following documents to the Compensation Commissioner:

- A completed CF-1E Form (Application for the registration of the domestic worker employer)
- Copies of the ID documents, passports, or similar form of identification for both employer and employee
- Proof of the employer's residential address
- A copy of the employment contract

When will the employer be required to submit their first Return of Earnings (ROE)?

It is accepted (but not certain so there is some risk) by the Department of Employment and Labour that because of the timing of the amendments, most employers of domestic workers will miss the annual deadline for the filing of the Return of Earnings (ROE) information for the period 1 March 2020 to 28 February 2021 (ROE due by 31 May 2021). With the various roadshows and campaigns only just getting under way it is likely that the employers of domestic workers will have until March 2022 (possibly 31 May 2022) to complete and submit a ROE for the period 1 March 2021 to 28 February 2022.

How will the annual assessment be determined?

The ROE is used within a standard assessment formula to determine the annual amount payable. This assessment tariff is paid directly to the Compensation Fund which will, in the event of injury or illness, pay the employee. It is important to note that the assessment payable is an employer cost.

The COIDA amendments, applicable from 1 March 2021, list domestic workers as Class M, subclass 2500 at an assessment rate of 1.04. These assessment tariffs are reviewed on an annual basis and are subject to change.

Employers can calculate their yearly payments to the Compensation Fund by using the following ROE and assessment tariff formula:

Annual earnings divided by 100 X 1.04 = annual assessment payable.

This would imply the following contribution under different annual remuneration for a domestic worker, but at this point it is not clear as to whether there will be a minimum assessment value applicable to domestics so we cannot confirm that the table below is accurate.

Annual Remuneration	Monthly Remuneration	Theoretical COIDA Contribution
48,000.00	4,000.00	499.20
60,000.00	5,000.00	624.00
72,000.00	6,000.00	748.80

What constitutes COIDA annual earnings for ROE purposes?

The following income constitutes the COID 'remuneration' that would be factored into the ROE calculation mentioned above:

- Salaries and/or Wages
- Cost of Living Allowance
- Bonuses (incentive or otherwise)
- Overtime payments (regular)
- A guaranteed 13th cheque
- Housing Allowance
- Commissions (only if given to an employee who also has a basic salary, and not agents or contractors)

- Cash value of meals and accommodation provided to an employee
- Any other payment due to an employee in accordance with the employee's contract of service

How can we help you?

The HRTorQue team can assist you in registering your domestic, submitting the annual Return of Earnings and ensuring that the payment is made timeously. We can also assist with the sourcing of a Letter of Good Standing if necessary. We also run domestic payrolls and help employers with all compliance in this area. Please contact info@hrtorque.co.za if you would like any such assistance.

6) 2021 Budget Speech commentary – Employment Tax Incentive anti avoidance

Author: Dave Beattie

Abuse in the Employment Tax Incentive (ETI) to be curbed

The employment tax incentive (ETI) was introduced in 2013 to encourage the employment of persons between the ages of 18 and 29 years, by allowing employers to reduce their PAYE liability to SARS for the first two years in which they employ qualifying employees (with a monthly remuneration of ZAR 6,500 or less). Over the past 8 years there has been a proliferation of training institutions assisting some taxpayers to claim the ETI for students who in fact never work for the employer. To curb this abuse, the definition of an "employee" will be changed in the Employment Tax Incentive Act to specify that work must be performed in terms of an employment contract that adheres to record-keeping provisions, in accordance with the Basic Conditions of Employment Act. This amendment will take effect on 1 March 2021.

Should you be concerned about your current ETI system / claims and like an experienced practitioner to cast their eye over the setup, please do not hesitate to contact us. This issue is going to be on the radar of the SARS auditors and with the number of audits being increased it would be prudent to get some professional advice before SARS visit and start asking awkward questions.

7) 2021 Budget Speech commentary – Nature of long-service awards for fringe benefit purposes to be reviewed

Author: Dave Beattie

An employer is currently allowed to treat a long-service award to an employee (in the form of an asset) to the value of ZAR 5,000 as a no value fringe benefit. However, employers recognize long service through awards in various forms that could be considered non-cash benefits in terms of the Income Tax Act, and it is proposed that the current provisions of the Act be reviewed to consider other awards, within the same limit, granted to employees as long-service awards.

Once clarity is provided in terms of what the 'other awards' are likely to be we will be able to assist you in putting together a comprehensive 'long service award' policy that meets current legislation. We will communicate further on this issue as and when additional information is provided.

8) 2021 Budget Speech commentary – SARS investment in technology and infrastructure

Author: Dave Beattie

One interesting element of the 2021 budget is the fact that SARS will be allocated R3 billion to upgrade its technology and infrastructure systems and expand its specialized audit and investigative skills to prevent tax avoidance.

It was also made clear that with SARS investing in technology and data to evaluate the complex tax structures of wealthy South Africans, that these affluent taxpayers would be put in the spotlight as the first step in recovering what they believe are large amounts of money that are slipping through the tax net.

The minister also mentioned leveraging the Davis Tax Committee's insights, suggesting that this will be a continued focus for SARS.

SARS will be using the allocated funds to attract technically skilled personnel and increase the organization's data-gathering capabilities. This includes expanding and increasing the use of data using machine learning algorithms and artificial intelligence to connect the dots and, also a very modern digital platform in which taxpayers can easily engage with SARS.

Finally, SARS will be focusing on areas where there is still aggressive non-compliance. The abuse of asset losses, transfer pricing and the use of complex arrangements and offshore vehicles to try and mask their tax obligations will be the first areas of focus.

An automation and digital migration process that started in 2020 will be continued, considerably reducing manual intervention and improving efficiency and turnaround times.

It is interesting to note that the increased budget allocation will only be from 2022/23. This possibly suggests that the hard work that is currently being done by the new Commissioner and his team will lead to improvement in efficiency and collections in the coming year. What is certain is that the Treasury is banking on a very big year from SARS.

Those individual taxpayers and companies who have been shunning compliance and not paying their share had better get their house in order fast, as it is matter of time before SARS come knocking. SARS will be utilizing the maximum penalties at their disposal to punish transgressions going forward.

9) 2021 Budget Speech commentary – Reimbursive Travel Allowance

Author: Dave Beattie

SARS is very aware of the fact that the current travel allowance system is open to abuse and that a large percentage of claims are fraudulent. There has been recent chatter that SARS may be looking to do away with the option of fixed travel allowances and suggestions that they may only allow business travel to be reimbursed at a fixed cost per kilometre. The current tax regime offers the reimbursive travel allowance as an option for employees. The system puts the onus on the employer to accurately determine the business travel undertaken by the employee and to then pay that at a rate per kilometre determined by SARS annually, or at a rate determined by the employer.

The taxing of the reimbursive allowance was fundamentally changed from 1 March 2018. Where an employee is reimbursed using a rate higher than the SARS prescribed rate, the difference between the SARS prescribed rate and the rate utilised by the employer will be subject to PAYE, regardless of the number of business-related kilometres travelled.

It is advisable that employers consider their reimbursement rates against the prescribed rate. An unintended consequence of reimbursing an employee on a higher rate will increase the employee's PAYE liability and may result in lower employee take-home pay.

An alternative to avoid this possible occurrence would be for the employer to reimburse the employee at a rate below the prescribed rate of R 3.82 (R 3.98 in 2021) per kilometre. The reimbursement will not attract PAYE and will also not be taxable on the employee's personal tax return. The simplicity of this approach reduces the reporting requirements associated with the reimbursement of business travel at a rate above the SARS prescribed rate.

HRTorQue can assist you with an evaluation of your current travel allowance and or reimbursement system. This will ensure that you are following industry best practice and that you are not at risk should SARS undertake an Employees Tax audit.

10) Tax deductible donations - Section 18A certificates

Author: Dave Beattie

With third party data supplied to SARS making up the majority of the information currently populating individual taxpayers' tax returns, it is no surprise that SARS intends to apply the same reporting requirements to Section 18A certificates. The reason for this move is to curb the issuing of such certificates by entities that are not approved to do so. SARS has proposed that the information required in such receipts be extended and third-party reporting be extended in future to cover the receipts issued.

This proposed change will make it easier for individual taxpayers to claim a donation as a tax deduction, as qualifying claims will automatically be prepopulated on their Income Tax returns. Taxpayers are still urged to ensure that the Public Benefit Organizations that they are donating money to qualifies to issue Section 18A certificates. This qualifying criteria can be checked by a simple check on the SARS website www.sars.gov.za. Simply click on the 'Business and Employers' tab, go to 'Tax Exempt Organizations' and then 'Approved Section 18A PBOs'. If the name of the entity you are donating to is not on this list, you will not qualify for the applicable tax deduction.

11) Penalties for late submission or no submission of 2021 employer tax certificates

Author: Dave Beattie

In terms of paragraph 14(6) of the Fourth Schedule of the Income Tax Act 58 of 1962, if an employer fails to submit the EMP 501 return by the relevant due date, the Commissioner may impose an administrative non-compliance penalty for each month that the employer fails to submit a complete return. This penalty has been available for some years, but to date SARS has yet to apply it. In line with recent Budget proposals compliance will be stepped up, and SARS issued a notice that warns employers of the potential imposition of penalties starting from the February 2021 tax certificate submissions and reconciliations.

The February 2021 tax certificate submission and reconciliations must be submitted to SARS by 31 May 2021. In terms of the above legislation, SARS can impose a penalty of up to 10% of the total amount of the Employees Tax deducted or withheld, or which should have been deducted or withheld by the employer from remuneration for that reconciliation period. SARS has however taken a decision to impose a penalty of 1% (instead of 10%) for each month that the employer fails to submit the complete return. A penalty notice in the form of an EMP 301 will be issued at the end of every month to confirm the penalty imposed.

If an employer ceases to be an employer from 1 March 2021 onwards, a final reconciliation return must be submitted within 14 days from the date that the employer ceased to be an employer. If these returns are not received timeously the 1% penalty will be applied.

At this stage it is unclear how SARS will deal with cases where due to the non-submission of monthly or six-monthly returns the Employees Tax for the period is unknown. Whilst it would make sense for the penalty in such cases to be applied retrospectively, this would undermine the purpose and deterrent effect of the non-compliance penalty. The Payroll Authors Group of South Africa has suggested that SARS might raise the penalty on an alternative basis in such cases, for example through an estimate of the Employees Tax with an adjustment once the actual Employees Tax is known.

What is clear is that SARS is stepping up efforts to punish non-compliance. Employers will be put under more pressure to ensure compliance due to the severity of the penalties that will be imposed. As compliance becomes more important, employers will need to ensure that their payrolls and related SARS submissions are accurate and submitted timeously.

12) TERS vs Reduced Work Time Benefit

Author: Nicky Hardwick

UIF Covid-19 TERS

On the 28th February 2021 employers were sent correspondence from UIF regarding the extension of the TERS benefits. These benefits were extended from 16th October 2020 until 15th March 2021 but only certain categories of employees are eligible for this benefit.

These include

1) Employees who are on temporary lay-off or Reduced Work Time within those sectors that have not been able to operate due to regulatory restrictions. These business sectors are specified in Annexure A of the New Directions and include businesses directly involved in hospitality, tourism, liquor, some sectors of Arts, entertainment and recreation and certain businesses included as part of the supply chain to the aforementioned sectors.
2) Employees in all sectors who:
    a. Were required to self-isolate or quarantine to prevent the spread of COVID-19
    b. Are age 60 or above and who could not reasonably be accommodated in the workplace
    c. Have co-morbidities and who could not reasonably accommodated in the workplace

The online portal is open to accept claims for employees list in section 1 above for the period 16th October 2020 until 31st December 2020 ONLY. UIF will communicate on the opening of the other claim codes and the period 1st January 2021 until 15th March 2021.

Reduced Work Time Benefits

In light of the extended UIF TERS benefit period, employers in the sectors targeted for relief will have the opportunity to apply for the TERS benefits.

For those sectors unable to claim TERS, employees could make use of the Short Term/Reduced Work Time Benefits.

The Reduced Work Time covers employees whose working hours have been reduced or who are forced to stay at home due to work stoppage.

Normally, a claim for this benefit is submitted by an employee with the assistance of the employer. However, the system has apparently been enhanced to enable employers to submit bulk applications on behalf of employees and a spreadsheet has been designed to make this easy for employers.

The differences between TERS and Reduced Work Time Benefits are:

1) The Reduced Work Time benefit uses, and then reduces, the employee's "credit days". These days are then no longer available to the employee to increase the value of unemployment benefits at a later stage.
2) The TERS benefit does not use or reduce "credit days". The value of the RWT benefit is, in almost all cases, less than the value of the TERS benefit.

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