



Table of Contents

- 1) Should I outsource my payroll?
- 2) The headaches of POPI compliance
- 3) SARS failure to respond letters – was there a glitch at SARS?
- 4) SARS portal changes and SARS profile issues
- 5) UIF compliance certificates – the challenges
- 6) Employees and criminal history
- 7) HRTorque moves into time & attendance
- 8) Occupational Health & Safety Bill – 2021
- 9) UIF contribution limit increase

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

1) Should I outsource my payroll?

Author: Jonty Aitken

Editor's note: HRTorque offers an outsourced payroll solution and has been doing so for over twenty years. However, we recognize the decision can be difficult and as a result we also offer a number of services to help clients who don't want to outsource including a comprehensive payroll review, project management and implementation assistance for payroll system changes and a payroll support service for all major systems in South Africa.

We are often asked the question, "Should I outsource my payroll?". The answer as you might imagine is not an easy one. In this article we look at some of the key reasons why employers should outsource their payroll and the circumstances in which keeping it in-house might be better. We also look at the reasons that are often used for changing payroll, but which are misleading as they can be achieved no matter where the payroll is processed.

Ultimately the key reasons for outsourcing your payroll are cost and risk, but the nature of the system, access to trained staff and reporting considerations play a part.

- Cost – cost is usually the deciding factor for an employer looking to outsource payroll. However, in some situations an outsourced solution may not reduce cost. For example, a large company may be able to build the necessary skills in-house to provide a professional payroll solution at a reasonable cost. On the other end of the scale very small companies may find their payroll is simple enough for an office manager or accountant to run (and seeing they are also doing other jobs the cost is already sunk)(but just be aware of the risk). The area we see many employers getting this decision-making process wrong is they don't consider the full cost of running payroll to do a proper comparison. To make the right decision you need to include:
 - Payroll software licensing costs (incl ESS)
 - Payroll software support costs
 - Payroll staff salary and admin costs (including overheads for laptops etc..)
 - Payroll staff training
 - Transaction costs for making payroll payments
 - Despatch and printing
 - Costs of getting finance involved in payroll for reporting and reconciliations
 - The cost of getting it wrong – penalties and audit costs from SARS, Department of Labour and the Compensation Fund and employee unhappiness when paid incorrectly
- Risk – often seen as an intangible, this is the biggest reason we advocate for outsourcing your payroll. Employers often decide to outsource their payroll because they are already facing one of these risks (e.g. an audit or key person leaving). In theory the outsourced service provider is better able to manage these risks because of their scale (depending on the outsourcer). Risk falls into a number of buckets:

- South African legislation and practice (how it is implemented by government entities) is complex. In-house personnel are expected to keep up to speed with software changes and legislation and practical implementation for:
 - The Income Tax Act and SARS practice notes
 - Both UIF acts
 - The Basic Conditions of Employment Act and Labour Relations Act
 - The Employment Equity Act
 - The Skills Development Act
 - DTI guidance as it relates to BEE
 - Court cases and decisions by CCMA, the Labour Court and other court decisions
 - Compensation for Occupational Injuries and Diseases Act
 - Protection of Personal Information Act
- Over reliance on key staff – often we see employers are heavily reliant on one key payroll person. This can be for many legacy reasons. Irrespective, the employer faces significant risk should something happen to this key person or should they leave or retire. Payroll staff are also usually under significant pressure and stress and not always highly paid. This leads to an increased risk for the employer.
- Over reliance on a system – should something happen to the system on which payroll is processed, the employer faces a tough decision to make a change at short notice. While potentially a low probability event it has significant repercussions for the business if a change has to be made at short notice.
- Processors vs those who actually understand payroll - in our experience, payroll processing staff generally fall into two categories. 1) Those who are process orientated and take input each month and process it through the system to generate payslips, but who are reliant on external consultants to make changes to the payroll and 2) those who actually know how the system calculates things and can make changes to fix problems. If you have the second category, great. If you have the former, then be careful. The processors don't know what is under the hood of the car and what makes it run. This also means they don't know what can go wrong and wouldn't be able to recognise an error and fix it without external support.
- Confidentiality – it is easier to maintain confidentiality if less people in your organisation see payroll data.
- Controls – through scale, outsourcers are usually better able to implement important internal controls, but this should always be tested as it is not a given.
- Reporting – many employers are not optimising their reporting from their payroll system. Outsourcing might not necessarily solve this unless the employer makes this a key component of the outsource solution. We usually see problems in the following reporting areas:
 - Payroll is processed by one staff member and they are the only person with access/knowledge of the payroll system. This creates a bottleneck and a situation where non-standard reports are sometimes not requested by management because they know it will take too long to get;
 - Payroll checking – the payroll is signed off by a manager, but the reports they are given are too long or don't focus on the key issues making it very difficult to check payroll properly. This increases the risk of mistakes;
 - Data for decision making – payroll is a significant cost for most businesses, yet we seldom see employers using the valuable time & attendance and payroll data to identify areas where efficiencies can be found and value added;
- Access to good staff – the ability to source good staff is dependent on the system you are on (payroll candidates tend to have experience on specific systems); your budget for training and your willingness to send staff on training courses. If you have the right formula and you have a good team then outsourcing would not necessarily add anything to this. The best way to test this is to do a payroll review and see whether there are any gaps. If you are happy with your team's performance (meeting deadlines, accuracy in processing and reporting) and the payroll review doesn't identify any major problems then you find yourself in a great position.
- Payroll system – moving to the right system is sometimes used as a reason for changing payroll. This is a bit misleading because in practice an employer can change system without outsourcing. It is also a common mistake to think the right system can fix anything. A successful tool requires three things: the right system, the right people using it and the right process. The key considerations in looking at a system (excluding cost) are:
 - Which is the right system for us? This can often be a difficult question in its own right. When you are being sold the system, it will seem like the system can do no wrong. Reality is a bit different. Implementation is key and it is important for an employer to do a walkthrough to identify where internal processes will need to adapt to the new system and where the system may not be able to cater for a specific requirement.
 - Training of staff. Whoever is going to run the payroll needs to be trained on the new system. Provided your staff are capable there is no reason they cannot be trained on the new system. However, there will be risk for the first six months as they are likely to make mistakes. This is natural in a change process.

- Functionality. If you are not going to use the functionality a system offers, then paying a premium for a good system might not be worth it. That said, if you aren't using the best parts of the system you should ask yourself why not? What can your business gain from it?

The above is quite comprehensive and there are numerous issues to consider. HRTorQue is able to assist you make the decision whether to outsource or not with a number of our services:

- Payroll review – we can review your existing payroll and team to identify any risk areas;
- Payroll support – if you are worried about continuity of staff, we can provide payroll support services to get to know your business in case of any loss of key personnel;
- System assessment – HRTorQue works on multiple systems. We would be happy to showcase the merits of different systems to help you decide which would be best for your business;
- System change management – our trained staff can help you implement a system change including setting up the payroll and training your staff;
- Our finance and payroll teams are able to work with you to optimise your reporting and reconciliations (HR, payroll and finance); and
- Should you decide to outsource we would be more than happy to be your outsource partner;

Feel free to contact info@hrtorque.co.za if you wish to chat about your options.

2) The headaches of POPI compliance

Source: Jonty Aitken

The cat is out the bag, The Information Regulator has issued guidance and companies are scrambling to get compliant by the 30 June.

The problem is that nobody really knows what compliance means. Until we see the outcomes of complaints and subsequent rulings by the Information Regulator, we won't know what steps South African corporates will need to take to be fully compliant and not at risk of fines.

This article contains a few of our comments, gripes and straight speculation on all things POPI.

Firstly, as a principle, in the modern world we live in, there is no doubt the principle of POPI is important. Our data and how it should be used should be protected.

The problems as they relate to this protection and POPI in our view are:

- No systems or processes can protect against individual human intervention. Individual companies are not security experts nor are they like the CIA or NSA able to put in place measures to stop individual employees from walking out with valuable data. It is naïve to think otherwise. Human error will remain the single biggest risk for POPI compliance and we hope the Information will be pragmatic in reviewing the steps taken by companies to protect the exposure of personal data by users.
- There has been an escalation in malicious external attacks (phishing, ransomware) in the past few years. Even large organisations have become victims. It is not practical to assume that companies will be able to put in place protective measures against these attacks. They will occur. What will the benchmark for negligence be when it comes to the Information Regulator reviewing the leaking of data in these circumstances? Ironically it is also the countries without these data protection laws from which most of the attacks originate.
- The potential burden of compliance is massive. Larger companies are following the example of US and European standards and implementing checklists and processes and controls for all data touchpoints. Even for larger corporates there is the risk of the tail wagging the dog. How more so for smaller companies who don't have the skills or resources to follow the same compliance protocols. Does this have the potential to negatively impact competition, making it easier for large corporates to dominate?
- The Information Regulators requirements to register an Information Officer apply to all companies, including subsidiaries. This means that some bigger corporates may have hundreds of registrations. Is this really feasible to try and aim the rules at individual companies? Not only will it swamp the Regulator, but it may also mean that when they try and investigate a complaint they will probably have to wade through the whole corporate structure to try work out where the responsibility for that data should really lie. How do you also compensate your employees for potential criminal charges for non-compliance where they are implicated by an investigation they are unaware of, because of a complex group structure?

- For cross border activities and sharing of data, are we creating a situation where we restrict the use of international tools because we can't confirm where the data sits or how it is processed?
- The rules for Prior Authorisation where it comes to Unique Identifiers is in our view very vague and could capture far too many activities into its net. How broad can one argue the concept of "intended purpose"? does this need to be specific? This one paragraph is a potential minefield...for interest the specific paragraph is reproduced below...

"In accordance with section 58(1) of POPIA and subject to section 57(3) of POPIA, the responsible party must notify the Regulator that he, she or it is processing or intends to process any of the following personal information, as referred to in section 57(1) of POPIA 3.1.1. Unique identifiers of data subjects for a purpose other than the one for which the identifier was specifically intended at collection; and with the aim of linking the information together with information processed by other responsible parties;

Examples of unique identifier are, amongst others- Bank Account Numbers or any account number; Policy Number; Identity Number; Employee Number; Student Number; Telephone or cell phone number; or Reference Number."

We know how hard it has been for some of our clients. It is difficult to get pragmatic advisors because the advisors are themselves worried they face push back if they don't do a belts and braces approach. There is just too much uncertainty.

In the interim, we would suggest do your best to be compliant. At the very least do the following (and no we don't warrant this will make you compliant):

- Read the guidance on the [Information Regulator's website](#)
- Register your information officer and any deputies for each of your companies on the same website
- Do a risk assessment (be sure to include all personal data touchpoints, where the data is stored, how it is used and how it is communicated both internally and externally). Don't forget to include your full IT environment in this risk assessment (servers, websites, email, use of storage media... it is a long list)
- Put in place a plan to address risk areas over time
- Prepare an internal code of conduct and policy
- Prepare a letter you are comfortable going out to third parties explaining your processes including the process for somebody to request what data you have on them and how to request deletion
- Review all your contracts and make sure you have permission to process data for the intended purposes
- Send communication to all entities who process on your behalf or who you send data to and make sure you get some comfort they are compliant
- Put in place staff training
- Check whether you need Prior Authorisation for any of your activities. Remember if you need it and don't have it you have to theoretically stop doing it.

Good luck to all of you.

3) SARS failure to respond letters – was there a glitch at SARS?

Author: Jonty Aitken

As we run a number of payrolls and submit returns for clients, we monitor the EMP201 profile closely for any audit letters SARS issue.

In the past month or so it has come to our attention that SARS has started issuing audit letters on companies' EMP501 profiles instead of the EMP201 profile as they have done in the past. This in itself is not a major problem because usually SARS would send an email notification to the representative responsible for the profile and the public officer so the company could then go into the profile and find out more about what SARS is looking for.

The problem is that when we started noticing the letters on the EMP501 profile we tried to track the email notifications that were supposedly sent out to various parties and we cannot find them anywhere.

Ironically, post raising the issue with SARS our EMP201 profiles have now been inundated by notifications on historic audit requests, almost as if somebody at SARS has noticed an error on their servers and flicked the switch to release the notifications.

The problem for the taxpayer is that because the issue is post-dated and they have been issued with a failure to respond notice, the matter is closed, and it is far harder for a taxpayer to submit the required documents because they can no longer do this on efilling or e@syfile.

If you are experiencing a similar issue and need assistance contact us on info@hrtorque.co.za.

4) SARS portal changes and SARS profile issues

Author: Jonty Aitken

Every year as we get to employer filing season we have a raft of companies approaching us to help them get access to their SARS, either because they can't remember their details, can't remember who had access originally, or can't remember who is the public officer.

This year it has been a little worse because SARS have changed the look and feel of their efilling portal and haven't been that open with instructions on how to use it.

This at the same time they have indicated they will be charging penalties for late submissions of employer filings.

If you do find yourself in that desperate situation where you can't get access to your profile, please feel free to contact us. It is a paid service and we can't guarantee we will be able to solve it for you, but at least you will be talking to people who know what they are doing.

5) UIF compliance certificates – the challenges

Author: Jonty Aitken

The UIF Commissioner launched a new facility a few months back to allow employers to check whether they are UIF compliant. In parallel UIF have been sending out letters to clients who are not compliant. This against the backdrop of a large number of TERS audits and the announcement by UIF they will be engaging forensic auditors to help them with this process.

It is admirable the progress UIF have made since the start of lockdown in March 2020 to improve their data and systems in response to TERS. This is a welcome improvement. However, the usual challenge exists with authorities that they don't think through some of the implications of their actions.

We have set out below some of the challenges we have seen with the compliance process and UIF in particular (only as it relates to submissions and not in relation to contributions and claims – another time for those perhaps).

- It appears the databases populated by ufilling and eDeclarations (edec) are still separate and don't communicate with one another: We have seen examples where an employer has consistently sent in eDeclarations, but a UIF officer in performing an audit claims they haven't submitted information for a particular employee, when it is clear from the edecs they have. We assume the UIF officer is referring to the ufilling info.
- Because the systems don't communicate it is impossible for an employer to check ufilling to see what info UIF has for them. They can only be reactive and respond to requests for data.
- An easy solution would be for employers to use ufilling instead of edecs. The challenge however is twofold:
 - Ufilling uploads are limited to a certain number of employees so bigger companies can't use the system
 - One can only make a bulk ufilling upload if an employee has already been manually loaded to the system. This makes it cumbersome to manage because all engagements and terminations have to be done individually.
- The compliance certificates are helpful in providing a breakdown of problems with the information UIF has for an employer. This is useful, but once again comes with some challenges:
 - The compliance certificate for a specific UIF number can only be accessed by one user per UIF number. This is problematic for larger groups or employers who rely on an agent or third party to manage their UIF.
 - The certificate does show when returns have not been submitted. However, the vast majority of errors relate to a simple issue. If an employee is terminated, but UIF has not been informed of the termination through edec (a UI19 won't do) then UIF will assume the employer has mistakenly not sent a

declaration for that employee from that period onwards. Instead, it may just be that the employee was terminated on payroll in the following month, but had no payroll record and was therefore not included on the edec. This can result in an employer have hundreds of records to correct even though UIF has been told correctly and contributions for UIF have been made correctly. The double whammy is the employer will not be able to get a certificate of good standing until this has been resolved.

In the interim we strongly recommend you register at [UIF](#) for this process and find out now what you need to do to comply so that it doesn't create a last minute problem for your business.

6) Employees and criminal history

Author: Nicky Hardwick

Can an employer reject a prospective employee because he/she has a criminal record?

Can you dismiss a current employee for having a criminal record?

The Employment Equity Act states that no employer may unfairly discriminate against an employee (which includes applicants) on grounds such as race; gender; sexual orientation and disabilities

The Act goes on to say however that it is not unfair to distinguish, exclude or prefer any person based on an inherent requirement of a job. When recruiting we can therefore ask applicants to disclose information to allow us to determine their suitability for the position they are applying for, this may include requesting previous criminal records.

Some key aspects to consider if you are going to exclude the person

- 1) How long ago did the transgression occur?
- 2) What is the record for?
- 3) Does having this record in any way affect the person's ability to do their job (i.e. the inherent requirements of the job)

Example:

Bob, 48 years of age, is a qualified school bus driver but has a criminal record for drunk driving when he was 18 years of age. This criminal record does not mean that Bob is a raging alcoholic or drinks whilst on duty and endangers the lives of children. It could be that he went out as an 18-year school leaver and got caught drinking and driving. His employment references and record of the past 25 years are impeccable and there is no evidence that this is an ongoing issue.

Without asking the correct questions you are unable to make a fair and rational judgment and if you reject his application or terminate his employment you could end up in CCMA for unfair discrimination.

NOTE: Compensation under the LRA is limited to 12 months' remuneration in the case of 'ordinary' dismissals, and 24 months' remuneration in the case of discriminatory dismissals (this includes prospective employees). The Employment Equity Act permits the payment of compensation, as well as damages. Damages may be awarded in respect of patrimonial losses suffered and proved. Compensation is monetary relief for the affront of human dignity arising from the unfair discrimination suffered by the complainant. The amount of compensation that may be awarded in terms of the EEA is not limited and must be just and equitable.

This is not to say that there are times in which a criminal record could be grounds for dismissal, but the correct HR procedures must be followed before any action is taken.

For assistance with any pre-employment checks and/or guidance on the correct procedures to follow feel free to contact info@hrtorque.co.za.

7) HRTorQue moves into time & attendance

source: Jonty Aitken

Time & attendance is an area we see a lot of clients getting very frustrated. They implement a time & attendance hardware and software package and then assume that everything will work out perfectly and it doesn't (for some of the challenges on time & attendance please see one of our previous [articles](#)).

Historically we have steered clear of assisting clients in this space because we were concerned that we did not have the technical capabilities to deal with the hardware and software challenges.

We are very pleased to say we have now partnered with a couple of market leading partners able to provide the hardware and software while we assist the client to optimise their time & attendance processes.

Time & attendance is not cheap to install, but the problem we almost always see is that because clients don't use it properly it stays a cost to the organization. To make it a no brainer decision, you need to use the info provided and drive efficiencies. If you do this then the system pays for itself many times over.

If you are looking to implement a time & attendance system, are frustrated with the support you currently receive from your provider or want to learn how to get a return on your investment and use the time data to drive efficiencies, please feel free to [contact us](#).

8) Occupational Health & Safety Bill – 2021

Author: Jonty Aitken

On the 21 May 2021 the Department of Labour published the Occupational Health & Safety Bill for public comment. We would recommend that employers consider the impact this may have on their organisations as there are a number of important changes. The Bill is available [here](#).

Specific items to be aware of include (not a complete list):

- New definition of employer and employee
- Requirement for a risk assessment to be carried out by all employers by a "person or persons who are competent to pronounce on all the risks associated with that workplace" – it is not clear whether this will create a more onerous and costly requirement for office based employers;
- Placing a specific burden on manufacturers and importers to make their product safe and also to provide correct instructions on use without the previous wording of "so far as reasonably practicable." This will likely add extra costs and risks for importers in particular who may traditionally have relied on the instructions and safety steps taken by manufacturers in other countries;
- Changes to the rules around Health & Safety committees and a requirement for them to meet every two months (previously three months) and for a committee to be setup where there is one or more health and safety representative;
- A new reporting obligation to inform the Department by the 1 March of any incidents in the past twelve months
- Further administration clauses around the rights and duties of inspectors, appeals, penalties, fines and complaints as well as the protection of personal information

9) UIF contribution limit increase

Author: Dave Beattie

The Minister of Finance after consultation with the Minister of Employment and Labour and the Unemployment Insurance Commissioner announced by notice in Government Gazette 44641 on Friday, 28 May 2021, that the contributions to the Unemployment Insurance Fund must be determined on remuneration not exceeding R 17 712 per month (previously R 14 872).

This increase is applicable to remuneration paid or payable by an employer to an employee during any month from 1 June 2021. This change had initially been announced as being effective 1 March 2021. The delay in the change was necessary to give payroll providers adequate time to make the necessary changes to their payroll systems. These changes will need to be made this month as the UIF contributions for June 2021 will need to be correctly determined so that payment can be made no later than 7 July 2021.

It is interesting to note that the monthly contributions limit value is now the same as the monthly benefit value. These values had not been aligned for years and this had caused confusion to both contributors and claimants.

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