HRTorQue Reporter
November 2023

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

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1) A landmark ruling in South Africa: Equality in parental leave

Author: Nicky Hardwick

In a groundbreaking decision, the Gauteng High Court recently shook the foundations of traditional parental leave arrangements, especially concerning maternity leave. This landmark judgment challenged not only the legal interpretation of maternity leave but also the societal norms and expectations surrounding parental roles. The court's ruling brings to light the need for greater gender equality in parental leave policies, and strives to promote a more inclusive and equitable society.

The legal challenge

The case centred around specific provisions of the Basic Conditions of Employment Act 75 of 1997 (BCEA), particularly Sections 9 and 10 of the Constitution of South Africa, which emphasise the right to equality and human dignity. At the heart of the matter was the differentiation between maternity and paternal leave, a distinction that the court found to be rooted in gender discrimination.

The court emphasised that the BCEA unfairly favours the birth-giver in granting an extended period for bonding with and nurturing the child, while other parents, particularly fathers, are considered secondary to the care of the child. This gender-based discrimination was deemed irrational and contrary to the Constitution's spirit and purpose, which promotes the dignity and equality of all individuals while prioritising the best interests of the child, as defined in the Children's Act.

The court's decision

The Gauteng High Court delivered a resounding verdict - it declared Sections 25, 25A, 25B and 25C of the BCEA, along with corresponding provisions of the UIF Act, as unconstitutional. These provisions were found to offend Sections 9 and 10 of the Constitution.

To address these issues, the court suspended the declaration of invalidity for two years, giving Parliament the opportunity to amend the legislation. During this suspension, the court ordered that all parents be entitled to four consecutive months of parental leave, to be shared according to their preferences.

Specific provisions in the BCEA and the UIF Act were to be read consistently with the changes effected by the court's order, ensuring that each parent defined as a contributor under the UIF Act could access the benefits prescribed therein.

Section 25(1) of the BCEA was amended to specify that both single parents and pairs of parents are collectively entitled to at least four months of consecutive parental leave. Parents can choose whether one parent takes the entire period or they take turns, with required notification to their respective employers.

What this means for parents

This significant ruling fundamentally alters the landscape of parental leave in South Africa. It paves the way for more inclusive policies that allow parents, irrespective of gender, to decide how to share the four months of 'maternity' leave. However, it is crucial to note that the Constitutional Court will have the final say, either upholding, dismissing, or modifying the High Court's judgment.

What this means for employers

Employers and policymakers must carefully consider the potential ramifications, such as the need to ensure your policies align across gender if you provide financial support for parental leave.

In light of the court's decision, it becomes essential for companies to revisit their existing policies and ensure they reflect this new reality of gender-neutral parental leave. This alignment not only promotes a more inclusive workplace but also adheres to the principles of equality and human dignity, as specified in the Constitution.

Additionally, it is crucial to address the implications of men fathering multiple children in a year. While the court's decision signifies a significant step toward gender equality in parental leave, it also raises practical questions regarding the obligations of employers when employees become fathers multiple times in a short period. Employers may need to develop clear policies that balance employee rights with organisational needs, particularly when it comes to the allocation of extended leave.

The next couple of weeks will be pivotal as the Constitutional Court weighs in on this groundbreaking decision. The court's ruling, whether upheld, dismissed, or modified, will undoubtedly have a lasting impact on parental leave policies and the work-life balance for countless families across South Africa.

Employers should closely monitor these developments and be prepared to adapt their policies accordingly to ensure compliance with the law, and to foster a more equitable and supportive workplace for all employees. Significantly, this is the ideal opportunity for businesses to be at the forefront of promoting gender equality and family-friendly policies in the workplace.

Contact us should you require any assistance with updating or revising your HR policies and procedures.

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2) Important employer announcement: COIDA monthly pensions increase (South Africa)

Author: Harusha Naidoo

The Compensation Fund is covered by the Compensation for Occupational Injuries and Diseases Act (No 130 of 1993) (COIDA) and the Compensation for Occupational Injuries and Diseases Amendment Act (No 61 of 1997). The main objective of the Act is to provide compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees, or for death resulting from injuries or diseases, and provide for matters connected therewith.

Anyone who is employed under a contract of service and receives wages, salary on weekly or monthly basis may claim compensation in terms of the Act's. Dependants of an employee who is fatally injured can also claim compensation. Casual employees' rights are exactly the same as full-time employees.

The Fund generates its revenue from levies paid by employers, and this consists of annual assessments paid by registered employers on a basis of a percentage or fixed rate of the annual earnings of their employees. The COID Act, however, makes provision for a minimum assessment to ensure the assessment is not less than the administration costs incurred.

Government Gazette 49458 Notice 2079 of 2023 was published on 13 October 2023, whereby the Minister of the Department of Employment and Labour informed all relevant parties of the increase to monthly pensions with 7.5% with regards to accidents which occurred before 31 March 2023, and occupational diseases which were diagnosed before 31 March 2023. The increase is to be effective from 1 April 2023.

Schedule 4 to the COID Act on the manner of calculating compensation has also been amended and prescribed according to the minimum and maximum compensation for accidents that occur from 1 April 2023 as well as occupational diseases diagnosed from 1 April 2023.

Recommended benefits from 1 April 2023:

Temporary disability - If the doctor indicates in the medical reports that you have a temporary disability (a minor injury) you will only get 75% of the earnings you were receiving at the time of the accident. This will only be paid during the time that you are unfit for duty, recovering as a result of injury. The Fund does not pay for pain and suffering.

Permanent disability - If the doctor indicates in the medical reports that you have a permanent injury, such as deafness, blindness, amputation of a limb or an injury that permanently disables you (for the rest of your life), it will be assessed according to the percentage of disability laid down in the Act. If your disability is assessed at 30% or less, you will be paid a lump sum, which is a once-off payment for that injury. If your disability is assessed at more 30% you will receive a monthly pension together with the arrears payment from the date of stabilisation of your condition which is reflected on the Final Medical Report, and a monthly pension is payable for life. The amount of this pension is calculated on your earnings at the time of the accident, your percentage of disability and the benefits applicable at the time of the accident.

Fatal - When an employee dies as a result of the injury or disease, his or her dependant's widow or widower will get a pension for life. All children under the age of 18 years will qualify and will be included as part of the parent/guardian's pension. This pension will stop when the child reach 18 years unless he/she is still at school or attending a tertiary institution.

(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)
Item	**Section**	**Nature and degree of disablement**	**Nature of benefits**	**Manner of calculating compensation**	**Maximum compensation**	**Minimum compensation**
1	47(1)(a)	Temporary total disablement	Periodical payments	75% x monthly earnings at the time of the accident x number of days off/total days in month	R35 220	R4 933
2	49(1)	Permanent disablement of 1-30%	Lump sum	15 x monthly earnings at the time of the accident x permanent disablement %/30	R394 481	R98 633
3	49(1)	Permanent disablement of 31-100%	Monthly pension	75% x monthly earnings at the time of the accident x permanent disablement %	R35 220	R4 933
4	54(1)(a)	Fatal	Lump sum	Twice employee's monthly pension that would have been payable under item 4 had he/she been totally permanently disabled (100%)	R70 440	R9 866
5	54(1)(b)	Fatal	Monthly pension	40% of the monthly pension that would have been payable to the employee under item 4 had he/she been permanently disabled	R14 088	R1 973

6	54(1)(c)	Fatal	Monthly pension	A maximum of 20% of the monthly pension that would have been payable to the employee under item 4 had he/she been totally permanently disabled, is payable to a child. In case of more than three children, the children will share 60% in equal proportions	R7 044	R987
7	54(1)(d)(ii)	Fatal	Lump sum	Percentage dependence as portion of R202 925	R202 925	N/A
8	54(2)	Fatal	Funeral costs	R19 620 per valid claim	R19 620	N/A
9	63(1)(a)	Minimum for free food and quarters	To be included in earnings	Minimum for free food R347 per month; and minimum for free quarters R156 per month	N/A	R347 R156
10	28	Constant attendance allowance	Monthly allowance	Minimum amount of R2 577 per month	N/A	R2 577

Click here to download the Government Gazette Notice:
https://www.gov.za/sites/default/files/gcis_document/202310/49458gen2079_0.pdf

Chat to one of our experts today for any pension or benefits advice.

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3) Protecting your business: Guarding against phishing threats and enhancing security

Author: Pilalula Ndhlovu
Keeping your confidential information safe and secure should be a number one priority for all businesses.

The growing threat of phishing attacks

Recently, there has been an alarming surge in the success rate of phishing attacks. Phishing attacks are deceptive tactics employed by cybercriminals to trick individuals into divulging sensitive information or performing actions that could compromise their security. These attacks often involve fraudulent emails, seemingly from reputable sources, that entice recipients into providing personal or financial information. Despite increased awareness and improved security measures, these attacks continue to evolve, becoming more sophisticated and, unfortunately, more effective.

Protecting your organization and payroll

The security of your business and the personal information of your employees are of utmost importance to us. At HRTorQue, we are committed to providing comprehensive solutions to enhance your business's security. In light of the increasing success of phishing attacks, we recommend implementing the following measures to bolster your payroll process defences:

Employee Self Service (ESS) module
Consider integrating an ESS module (from Psiber) into your existing processes. Designed to streamline and secure your HR and payroll processes, this valuable tool allows employees to manage their personal information securely, reducing the risk of unauthorised changes to sensitive data and improving overall data protection.

Notification system
Implement a robust notification system in your payroll that alerts employees when any critical information (such as banking details), is modified. These notifications can act as an early warning system against fraudulent activity,

enabling swift response to any suspicious changes. Our team can assist you in setting these up, ensuring your employees are informed and in-the-know at all times.

Your business's security is our priority, and we are here to support you in every way possible. If you would like to explore these options further or have any questions, please reach out to us at info@hrtorque.co.za.

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4) Two-pot retirement system: October 2023 update

Author: Dave Beattie

Note from editor – as we publish this the Parliament finance committee looks as if it wants to push to have the two pot implemented by 1 March 2024 and not 1 March 2025. We are not yet sure what this will mean, but will report on it as we find out more news.

We have published numerous articles on this topic over the past year. In them, we mentioned that there were likely to be changes and challenges as all parties worked through the practicalities of the process.

The first of these changes was to be expected, and it relates to the implementation date. National Treasury has proposed that the implementation of the so-called two-pot retirement system, which allows people to access a portion of their pension savings before retirement, be delayed by a year. Treasury now wants the system implemented on the 1st March 2025, as opposed to the original implementation date of 1 March 2024. This will give the savings and investment industry more time to grapple with the complex task of administering the changes.

The very magnitude of the reform, the need for system changes and vital communication between funds and their members in terms of how this will impact on their future contributions, necessitated the extension.

The current system enables South Africans to withdraw their full pension savings, subject to taxation, when they leave a job, with this often leaving them with no retirement savings when reaching retirement age. The planned two-pot system will prevent this as it will be compulsory for retirement funds to split member contributions into two components, with one-third going to a savings pot that is available any time to meet emergency expenses, and the remaining two-thirds to go to a retirement pot to be used to purchase an annuity upon retirement. There is effectively also a third pot, that being the pot of savings up to the above-mentioned implementation date.

Another amendment proposed by Treasury is the increasing of the immediately accessible amount from R25 000 to R30 000. This 'seed capital' amount equates to 10% of a member's retirement savings value on the 28th February 2025, up to a maximum of R30 000. Any lump sum withdrawals from a worker's savings pot after the 1st March 2025, including seed capital, will be subject to tax should it be withdrawn before retirement.

Unions are not pleased with these proposals as they delay employee access to emergency funds that are often urgently needed in our struggling economy. They believe that the delay may push more employees to resign from employment to access their pensions. They are also unhappy with the accessible limit of R25 000 and are pushing for it to be increased to R50 000.

Other proposals made by Treasury are the implementation of a withholding tax process rather than a tax directive process for savings withdrawal claims, with SARS to provide guidance on the correct tax rate to fund administrators. Provident fund members who were 55 years or older on the 1st March 2021 will be able to voluntarily opt in to the two-pot system and will not have it automatically applied to them.

It makes sense that such a fundamental change to the retirement fund industry be carefully planned and rolled out. All parties must work together to ensure that the process is fit for purpose and most importantly, beneficial from a short and long-term perspective for fund members. It is hoped that the final legislation will be published as soon as practically possible so that there is no uncertainty for any party.

We will ensure that any movements in the regulatory process are relayed to you as soon as they are made public.

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5) Transform your HR practices: Introducing HRTorQue's comprehensive HR audit service

Author: Nicky Hardwick

As an employer, you know the importance of complying with relevant laws and regulations to avoid legal issues and promote productivity and performance. But how can you be sure that your HR policies and procedures align with these standards? That's where HRTorQue's professional HR audit service comes in!

Our team of experts collaborates closely with your organisation to evaluate critical HR process areas. We identify any areas that require improvement and optimise your HR processes to align with your overall objectives and strategies. With tailored solutions, you can be sure that your company will comply with all applicable regulations.

We offer an HR audit service that helps clients gain insight into key areas of their HR processes. These include:

- **Talent management audit**
  - Employee engagement administration, probation management review, leave management process review, employee exit management and/or disciplinary process review
- **Compensation and employment benefits audit**
  - Fringe benefits process and/or remuneration policy review
- **Training and development audit**
  - Review of recruitment process and/or training plan and training management
- **Compliance audit**
  - Employment equity file review
  - Skills development process review, POPI Act compliance as well as key organisation documentation review, including policies, procedures and contracts of employment

Partnering with HRTorQue for your HR audit needs provides significant benefits to your organisation. By conducting a thorough analysis of your HR function, we can help you identify any gaps in your processes and develop strategies to bridge them. With our customised solutions, you can focus on growing your business while we take care of your HR requirements.

In today's highly competitive business environment, it is critical to ensure that your HR practices are legally compliant, efficient and effective.

Contact us today to learn more about our HR audit service and how we can help your organisation achieve its HR goals with ease and confidence.

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6) Christmas shutdown: Important information and dates

Author: Candice Zulu

The festive period is fast approaching, and to enable us to process your payroll runs as effectively and trouble free as possible, we would like to schedule them in for December 2023 and January 2024.

Please advise us when your payroll runs are anticipated to take place. If you are closing down in December, please provide a cell number and contact name for proof of payment confirmation in December, as this is often a struggle when companies are closed.

While we will try to accommodate all requests, please be aware that we cannot accommodate last minute changes. In addition, we cannot accept any responsibility for payroll being delayed at year-end where client staff are unavailable to approve the payroll before submission.

Should you have any queries, please contact info@hrtorque.co.za or your dedicated payroll administrator.

Important dates to remember

We will be hosting our **annual office Christmas party** on Friday the 1st December 2023 and will be unavailable from 11.30am. For any urgent queries please contact or Nicky on the number below.

We will be **closing our offices** on Wednesday the 20th December 2023 at 4.30pm, and will re-open on Monday the 8th January 2024. During this time we will have skeleton staff available for any urgent matters, as we know that some clients will not be closing.

During the shutdown period please keep these numbers on hand:

- Karen van den Bergh: 082 891 1722 – for any payroll or 3rd party payment queries
- Nicky Hardwick: 083 788 6999 – for any labour or HR-related issues

We would like to take this opportunity to wish you and your family best wishes for the festive season. As always, a heartfelt THANK YOU for entrusting your payroll and HR obligations to our company!

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7) Things to take note of this November

Author: Candice Zulu

1. We understand that managing HR matters can sometimes feel like navigating a maze. That is why we are thrilled to announce the launch of our brand-new HR Go-to Guide, a powerful resource designed to simplify your HR journey! Access our HR Go-to Guide now.

2. **Personal tax filing season** started on the 1st July 2023 and is now in full swing. For assistance please send an email to tax@hrtorque.co.za. Alternatively, 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 R150 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. **Communicate with SARS quickly and easily**
   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 the organisation. 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.

Contact us today for all your HR, payroll, tax and accounting needs.

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7) CRS news flash 18 October 2023: Zambia - 2024 budget speech

Source: www.crs.co.za

Budget speech and proposed tax changes

On Friday the 29th September 2023, Minister Itumbeko Musokotwane delivered the 2024 budget to the National Assembly.

Budget highlights

- The proposed 2024 budget amounts to ZMW177.9 billion or 27.8% of GDP, compared to the 2023 budget of ZMW167.3 billion or 31.4% of GDP
- In 2023, global economic growth is expected to slow down to 3.0% from 3.5% recorded in 2022
- Government's objective is to:
    - Attain a real GDP growth rate of at least 4.8%
    - Maintain international reserves to at least three months of import cover
    - Reduce fiscal deficit to 4.8% of GDP
    - Increase domestic revenue to at least 22% of GDP
    - Reduce inflation to the 6 - 8% medium-term target band
    - Limit domestic borrowing to no more than 2.5% of GDP
- In 2024, Government will continue to increase access to quality education through infrastructure development

Proposed tax measures

- Increase the exempt threshold for PAYE from ZMW 4,800 per month to ZMW 5,100, along with a reduction in the top bracket rate from 37.5% to 37.0%, and other bracket adjustments
- Replace the definition of electronic fiscal devices (EFDs) with electronic invoicing systems (EISs) and provide for the use of EISs
- Provide for exemption from the mandatory use of EISs
- Implement an EIS that will enable the Zambia Revenue Authority to have real-time access to business transactions, prevent the use of fake invoices in VAT refund claims and ensure only qualifying entities claim deductions
- Revise the definition of approved pension fund to clarify that approval is to be granted by the Pensions and Insurance Authority (PIA) and not the Commissioner-general
- Remove the mandatory provision for new businesses to write a notice to the Commissioner-general within 30 days when they are in receipt of their first income
- Commence consultations in 2024 to introduce a unified Tax Administration Act that will, among others, enable the harmonisation of tax treatment across different tax types and ease tax administration
- Amend the Zambia Revenue Authority Act to introduce a whistleblower reward in 2024 to enable the reward of whistleblowers who disclose information leading to the recovery of tax
- Exempt the Zambia Revenue Authority from the provisions of the Data Protection Act No. 3 of 2021

The proposed PAYE table for 2024 is as follows:

Current regime		Proposed regime	
Chargeable income per month (ZMW)	Tax rate	Chargeable income per month (ZMW)	Tax rate
First 4,800	0%	First 5,100	0%
4,801 – 6,800	20%	5,101 – 7,100	20%
6,801 – 8,900	30%	7,101 – 9,200	30%
Above 8,900	37.5%	Above 9,200	37%

The 2024 budget tax changes will be enacted through various amendment acts which will apply from the 1st January 2024.

To read the full budget speech, follow this link.

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