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

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1) SARS addresses technical glitch impacting defaulted third party (AA88) notices

Author: Karen van den Bergh

In accordance with Section 179(1) of the Tax Administration Act, the South African Revenue Service (SARS) has the authority to issue a notice to third parties, requiring them to remit funds to SARS on behalf of a taxpayer to settle outstanding debt. However, SARS recently encountered technical issues in its Employer e@syFile system, resulting in employers not being notified of third-party (AA88) appointment and default notices. This unintentionally placed several employers in a non-compliant (default) status.

SARS has undertaken to rectify the issue promptly. In April 2023, the tax authority applied necessary fixes to the Employer e@syFile system, successfully resolving the technical problems.

Commencement of follow-up procedures

SARS has decided to commence follow-up procedures on employer non-compliance (payment defaults) arising on or after the 1st July 2023. This delay SARS believes will allow employers sufficient time to address any outstanding issues and make necessary payments, while also providing SARS with a clear starting point to gauge compliance.

Relief for employers

In light of the technical issues that arose before the system fix, employers are not obliged to process any AA88 notices issued on or before the 1st May 2023 that have not been acted upon. To determine whether action is required, employers are advised to check the issue date on the notices. If the issue date falls prior to 1 May 2023, and the payment due date has already passed, employers need not take further action as these notices have been automatically cancelled. Notifications confirming this cancellation will be sent to Employer e@syFile systems in due course, ensuring employers are informed of the status of these notices.

Scope of decisions and exclusions

The decisions regarding AA88 appointments and default notices apply to all cases delivered via the Employer e@syFile system and PERSAL. However, it is essential to note that the relief measures do not extend to third party appointments delivered through SARS eFiling.

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2) Cost effective alternatives to using labour brokers

Author: Jonathan Aitken

Many employers in South Africa use labour brokers for temporary employment services (TES). Often, they continue this practice because they don't feel able to manage the volume of workers, together with the HR commitment (some employers may only have 100-odd permanent staff, but engage 1000 temporary workers as an example). Following the Constitutional Court ruling in 2018 (that a worker placed by a labour broker becomes the company's employee after three months), many organisations are afraid they will not be able to manage the additional workers internally, and the additional cost will put them out of business. This doesn't have to be the case however – there are alternatives available that should result in minimal extra work for you and marginal to less cost, depending on how you approach the transition.

What does a labour broker do?

A labour broker performs a number of tasks for an employer including:

- Recruiting and contracting workers
- Managing these workers (the client would manage them operationally)
- Run payrolls and pay the workers
- Manage relationships with third parties including unions/bargaining councils
- Manage IR issues and terminate the workers' employment

Some potential options to consider

Following the ConCourt ruling, employers can choose one of the following:

- Do nothing and face significant financial risk (definitely not recommended!)
- Engage TES workers directly and manage them internally
- Engage TES workers directly and outsource the processes performed by the labour broker previously

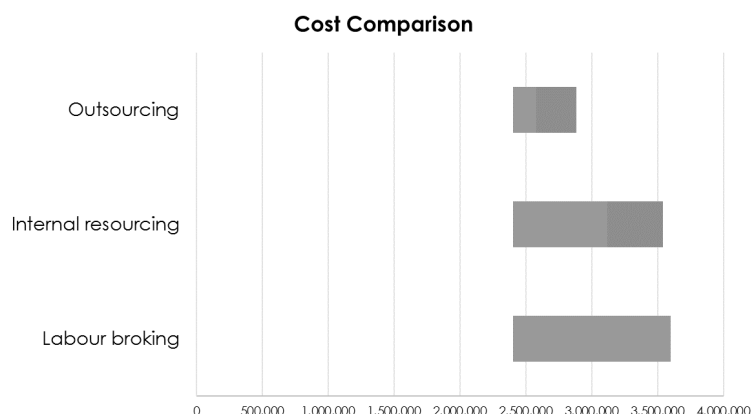
Comparison of options

The table below illustrates the comparison between trying to manage TES workers internally vs. outsourcing. We certainly don't look at the option of doing nothing because it doesn't make any sense financially or from a risk perspective!

	Internal Resource	Outsourcing
Expert at all areas	X	✓
Access to experts	✓ at a cost	✓
Time not lost because of: <ul style="list-style-type: none">• Sick days• Annual leave• Family responsibility	X X X	✓ ✓ ✓
Easy to change if not happy	X	✓
Easy to maintain confidentiality	X	✓
Easy to set SLA / objectives	✓ JD	✓ SLA
Apolitical	X	✓

Cost comparison

As cost is a significant factor, we have also included a comparison below between labour broking services, managing TES workers internally and outsourcing. For the comparison, we have assumed a company with 200 TES workers and a labour broking fee of between 10% and 15% of payroll.



For a more detailed overview the table below illustrates the key assumptions and working for each element.

Cost component (amts in 000's per annum)	Labour broking	Internal resource	Outsourcing	Assumptions
Labour broking fee	2,400-3,600			10%-15% of payroll
Wage uplift		2,400	2,400	Assumes 10% uplift
Resource cost		720		HR Manager R60 kpcm
Overheads		54		Laptops; telephone; stationery
Payroll		240	240	Assumes R100 pppm
External Consultants		70	70	EE / SDL / Grievances
Outsourced HR			180	Assumes HRAdmin on site 1 a week
Opportunity Cost		55		Internal resource on leave – assumes 20 days incl sick
Total	2,400-3,600	3,540	2,880	

The above table does not consider any savings through efficiency gains by managing the workers better. Previously there would have been no incentive to upskill.

It is clear that outsourcing is the best option to better manage your risk and financial exposure if you currently use TES workers. However, we recommend you undertake a review of your business and individual circumstances before you make a decision. If managed well, the transition has the potential to improve your business.

We can help you with a detailed review of your business, as well as any TES labour advice. [Chat](#) to one of the team today!

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3) Employment Equity Act amendments: The power of the compliance certificate

Author: Nicky Hardwick

Looming amendments to the Employment Equity Act brings with it higher expectations for employers to comply with regulations. Designated employers (those with 50 or more employees) will face more demanding compliance requirements, while non-designated employers (those under 50 staff), will experience changes as well. It is essential therefore, for both designated and non-designated employers to understand the implications of non-compliance, particularly concerning the new employment equity compliance certificate.

For designated employers, the amendments mean they must continue with their existing employment equity obligations, which includes maintaining an EE committee, completing and submitting the employment equity plan and reports, and conducting EE meetings. It also now includes conducting harassment risk assessments and ensuring staff are adequately trained on both employment equity and harassment in the workplace. Designated employers will now be subjected to heightened scrutiny from the Department of Labour, and failing to fulfill these obligations may result in severe consequences such as fines and failure to receive the compliance certificate, making compliance a top priority.

For non-designated employers, there has been a mass rush to de-register from the Department of Labour website, however this action warrants attention. While non-designated employers will no longer need to have an employment equity committee, conduct meetings or submit reports, they should not dismiss the importance of the employment equity compliance certificate.

The compliance certificate may become a crucial document for both designated and non-designated employers. It will be a requirement for tendering processes, including both government and private tenders. Additionally, any work done with Government will necessitate the certificate. Furthermore, there are indications that the certificate may be a consideration during BBBEE audits.

Obtaining the compliance certificate will not be a simple formality. Designated employers will need to meet the obligations as listed above, and there are now additional requirements for both designated and non-designated employers to fulfill. A certificate will only be issued if there have been no CCMA awards within the previous 12 months for failure to pay the minimum wage or any form of workplace harassment. This stringent requirement is designed to ensure that employers are treating their employees fairly and adhering to labour laws.

The risks of non-compliance are now compounded by the power employees wield. With an ability to lodge claims of harassment at the CCMA, employees could potentially abuse the system by making unfounded claims. This situation creates a challenging dilemma for employers who may feel pressured to settle claims out of fear of an adverse finding.

In conclusion, both designated and non-designated employers must be proactive in ensuring compliance with the forthcoming amendments to the Employment Equity Act. Designated employers should continue to meet their existing obligations diligently, while non-designated employers must not dismiss the significance of the EE compliance certificate. It will serve as a powerful document – crucial for accessing business opportunities, and will only be granted to employers with a clean record regarding minimum wage payment and workplace harassment. As these changes loom on the horizon, employers must be vigilant, fostering fair and inclusive workplaces to mitigate risks and seize opportunities in the evolving regulatory landscape.

We can help you with any compliancy queries or challenges you may have. Email us on info@hrtorque.co.za and one of the team will get back to you.

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4) Fitting in vs. being included: Understanding the not-so-subtle differences

Author: David King, learning and development activist



In social dynamics, the concepts of "fitting in" and "being included" are often used interchangeably, however they represent distinct approaches to social integration and acceptance. Understanding the subtle differences between the two is crucial in fostering an inclusive and harmonious environment where everyone feels valued and respected. Below, we explore the nuances between fitting in and being included, and highlight the significance of cultivating an inclusive culture in various settings.

Fitting in: Conformity and assimilation

Fitting in refers to the act of conforming to the norms, values, and behaviours of a particular group or community. It involves altering one's behaviour, appearance, or beliefs to match those of the majority, often to gain acceptance or avoid exclusion. People who focus on fitting in may suppress their true selves and prioritise conformity over individuality. While fitting in might lead to a superficial sense of belonging, it can also result in individuals feeling disconnected from their authentic selves.

In summary:

- Fitting in means conforming to group norms
- It can lead to suppressing one's true identity to gain acceptance
- People may prioritise conformity over individuality

Being included: Embracing diversity and respect

On the other hand, being included embodies a more embracing and accepting approach to social integration. In an inclusive environment, diversity is celebrated, and individuals are respected for their unique qualities, perspectives and backgrounds. Rather than conforming to pre-defined norms, being included fosters a sense of belonging based on shared values of respect, empathy and appreciation of differences. Inclusion enables individuals to feel valued for who they truly are, without fear of judgment or rejection. In a nutshell, it:

- Celebrates diversity and uniqueness
- Promotes a sense of belonging based on shared values of respect and empathy
- Allows individuals to feel valued for their authentic selves

The impact of fitting in and being included

While fitting in may provide temporary relief from social pressures, it can have long-term negative consequences. Individuals who prioritise fitting in may struggle with low self-esteem, identity issues, and difficulty in forming genuine connections. On the other hand, being included fosters a positive and supportive environment that encourages personal growth, creativity and collaboration. In inclusive settings, individuals are more likely to feel empowered to contribute their ideas and perspectives, leading to improved team dynamics and overall productivity.

- Fitting in can lead to negative consequences such as low self-esteem
- Being included promotes personal growth and collaboration

- Inclusive environments encourage individuals to contribute their unique perspectives

Cultivating inclusivity

Creating an inclusive environment requires intentional efforts and commitment from individuals and organisations alike. Some practical strategies to foster inclusivity include:

- Active listening: Engage in active listening to understand and appreciate the perspectives of others fully
- Embrace diversity: Recognise and celebrate the diversity of backgrounds, cultures, and experiences within the community or organisation
- Promote empathy: Cultivate empathy to build meaningful connections and demonstrate genuine care for others' well-being
- Challenge biases: Encourage open discussions about biases and stereotypes to create a space for personal growth and learning
- Encourage authenticity: Create an atmosphere where individuals feel comfortable being their true selves without fear of judgment or rejection

So, let's pull it all together with the following quotes:

"Fitting in is about becoming a chameleon to match your surroundings, while being included is about celebrating the kaleidoscope of colours that each individual brings to the canvas of life." - Unknown

"When we focus on fitting in, we lose the chance to stand out. But when we embrace inclusion, we gain the opportunity to shine as our authentic selves." - D. Davis

Where to find out more...

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5) Unintended Consequences: Navigating Moral Hazards in Employment Equity Compliance

Author: Jonathan Aitken

In our previous article we write about the importance of the Employment Equity compliance certificate. In order to get this compliance certificate one of the new rules requires there to have been no adverse ruling at CCMA against an employer for the past twelve months in relation to harassment. Whilst the amendment is well meaning we are extremely concerned about the moral hazard relating to this. This is best illustrated by an example.

Employer X is a good corporate citizen and takes steps to make sure it has the right policies and procedures and training for staff around harassment in the workplace. It even makes sure these are extended to any contractors working on site. Employer X has an under performing staff member and they follow a performance process to help move this staff member to a better position. The employee knows they are in a difficult position and either unwilling or unable to meet the required performance levels. They get advice from their friends and decide to lodge a harassment case against one of their colleagues on the back of something that is said in jest in the canteen.

The employer goes through a process and believes there has been no obvious harassment, but the employee threatens to take them to CCMA.

The employer does not want to risk losing their employment equity compliance certificate because of the billions of rand this may cost them. Instead they agree to settle... and the slippery slope of vexatious claims begins. Employees learn quickly that the employer cannot afford to take the risk of going to CCMA and has to settle each time.

Unfortunately, we don't have a solution to this problem other than taking extra care in managing harassment in the workplace. For that extra bit of good advice please feel free to contact us at info@hrtorque.co.za.

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6) Things to take note of this August

Author: Candice Zulu

1. **SARS notice: PAYE incorrect admin penalties** - SARS has identified an issue where several administrative penalties were incorrectly issued in connection with pay-as-you-earn (PAYE) tax. SARS has announced that formal cancellation notices will be issued in due course. Stay informed, stay compliant! And if you have any questions, [contact us](#) today.
2. **Personal tax filing season** started on the 1st July 2023 and is in full swing. For assistance send an email to tax@hrtorque.co.za. View our full [Newsflash here](#).
3. **Income tax number:** We can assist you with the registration of your employees for income tax purposes, managing the process from start to finish. Our consultants will obtain the employee's personal information from your payroll administrator and complete the necessary applications. The turnaround time for this process is 24 hours and the cost per application is R 150 plus VAT. A volume discount will be negotiated in cases where there are more than 20 applications at a time. Should you need assistance please contact Dave Beattie on 031 582 7410 or dave@hrtorque.co.za.
4. **Simple way to communicate with SARS:** The new USSD service makes it easy for taxpayers to communicate with SARS without having to own a smartphone or visit a SARS branch. All you need is a basic feature phone with a dial function and you will be able to use the code * 134 * 7277 # to interact with SARS. After entering the code, taxpayers will be presented with four menu options:
 1. To check if they have a tax number
 2. To get their account balance
 3. To check if they need to submit a tax return
 4. To make an e-booking to visit a branch
5. HRTorQue hosts a variety of weekly, online, **HR-focused mini workshops**, covering various topics to assist and guide your managers to perform more optimally. View our [list of trainings available](#) or [email us](#) for more information.
6. For our latest recordings from our **free Wednesday webinars** check out our [YouTube channel](#) filled with informative HR, payroll and legislation webinars. If you are not receiving our weekly invites you can subscribe to our Reporter list [here](#).

For all your HR, payroll, tax and accounting needs [contact us today](#).

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7) KENYA - Lifted suspension of the Finance Act and the Affordable Housing Levy

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

Collection of Affordable Housing Levy through the lifting of the suspended Kenya Finance Act

Following the President's assent to the Finance Act on 26 June 2023, a lawsuit was filed which led to a temporary halt of the Act's implementation by the High Court.

The High Court's order was subsequently lifted on 28 July 2023 by Kenya's Court of Appeal. As a result of this decision, the measures of the Finance Act 2023 generally take effect immediately. The measures were discussed in detail in the [CRS News Flash of 14 July 2023](#).

Following the lifting of the order, the Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development informed the Kenya Revenue Authority (KRA) through a public notice dated 3 August 2023 that all

employers are required to deduct the Affordable Housing Levy (AHL) with effect from 1 July 2023.

The monthly levy payable by the employer and employee are:

- For the employee: 1.5% of the employee's gross monthly salary;
- For the employer: 1.5% of the employee's gross monthly salary.

This amount will be collected as a tax by the KRA, along with other levies.

The levy is to be computed on the gross pay which will be inclusive of allowances, both cash and non-cash benefits, advanced to the employee. In essence, gross salary refers to all sums, benefits and allowances due to an employee pertaining to employment services. Please note that gross pay does not include reimbursements for payments made on behalf of the employer.

Employers are required to declare the AHL under sheet "M" of the PAYE return on itax and generate a payment slip under the tax head "Agency Revenue" and tax sub-head "Housing Levy" and make payments at KRA agent banks or mobile money.

An employer must remit the payments due by no later than nine working days after the end of the month in which the payments are due.

The P10 forms (PAYE return forms) have been updated to reflect the new PAYE bands and housing levy and are available on the KRA website under the sub-heading "iTax Downloads": <https://www.kra.go.ke/publications>

Contributors will no longer have the option of a refund. Previously, individuals who were unable to secure housing within the stipulated timeframe were entitled to have their contributions refunded with added interest.

It should be noted that the decision to lift the suspension orders has since been challenged through an appeal to the Supreme Court. Should anything change regarding the Finance Act of 2023, a news flash will be circulated.

To view the Finance Act, 2023, follow the [link](#).

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