

Equality: REMCOs' new challenge

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Equality has always been an issue in the South African environment. However, now more than ever, equal treatment has been placed front and centre for all REMCOs (Remuneration Committees) as the legislature tries to address differentials at occupational levels as well as the gap between CEOs and general workers. The legislature has attempted to tackle this inequality issue through the Labour Relations Act (LRA) and the Employment Equity Act (EEA).

Under the Employment Equity Act: No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, [and] birth or on any other arbitrary ground.

Further to the above, a difference in *terms and conditions of employment* between *employees of the same employer* performing the same or substantially the same work or *work of equal value* that is directly or indirectly based on any one or more of the grounds listed in the Act (which include, *inter alia*, race, gender, age, religion, etc.) is unfair discrimination.

The LRA tries to address the issue on another front. Tackling the treatment of temporary versus permanent staff, S198 (4F) provides that a Temporary employment service (TES) employee must be treated on the whole not less favourably than an equivalent employee of the client (after 3 months).

It is our opinion that there are a number of options for differentiating temporary employment service employees from other permanent employees. In the section below some of those areas are listed and are not limited as long as they are non-discriminatory in terms of section 6 of the Employment Equity Act.

Specifically with reference to Section 198D (2) of the LRA it provides that for the purposes of sections 198A (5), 198B (3) and 198C (3)(a), a justifiable reason includes that the different treatment is a

result of the application of a system that takes into account—

- a) Seniority, experience or length of service;
- b) Merit;
- c) The quality or quantity of work performed; or
- d) Any other criteria of a similar nature and such reason is not prohibited by section 6(1) of the Employment Equity Act, 1998 (Act No. 55 of 1998).

With REMCOs it is often a hit or miss exercise when evaluating equal treatment. It is, however, generally accepted that an employer's Operational requirements [ORs] can only be determined once the (employer's) operational circumstances are known. This emphasizes the importance of the Form EEA 9 framework - Occupational levels [OLs] as a useful guideline for employers.

Operational requirements as a ground for differentiation

It is our view, that as a direct consequence of the above, employers need to be able to develop their own Occupational level framework based on their unique business Operational requirements. Occupational levels allow for the broad definition of work process structures.

The new Form EEA9 attempts to define the 'work' required at each OL level. However, despite having added level G (i.e. seven pay levels) the new Form EEA9 only describes six work OLs. Consequently, the new EEA9 is only for employers to design the organisation that best suits their cost and work output requirements. Analysis will prove that a seven-level structure is more effective than six levels.

Way forward

Objective measurement is critical and it is important that business, labour and the inspectorate find the most objective method of measurement with the least amount of human manipulation. REMCOs need to partner with experienced providers to ensure that they come up with a solution and measure that is rational. ■