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Should you require more detail on any of these topics, please contact us at [info@hrtorque.co.za](mailto:info@hrtorque.co.za).

**1) Leave pay: Terminology and calculations**

**Author:** Karen van den Burgh

At HRTorque, we're continually inundated with queries regarding leave pay. It's an increasingly complex area, so let's go back to the basics to help you navigate this payroll minefield.

**LEAVE PAY – A LOOK AT THE BCEA LEGISLATION**

Statutory leave is the leave that you are entitled to under the basic conditions of employment – i.e. the same number of days you ordinarily work in a 21-day period. So, if you work Mondays to Friday, you will work 15 days in a 21-day period and are then entitled to 15 days leave for each full year worked.

Statutory minimum leave in terms of the Basic Conditions of Employment Act (BCEA) may not be paid out other than on termination of employment. However, where the company provides more than the statutory minimum, this additional leave may be bought or sold. As an example, an employee who works 5 days a week **MUST** take 15 days' annual leave per cycle. But where the company grants 20 days' annual leave, 5 of those days may then be paid out rather than being taken.

Calculating leave is set out in s35(5) of the BCEA, supplemented by the regulation on calculating remuneration for employees in terms of section 35(5), and set out in the decision table. How we calculate the value of leave will not change if it's to be paid out, as there would be no basis for that differentiation. If you were to take that leave, you would be paid a certain amount, and that is the same amount that would be paid if leave is bought or sold - if it's statutory leave.

**Remuneration**

'Remuneration' is defined as the payment in money or kind, or both in money and in kind, made or owing to any person in return for that person working for another person.

**Wage**

'Wage' means the amount of money paid or payable to an employee in respect of ordinary hours of work or, if they are shorter, the hours an employee ordinarily works in a day or week. Wage would therefore exclude payments in kind and payments done for work outside of ordinary hours.

The term 'wage' is used for the calculation of:

- Overtime
- Sick leave pay and family responsibility leave
- Public holidays

## **Allowance**

An 'allowance' is a payment to allow work to take place. Examples of such payments include transport allowance, tool allowances and uniform allowances. The important point to note here is that these payments allow work to take place and bears no relation to actual work done. So, for example, a transport or uniform allowance would still have to be paid even if work was not done.

## **Benefits**

In terms of labour terminology, a 'benefit' is something that an employee enjoys because of their association with their employer. The best examples of this would be the ability to purchase clothing rejected during the manufacturing process while working for a clothing manufacturer, and the ability for bank employees to receive low interest loans while working at a bank. The benefits acquired by the employee have no bearing on the employee's ability to work or their performance. When thinking of the term 'benefit' in terms of tax legislation, one would think of contributions to pension or provident funds, or a fringe benefit gained, but it can also include other items.

## **'REMUNERATION' INCLUSIONS AND EXCLUSIONS**

Employees cannot be financially worse off if they are on leave. This means that overtime payments, commissions, shift allowances and the like, should be included in their leave pay. In this case, employers are required to average the last 13 weeks of these earnings for weekly paid employees and 3 months for salaried employees, to arrive at leave pay. This exercise is particularly difficult if your payroll system isn't set up or equipped to store information of this nature.

### **1. Inclusions in 'remuneration'**

Paragraph 1 of the Government Notice deals with the inclusions in remuneration. These are:

#### ***Housing / accommodation***

This is included as it is a form of salary. If issuing notice pay, this would be included as the employee would in all probability no longer have the use of the accommodation. If the employee was on leave and still using the accommodation, then this value can be ignored.

#### ***Car allowance or company car***

The travel allowance issue is very technical and difficult to apply in practice. The business use portion of a travel allowance can be excluded from the leave payment. Experts in this field suggest that the business kilometres travelled should be multiplied by an acceptable per kilometre rate to arrive at this exclusion. The Automobile Association (AA) could be a reliable source for the per kilometre rate. We suggest a consultation with our tax and compliance expert in this regard if you have any questions.

If the employee has the use of a company car while on leave, then no calculation would be necessary. If, however, the employee does not have the use of the vehicle over this period, a recalculation would be necessary. You would need to determine a per kilometre cost for the use of the vehicle (using the history available). This value would then have to be multiplied by the estimated number of private kilometres that would have been travelled if the employee had worked. This value would have to be included in the leave pay to compensate the employee for losing the private use of the car when he is on leave. This exercise is likely to cause much debate if applied in practice.

#### ***Any payments in kind***

Any other payments in kind must be included (except those specifically excluded in the 'exclusions from remuneration' paragraph below).

#### ***Employers' contributions***

Employers' contributions to pension, provident and medical aid funds are specifically included. Obviously, if the employee is on annual leave and the company is still making these contributions then these amounts would not be included in annual leave. If, however, the employee's employment had been terminated and leave pay was being paid out then these contributions would have to be included in this payment. These same facts would apply for contributions to disability and funeral funds.

### **2. Exclusions from 'remuneration'**

The exclusions from remuneration are as follows:

#### ***Payments made to enable an employee to work***

Payments that enable the employee to work are excluded from remuneration. These payments include tool allowances, a transport allowance to enable an employee to catch a taxi to work or the provision of transport to get an employee to work.

#### ***Relocation allowance***

This allowance is also regarded as a payment to enable an employee to work and would also be excluded from remuneration.

### **Gratuities and gifts**

A birthday present or flowers when you are sick would fall into this category. An award due to good performance (reaching targets etc.) would not fall into this category and would be included in remuneration as it's paid because of work done.

### **Share incentive schemes**

The logic behind the exclusion of these payments is that such payments are sporadic and are not issued in terms of a regular practice.

### **Discretionary payments**

The best example of a discretionary payment would be a profit-sharing payment. These payments are not based on an employee's individual performance and so are excluded from remuneration. Bonus payments that are based on performance and are not guaranteed will also be excluded. However, if there is a pattern or expectation based on previous years' payments, then this payment is likely to be classed as non-discretionary and would then be included.

### **Entertainment allowance**

This is not deemed to be a payment for work done as the nature of this payment is intended to be of a reimbursive nature. The purpose of this allowance has in the past however become a bit distorted, and was mainly used as a means of reducing an employee's tax liability. The tax deductibility of entertainment expenses was withdrawn as of the 2003 year of assessment.

### **Education or schooling allowance**

An educational allowance would not fall into remuneration, as the allowance is not paid for work done. The allowance is intended to allow employees to up-skill themselves thereby improving both their effectiveness and efficiency.

### **Payments in kind**

The value of 'payments in kind' become a factor when payments must be made for leave, notice and severance pay when an employee leaves an organisation. It's critical that these values be correctly determined, as the employee cannot be left worse off than when he or she was in actual employment. Earlier we looked at the company car scenario and pointed out that calculating a value in this situation could be a daunting task. It's important to remember that the values for tax purposes cannot be used, as they are not an accurate reflection of an asset's worth and are merely reflected on the employee's pay slip for taxation purposes.

## **APPLICATION OF LEGISLATION**

This legislation is applicable from the 1<sup>st</sup> July 2003. This means that only leave that accrues after this date is subject to this legislation. The Payroll Authors Group has always maintained this legislation is merely a clarification and that nothing has really changed. Companies must however follow the current clarification as it means that their leave pay liability will only increase as of 1 July 2003. Prior to this date, companies have generally paid at a rate according to their policy at the time.

## **FLUCTUATING PAYMENTS**

The concept of an employee not being worse off when they are on leave was highlighted earlier. This point is particularly important when an employee earns payments that fluctuate each month. To accommodate this, the legislation requires that for weekly paid employees an average of the past 13 weeks of earnings be used. For salaried employees, an average of the past three months must be used.

If the employee has not been employed for the full 13 weeks prior to termination, then a more representative period must be used. Seasonal workers or other workers whose income fluctuates according to market demand would be unfairly disadvantaged if the averaging process was performed over the less productive months. There would then be an unfair advantage to the employer if the averaging was done in the higher earning months. In these cases, we believe that the averaging should be done over a full year to ensure fairness.

## **ANNUAL PAYMENTS PRO-RATED**

An employee still in employment is not entitled to a pro-rated share of their bonus, as he/she will get the bonus when it's actually paid. If the employee's employment is terminated however, they will be entitled to a pro-rated share as they would not be in employment when it's paid out. This fact assumes that the bonus is guaranteed.

## **WHAT HAPPENS IF AN EMPLOYEE WANTS TO SELL THEIR ADDITIONAL LEAVE?**

The above explains how to pay **an employee who is still employed and takes leave. You would use the remuneration rate for both statutory and non-statutory leave taken.**

It also explains how to pay **an employee who terminates employment and is owed leave**.

Added to this, we're often asked how we calculate the leave for an employee who wants to sell leave, but is still employed. Please remember that the **statutory minimum leave in terms of the BCEA may not be paid out other than on termination of employment, as this is contrary to the Act**. However, when the company provides more than the statutory minimum, **such additional leave may be bought and sold, should the employer allow it**. So, using an example, under the Act, a 5-day worker is entitled to 15 days of paid leave a year. The employer, however, gifts the employees 18 days a year. This means that there are 3 days non-statutory leave gifted. The company policy allows the employee to sell those leave days. Because it's a gift, we are of the opinion that the employer can dictate the value of the daily leave pay by using either the wage rate or the remuneration rate as the basis for payment. We would suggest that the company have a clear policy in writing in this regard though.

For any extra clarification, we can supply you with the relevant policies and documents you may need. Alternatively, please contact us on [info@hrtorque.co.za](mailto:info@hrtorque.co.za) to set up a time to chat, we'd love to meet with you!

## 2) COIDA issue notice: Expect a crackdown on compliance

**Author:** Delene Sheasby (Work Safety SA)

### **COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT, 1993 (ACT NO 130 OF 1993) NOTICE ISSUED INFORMING EMPLOYERS OF COIDA COMPLIANCE AND INTENTIONS TO CONDUCT EMPLOYER COIDA AUDITS AND EMPLOYER SITE VISITS**

Notice has been given by the Compensation Commissioner that the Compensation Fund will embark on employer engagements, site visits and audits, to establish effective registration and compliance with the COID Act. Employers, both registered and unregistered (including domestic employers), are encouraged to ensure effective registration and compliance with the Compensation for Occupational Injuries and Diseases Act; and should expect site visits and audits by representatives of the Compensation Fund.

See more here: [COIDA INTENTION TO AUDIT EMPLOYERS](#).

If you have any questions, please email [delene@worksafetysa.co.za](mailto:delene@worksafetysa.co.za).

At HR TorQue, we can help you register your employees and submit your annual returns and accident returns, quickly and easily. [Email us](#) for more information, and take a look at our latest [COIDA Fact Sheet 2022](#), which includes our up-to-date pricing.

## 3) An introduction to psychological testing and assessments

Over the next couple of months, we'll be running a series of articles by PTES Consulting's Celia Denton, our go-to expert for professional psychometric testing services. It's an integral component of HR, and here, Celia takes a look at where it started, and some of the early milestones of this highly specialised field.

**Author:** Celia Denton (PTES Consulting)

### **When did psychology testing begin?**

Psychology testing began in 1879, and is one of the earliest successful applications of the new science of psychology that emerged in the last quarter of the nineteenth century. With the founding of the first experimental psychology laboratory in Leipzig Germany in 1879, the scientific study of human behaviour began. It was intended to identify mental retardation in school children. The origins of personality testing date back to the 18th and 19th centuries, when personality was assessed through phrenology, the measurement of the human skull, and physiognomy, which assessed personality based on a person's outer appearances.

Psychologists were first introduced in World War I, implementing screening processes which they hoped would explain which soldiers exhibited appropriate mental fitness to cope with the stresses of war. The military wanted to avoid the incidence of shellshock, and they believed that through psychological testing, they could screen out the men that were most susceptible to breaking down.

Although these measures were found to be largely unsuccessful, the psychometric testing that was developed set the stage for the growth in psychological assessment that occurred after the war.

World War II was a turning point for the field of psychology. Up until that time, psychology was largely seen as an academic and philosophical discipline with little practical use. However, with the advent of psychological warfare and military screening assessments, governments found the need to use psychology as an applied science during the war. Additionally, it created a need for the clinical treatment of soldiers with resulting mental health issues. After the war, federal funding toward psychology caused the field to grow exponentially.

### **The effects of trauma**

After WWI, it was largely believed that the mental health issues experienced by certain soldiers were due to individual weaknesses in coping with the war. However, after WWII a new belief arose - anyone could be negatively affected by the stressors of war. In other words, you did not need to be "abnormal" to develop mental health issues as a result of trauma. This was an important shift in thinking and set the stage for future PTSD research and treatment.

Keep an eye out for Celia's second instalment in our next newsletter!

And, if you're in need of professional HR services, including psychometric testing, don't hesitate to give us a call. We provide outsourced HR and HR admin solutions tailored to your unique requirements.

## **4) Harassment in the workplace: A reflection of society?**

**Author:** Bruce Macgregor (MacGregor Erasmus Attorneys Inc)

### **The Anti-workplace Harassment Code**

Have you come across a manager who rules by sarcasm, fear or refusing to talk to non-compliant team members? Have you seen our unacceptable violence stats?

These are all signs of a silent pandemic existing within our society, including our workplaces: that being the harassment and unfair discrimination meted out on a daily basis.

Government is trying to address this pandemic, starting in March this year, with the Minister of Employment and Labour issuing a Code placing an obligation on employers to deal with harassment in all its forms, ranging from bullying to workplace harassment, including unfair discrimination and sexual harassment.

### **It's a violent world**

If adults are a reflection of their upbringing, then the statistics within South Africa and the world are worrying. Consider the following:

1. 36% of children are sexually abused during their lifetime in South Africa (sOptimus Study – reported in SA Medical Journal).
2. In America, the US Department of Health and Human Services tells us this figure sits at 9.2%
3. The WHO's latest report advises that 3 out of 4 children between 2 and 4 years old regularly suffer punishment or psychological violence at the hands of a parent or caregiver.
4. In South Africa, the Minister of Basic Education announced in Parliament that between April 2021 and March 2022, 11 000 learners in Limpopo schools are pregnant at the instance of their teachers and blessers (older men).
5. In America and the UK, 52% of employees report being sexually harassed during their work lifetime and in India this is as high as 95% of employees.
6. 55% of sexually harassed employees develop mental issues such as anxiety, depression and PTSD.
7. Various surveys find workplace harassment, excluding sexual harassment, to be experienced by 90% of participants during their work life, with some 50% indicating that they never report the incidents.

What's clear is that our employees are coming from environments plagued with serious domestic and societal issues, whether you're a child, wife, girlfriend or partner at the receiving end of unfair discrimination in some of its most horrendous forms. It's clearly not the starting point for us to have engaged and productive employees, and so, companies need to give time and make an effort to resolve this issue, as much as possible, within the workplace.

### **So, what's the solution?**

As we spend more time at work than at home, this problem is being tackled at work. The Code seeks to create a culture of peaceful co-existence within the workplace, and an acceptance of fellow employees irrespective of

gender, race, sexual orientation, political views and so on. It seeks a complete tolerance of different lifestyles, ultimately calling for management styles which are not harsh, but rather consistent, fair and patient.

To do so, employers are asked to root out harassers, put in policies and training to ingrain fairness and acceptance, and ensure that all employees are treated fairly and respectfully by managers, other employees, customers and service providers.

This starts with the board and the CEO, who need to be seen driving an agenda of acceptance and fairness, and for any breaches or incidents of harassment to be quickly and seriously dealt with.

In a world where international movement of people causes workplaces to be more diverse than ever, South Africa needs to work hard to ensure that nationalism in the form of cheap politicking at the expense of foreign nationals overshadows the good example our Rainbow Nation was demonstrating at the end of the apartheid era.

### **Food for thought**

As a final take: we are repeatedly told, as a result of ongoing research work from various bodies and experts, that engaged employees are productive employees. An unhappy workforce is an unproductive workforce, and even to the most hardened profit dividend employee, these consequences to the business are obvious and need to be stamped out.

For more sympathetic employers, clearly this is simply the right thing to do.

*Bruce Macgregor is a South African attorney and English solicitor who specialises in employment law, business agreements and commercial litigation for local and international clients. He has a simple and uncluttered business orientated approach to employment issues, with a view to finding practical solutions to workplace issues.*

*Bruce is English and Zulu speaking, and served his articles under Ray Zondo, the current Chief Justice of the Constitutional Court.*

At HRTorQue, we offer specialist high-level consulting to assist your employees, line managers and HR teams. This includes:

1. Updating of policies and procedures aligned to the new Code on harassment.
2. Coaching and guidance on how to manage instances of harassment in the workplace, to ensure that both parties are managed fairly and sensitively.
3. Training to employees, line managers and HR teams (a key requirement of the Code). This includes understanding the legislation and the minimum requirements for workplace policies on harassment, unpacking employers' obligations in managing harassment in the workplace, clearly defining harassment in the workplace, identifying and defining the various forms of harassment in the workplace and the processes that need to be followed when reporting harassment.

[Email us](#) for more information.

## **5) Benefits of time and attendance**

**Author:** Daniel Dinnie (TimeGuard)

Often, we hear about a product or specialised service that we know others are using, but aren't sure exactly what it entails or how it can help us. Here are some general benefits of a time and attendance (T&A) solution that we suggest looking into:

1. Reduces admin time in the processing of wages
2. Reduces costs associated with the processing of wages
3. Increases accuracy of hours captured
4. Removes the human element of staff hours calculation
5. Gives local administrators the ability to administer remote staff

To find out how a T&A solution can make your business more productive, contact Pila on [Pila@hrtorque.co.za](mailto:Pila@hrtorque.co.za). HRTorQue can consult and integrate a T&A system seamlessly with your payroll system, ensuring that all your setups are done quickly and correctly.

## 6) Ally is a VERB!

**Author:** David King, learning and development activist and ally journey participant

I am a white heterosexual South African male - not your obvious poster person for diversity and inclusion. Nonetheless, I might just use this disadvantage to my advantage.

I am not an expert. I am sharing my lived experience and my call to action, even though I'm going to get it wrong and stuff up (countless times). It's going to get messy, but I'm committed.

**Ally:** Definition: a person or group that gives help to another person or group (of Latin origin, meaning "to bind together")

When I first came across the term allyship, it resonated immediately. I love nothing better than to be initially surprised by a new term and then to be challenged by it. Insights <https://www.insights.com/products/insights-discovery/> and Enneagram <https://www.integrative9.com/enneagram/> are two examples of assessments which have given me much direction and clarity on my strengths and how others see me. I learnt that I tend to avoid negativity, pain and struggle, as I am a fun-loving, enthusiastic, innovative, strategic optimist. So, I knew I had to lean into the discomfort which I wished to avoid, as that is where I would shine and hopefully be able to make a difference.

Discovering the quote, "diversity is a fact, inclusion is a choice", finally entrenched the meaning of diversity and inclusion for me, and then, "getting comfortable being uncomfortable" catapulted me on a mission to move from awareness through to action! As this is only the start of my formal awakening, I wish to share some of my learnings from 'experts' further on in their journey, or those that have lived a discriminated experience.

Thank you to these and countless others that I will meet, watch, read and listen to along the way. Here are some that have impacted me to date:

### WATCH:

<https://www.youtube.com/watch?v=g3D-5-2EqHl>

[https://www.youtube.com/watch?v=hmN1\\_Bsb0FE](https://www.youtube.com/watch?v=hmN1_Bsb0FE)

[https://www.ted.com/talks/melinda\\_epler\\_3\\_ways\\_to\\_be\\_a\\_better\\_ally\\_in\\_the\\_workplace](https://www.ted.com/talks/melinda_epler_3_ways_to_be_a_better_ally_in_the_workplace)

[https://www.ted.com/talks/nita\\_mosby\\_tyler\\_want\\_a\\_more\\_just\\_world\\_be\\_an\\_unlikely\\_ally](https://www.ted.com/talks/nita_mosby_tyler_want_a_more_just_world_be_an_unlikely_ally)

### READ:

<https://theantioppressionnetwork.com/allyship/>

<https://www.newsweek.com/dear-white-people-empty-allyship-contributes-loss-black-lives-opinion-1586591>

<https://www.idealst.org/en/careers/allyship-at-work-actions>

Take the time to learn and absorb their messages.

I'm on a journey to improve, to be challenged, to get better, to make progress. I will fail, and ask for forgiveness, and request a deeper understanding. Damn it, I'm going to it say...to make the world a better place 😊.

"If you have some power, it's your job to empower somebody else." Thanks, Toni Morrison, for the call to action (yes, ally is a verb!)

If you have an HR challenge, particularly in the diversity and inclusion space, then we'd love to help. Email our HR department today on [info@hrtorque.co.za](mailto:info@hrtorque.co.za).

## 7) Fixed term contracts: What you need to know

**Author:** Nicky Hardwick

It's become very common in the workplace to hire new staff on a fixed term contract (FTC), as opposed to making them permanent employees. However, the Labour Relations Act (LRA) is quite specific in Section 198B in terms of when you can have a FTC, so make sure you're up to speed on what the law and the experts have to say.

The only acceptable reasons for entering into a fixed term contract, where the employee is under the threshold, is when the employee:

- is replacing another employee who is temporarily absent from work
- is employed on account of a temporary increase in the volume of work which is not expected to endure beyond 12 months

- is a student or recent graduate who is employed for the purpose of being trained or gaining work experience in order to enter a job or profession
- is employed to work exclusively on a specific project that has a limited or defined duration
- is a non-citizen who has been granted a work permit for a defined period
- is employed to perform seasonal work
- is employed for the purpose of an official public works scheme or similar public job creation scheme
- is employed in a position which is funded by an external source for a limited period; or
- has reached the normal or agreed retirement age applicable in the employer's business.

If none of these are applicable to your situation, the best option is to have a permanent contract in place with a probation that is managed correctly, and to terminate the service before probation ends if the new employee is not suitable.

If you have any questions relating to fixed term contracts, reach out to us on [info@hrtorque.co.za](mailto:info@hrtorque.co.za).

## 8) Mauritius: NSF ceiling

**Source:** Payspace

The minimum and maximum basic wage or salary on which contributions to the National Savings Fund (NSF) are based, have been increased effective 01 July 2022.

### NSF ceiling July 2022

National Savings Fund	Rates 2022/2023
NSF Monthly Minimum Base	3 295.00
NSF Monthly Maximum Base	21 435.00

Click [here](#) for more details.

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