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

1) The Employment Equity Amendment Bill

Source: Department of Labour

Editor's comment: We have mentioned previously that we are very concerned this amended act will pave the way for government to regulate through the back door by setting targets that are arbitrary or impossible to implement, depending on where an employer is located. Please keep a wary eye on how the targets are set and the legislation enacted in practice.

On the 31st August 2022, it was announced that the amended Employment Equity Act will come into effect from the 1st September 2023. For more details, take a look at the official notice from the Department of Labour below.

Newly amended Employment Equity (EE) Act to aid workplace transformation in SA to come into operation on 01 September 2023.

The amended Employment Equity (EE) Act of 1998 empowering the Employment and Labour Minister to set sector specific EE targets and to regulate compliance criteria to issue EE compliance certificates in terms of Section 53 of the EE Act will come into force on the first of September 2023.

Department of Employment and Labour's Acting Deputy Director-General (DDG) of Labour Policy and Industrial Relations (LP&IR) Thembinkosi Mkalipi said the signing of the Bill by President Cyril Ramaphosa was imminent. He said this was expected to happen between now and the beginning of the year.

The Employment Equity Amendment Bill 2020 was passed by Parliament (National Assembly and National Council of Provinces) on the 17th May 2022, and is waiting for the assenting and signing into law by the President.

The main objectives of the Amendments are to empower the Minister to regulate sector specific EE targets and to regulate compliance criteria to issue EE compliance certificates in terms of Section 53 of the EEA. This means that organisations that do business with the State will have to be in good standing when it comes to compliance with EE. He cautioned that even those businesses that do not necessarily do business directly with the State will have to comply with the law.

Engagements on the setting of sector specific EE targets started from June 2019, and will be completed by the end of September 2022.

The Acting Deputy Director-General was speaking at the Eastcape Training Centre (ETC) in Gqeberha today during the joint Department of Employment and Labour, and the Commission for Conciliation, Mediation and Arbitration (CCMA) 2022 EE workshop.

Mkalipi said the Department will in due course publish the list of sector targets for public comment.

"The implication for employers is that if you have an EE plan in place, it will be affected by the setting of targets and you will have to revisit your targets," he said.

According to Mkalipi, 18 sectors have been consulted on the setting of EE targets.

Some of the sectors consulted include education, water supply, sewerage management and remediation, accommodation and food services, human health and social work, agriculture, forestry and fishing, wholesale and retail trade, repair of motor vehicles and motorcycles, administrative and support, professional, scientific and technical, electricity, gas steam and air conditioning supply, and financial and insurance activities.

The remaining sectors that are to be consulted between now and the end of September 2022 include mining and quarrying, public administration and defence, manufacturing, information and communication, construction and real estate.

Mkalipi said a new EE online assessment system will be created to monitor the implementation of sector targets. He added that the assessment will be done annually, and the system will allow employers to report on their planned targets and how they intend to achieve them.

He said in the financial year of 2024 - the first year post-sector target setting period - the system will be able to tell whether employers are achieving their target plans. If employers are not meeting their set targets, they will need to have justifiable reasons for not doing so.

"The system will accept in good faith all the information supplied. The Department will, through the inspectorate, visit workplaces to verify if information submitted is genuine." He warned that if this wasn't the case, compliance certificates will be withdrawn, and penalties will kick in.

A NOTE FROM HRTORQUE:
Take a look at our next article to establish whether you're a designated employer and need to comply with the provision of the Act. You can also view our webinar recording on employment equity, to get a better understanding of who is required to comply.

For more information on EE, or to secure your own DIY EE filing pack (including checklists and draft staff communications), visit our website.

2) It is employment equity season…are you a designated employer?

Author: Nicky Hardwick

Employment equity is a legislative requirement for all companies deemed to be designated employers. Two of the main requirements to determine if you're a designated employer include:

- A company which employs 50 or more employees **(this includes temporary/fixed term contracts)**
- A person who employs fewer than 50 employees but has a total turnover that is equal to or above the applicable annual turnover of a small business in terms of Schedule 4 of this Act. See below:

Sector	Turnover
Agriculture	R 6,00 m
Mining and quarrying	R 22,50 m
Manufacturing	R 30,00 m

Electricity, gas and water	R 30,00 m
Construction	R 15,00 m
Retail and motor trade and repair services	R 45,00 m
Wholesale trade, commercial agents and allied	R 75,00 m
Catering, accommodation and other trade services	R 15,00 m
Transport, storage and communications	R 30,00 m
Finance and business services	R 30,00 m
Community, social and personal services	R 15,00 m

Designated employers are required to comply with the following in terms of the Employment Equity Act:

1. Assign a senior manager
2. Establish a consultative forum
3. Prepare an EE analysis
4. Prepare and implement an employment equity plan
5. Submit EE reports and income differential statements electronically from the 15th September 2022

Failure to comply could result in a fine of R1,5 million or 2% of your turnover.

Please feel free to make use of the HRTorQue Outsourcing Employment Equity Compliance Checklist. This is not a Department of Labour audit, but will assist you in quickly identifying possible areas of concern where you may not be compliant in line with the Employment Equity Act.

If you're uncertain about your overall compliance, please reach out to one of our employment equity specialists for a consult on info@hrtorque.co.za. We're here to help you in whatever way we can!

3. COID domestic employee registration

Author: Dave Beattie

While the uptake in domestic employers registering their employees for UIF purposes has improved, we have noticed that very few employers have registered with the Compensation Commissioner for Workman's Compensation purposes. The Constitutional Court in 2020 confirmed that domestic workers should be covered by COIDA (or the Compensation for Occupational Injuries and Disease Act). This means that they may now claim for injuries, disabilities or illness acquired while on the job, including compensation for temporary or permanent disability, assistance with medical bills, orthotic or assistive devices and rehabilitation services (these were previously excluded). In the event of their death, their dependents can claim compensation from the fund for funeral expenses and ongoing support in the form of a widow/widower's pension or lump sum, a child pension or additional dependency award to cover parents, siblings and other family members who may have been dependent on the employee. This change in legislation means that all employers of domestic workers (including gardeners) – whether part-time, casual, temporary or full-time – must register themselves and their employees with the Compensation Commissioner.

When registering you as an employer, the Compensation Commissioner will allocate you to risk rate 1.04. This is the rate applied to all domestics. This rate will be applied to the domestic's earnings for the period 1 March to 28 February to arrive at the annual liability. The provisional payment made on registration is offset against this final liability. Please note that the minimum annual liability is R 463. This liability is raised by the submission of the Annual Return of Earnings. This return must be submitted between 1 April and 31 May each year to avoid the raising of penalties and interest. HRTorQue can assist you with this process annually.

If you haven't yet registered, we can help you! We're currently in the 2022 COID year of assessment so registration would be as of 1 March 2022.

Email me on dave@hrtorque.co.za for more information, or take a look at our website for the consulting services we offer in this space.

4. Bursaries: the road travelled so far

Author: Dave Beattie

One of the interesting inclusions in the Tax Law Amendment Bill (TLAB) of 2020 was the bursary issue. Its inclusion had been a poorly kept secret though as the proliferation of companies offering salary structuring services around the bursary issue had already alerted SARS to tax leakage. Employers had been transfixed by the promises made by these companies and it had become difficult to convince employers that such structuring carried more risk than reward.

So, when did the legislation in this regard become problematic?

In March 2006, the rules regarding the implementation of a bursary scheme for employees, and relatives of employees, were changed to allow for the use of a salary sacrifice mechanism to assist employers in factoring bursaries into their employees' remuneration packages. This method was widely utilised to encourage employers to develop employees and their relatives by providing bursaries to both these parties. The benefit highlighted in all of the brochures promoting this scheme was the tax saving in the hands of the employee. It really was seen as a win / win situation, as employers also benefitted by receiving educated / developed employees without incurring additional costs.

In recent years, the method utilised when implementing this scheme has come under SARS scrutiny, as many employers adopted the approach of reclassifying remuneration already accrued to the employee to account for the value of the bursary. This had never been the intention of SARS and it was proposed in the TLAB of 2020 that from March 2021, this method of facilitating a bursary would be discontinued. The proposal has since been promulgated, meaning that from the beginning of March 2021:

- The exemption would only be available if the bursary granted by the employer is not restricted to relatives of employees, but is an open bursary scheme available to members of the public.
- The exemption would not be available if the employees' remuneration includes bursaries or scholarships implemented by means of a salary sacrifice.
- If the bursary was introduced utilising a salary sacrifice scheme, then the employer would not be entitled to a tax deduction for the bursary expense.

Where to now?

It's important that employers who have existing bursary schemes in operation which were facilitated by means of a salary sacrifice, get some specialised tax help as soon as possible. This will be necessary to ensure that the remuneration structures are compliant going forward. Moving towards compliance will not be easy as it will involve some uncomfortable conversations with employees regarding their remuneration packages, and more importantly, changes to their take home pay. I would also advise that an experienced human resources practitioner be involved in this process as perceived changes to conditions of employment could find the employer embroiled in disputes at the CCMA.

If your organisation has an existing bursary scheme that includes a salary sacrifice component, or you are in any way concerned regarding its legislative compliance, please do not hesitate to contact us at info@hrtorque.co.za.

5. The first personality test: the curious case of the soldier

Editor's comment: 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. In her second instalment, Celia delves into the origins of the first personality test.

Author: Celia Denton (PTES Consulting)

In January 1915, less than a year into the First World War, Charles Myers, a doctor with the Royal Army Medical Corps, documented the history of a soldier known as Case 3.

Case 3 was a 23-year-old private who had survived a shell explosion and woken up, memory cloudy, in a cellar and then in a hospital. A healthy-looking man, well-nourished, but obviously in an extremely nervous condition, he complained that the slightest noise made him startled.

The physician termed the affliction exhibited by this private and two other soldiers as 'shell shock'. This affliction ultimately sent home 15% of British soldiers. Their symptoms included uncontrollable weeping, amnesia, tics, paralysis, nightmares, insomnia, heart palpitations, anxiety attacks, muteness, and more.

The most important recommendation to be made from these cases of shell shock, was that of rigidly excluding insane, feebleminded, psychopathic and neuropathic individuals from the forces sent to France and exposed to the massive stresses of modern war. While the suggestion to identify and exclude soldiers who might be more vulnerable to 'war neuroses' seems today as an outdated approach to mental health, it resulted in a lasting contribution to popular psychology – the first personality test.

Less than two years after the United States entered World War I, around 1,727,000 would-be soldiers had received a psychological evaluation, including the first group of intelligence tests, and roughly 2% of entrants were rejected for psychological concerns.

When World War II began, the army again administered psychological tests with the same backwards objective of finding people whose weak mental constitutions might put them at risk in combat. They rejected more soldiers for neuropsychiatric causes, and it wasn't until after the Vietnam War – more than 60 years after Woodworth set out to test for shell shock susceptibility – that clinicians and experts began changing their views regarding traumatised patients, and the definition of PTSD finally entered the D.S.M (the guiding text for psychiatric diagnosis).

6. Why don't we performance manage our staff?

Author: Bruce Macgregor

As a busy litigation lawyer, I literally have hundreds of disputes that I deal with at any one time. The large majority are misconduct related as I rarely have performance disputes. A brief look at the CCMA statistics confirms that CCMA matters are largely misconduct related and revolve around the breaking of some rule or other, ultimately resulting in a dismissal, whereas performance dismissals are few and far between.

A quick glance through the cases that I handle, and, as the statistics tell us, there are very few incapacity issues pursued by business – the bulk of which relate to illness or injury, and only a few to poor performance. The inference being that either all employees are star performers, or that performance isn't managed as it should. And from my experience, the second is the applicable explanation.

Performance management is perceived as difficult to do, and incredibly time consuming. Managing a poor performer takes energy, skill and patience, and there is a common misperception that it's not worth the trouble.

Hidden benefit

I find in many workplaces that employers revert to retrenching when times are tough, without reference to the hidden benefit of performance managing those already in the business in boosting productivity and profitability.

Personally, I like to place all employees in one of three brackets, namely under performers, satisfactory performers and super performers. I then recommend to my clients that they focus on moving their under performers to become satisfactory performers, and satisfactory performers to become super performers. This should be happening continually. Energy and time should also be spent in teaching supervisors and managers to manage performance and keep their people engaged.

If progress isn't made by an employee, then the performance management needs to be intensified. This will either get you to a point where your employee starts performing, or you're entering possible dismissal territory. At this point, a retrenchment might be the only option.

In this difficult time we find ourselves in, businesses need to be optimised with the correct number of employees, all performing at the full extent of their ability to ensure that the payroll costs are worthwhile. This takes an effort from day one, ensuring the right employee is recruited and then trained, managed and kept productive. A dismissal as a result of poor performance speaks more to a failure in the business systems and comes at a large cost to the organisation.

The cost of dismissal

Whether for misconduct or performance, a dismissal is a costly exercise. Besides the cost to the employer in recruiting and training the employee and then dealing with the dismissal, a dismissal also means that a business has lost critical skills, and the process of recruiting, training and development will have to start again.

As a result, dismissals shouldn't be taken lightly as they have a serious impact on the employer as well as the employee. In South Africa, we are told that employees support between six and seven dependents, and the loss of employment is a significant and serious development in the life of those dependents when it occurs.

Our challenge

This leaves us with a challenge – that being to carefully consider whether we have a clear picture with regards to each and every team in the business, and whether employees are under, satisfactory or super performers. If that question cannot be easily answered, then it's time to act.

At HRTorQue, we offer specialist high-level consulting to help you with any litigation challenge you may have. Email us for more information.

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.

7. Manage your deployed staff easier with a time and attendance solution

Author: Daniel Dinnie (TimeGuard)

If you deploy staff from head office to a client's site, or have to look after multiple sites from a central location, how easy is to manage these sites? How are you collecting all your staff data, and verifying the accuracy of your data to ensure you're not paying thousands of Rands towards unpaid hours?

We have the solution.

A biometric reader mountable on a wall, that collects all the data you need and makes your employees' hours available to you. Just click a few buttons and send it onto payroll.

At HRTorQue, we can help you get started with a holistic time and attendance solution, from onsite installation of biometric devices at your premise, through integration with your payroll system and most importantly we can assist you interrogate the date and find ways to identify cost savings. Chat to us today for a free demo and quote – email info@hrtorque.co.za.

8. Interest paid on salary late payment

Author: Dave Beattie

Tax is such a fascinating field to work in as barely a day goes by without an issue popping up that makes you scratch your head. Last week one of those issues presented itself when a client posed a question as to whether interest would need to be paid to an employee for the late payment of salary. The first hurdle that needed to be overcome was to establish which legislation would need to be considered here, and the first thing that sprang to mind was the Basic Conditions of Employment Act (BCEA).

Two sections of this Act provided clarity on the matter. Firstly, in terms of Section 32(3) of the BCEA, an employer has a 7-day grace period after the contractual date of salary payment to make such a payment to an employee. After the seven days has lapsed and no payment is received, the employee can approach the CCMA to lodge a grievance in this regard. Secondly, Section 75 of the BCEA requires an employer to pay interest to an employee on any amount due in terms of the Prescribed Rate of Interest Act. The prescribed rate of interest is the repo rate plus 3.5% (currently 9%). The prescribed rate of interest is always equal to the Prime Lending Rate. Failure to pay employees their salaries will mean that the employer will need to pay those employees interest at the prescribed rate for the period that the salaries went unpaid.

The payment of interest to an employee brings up another interesting question. Is the interest that the employer is paying 'remuneration' in the employee's hands and therefore subject to PAYE? Is the interest paid to the employee in such circumstances also a reward for the use of their productive capacity, or is only the remuneration portion such a reward? If the interest is not 'remuneration' for PAYE purposes, would it be included in an employee's gross remuneration for Income Tax purposes?

It's our contention that this interest would not be 'remuneration' for PAYE purposes, but that it would need to be included in an employee's 'gross remuneration'. The employer would have an obligation to generate an IT 3(b) for the interest paid. SARS has published a Business Requirements Specification (BRS) called IT 3 Data Submission, explaining how this process would need to be done. This would ensure that the IT 3(b) would be pulled through to the employees eFiling tax profile in preparation for the submission of their annual tax return.

The implications of paying employees their salaries outside the 7-day concession period are certainly dire. The relationship between employer and employee sours and the seeds of distrust are sowed. In addition, the employer has administrative hoops to jump through to ensure that they comply with the SARS BRS specifications. There is no winner in these cases, so unless such matters are unavoidable it would be wise to avoid them at all costs.

For further information on this matter, contact me on dave@hrtoque.co.za. Visit our website to view our tax consulting and tax compliance services we offer.

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