

Lessons from the equal pay journey

Companies in South Africa must meet their legal obligation to ensure that their employees are paid fairly, or prepare themselves for the consequences. This is the advice offered by Arlene Leggat, a Director at the South African Payroll Association (SAPA). “Specifically, they must have a documented system for determining the value of an employee’s job and it must be applied consistently across their workforce,” she urges.

Unfair discrimination and pay

As per the Constitution of South Africa, the Employment Equity Act 55 of 1998 as amended prohibits any person from unfairly discriminating, 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 or birth.

According to Leggat, “Although the legislation covers a broad range of issues, such as recruitment practices or career development, pay is a core concern because it’s why people work in the first place. Discrimination in this basic area means they’re being unjustly deprived of a better way of life.”

Employers are obliged under the Act to eliminate unfair discrimination in respect of pay. They must also ensure that differences in terms and conditions of employment between their employees who are performing work that is the ‘same, substantially the same or of equal value’, do not arise because of the above factors. However, where those factors are considered in terms of an affirmative action programme, it is not unfair discrimination.

Auditing inequality

The Code of Good Practice on Equal Pay/Remuneration for Work of Equal Value (Government Gazette No. 38837 of 2015) sets out practical guidelines for employers to audit their pay policies on an annual basis to identify inequalities.

Using this companion to the Act, they must determine which jobs should be audited and if:

- a) jobs being compared are the same, substantially the same or of equal value;
- b) if there are differences in the terms and conditions of employment regarding pay for these jobs; and
- c) if these differences are non-discriminatory and can be justified.

When evaluating jobs, employers should consider the responsibilities demanded of the work; the skills, qualifications (including prior learning) and experience required; the physical, mental and emotional effort needed; and the working conditions of the job. They should also take special precautions not to evaluate female-dominated jobs using the same criteria as male-dominated jobs.

However, the law doesn’t demand that all employees doing similar work should be paid the same. Certain factors must be considered, like seniority, above-average capability, personal performance (provided the same evaluations are applied equally), freezing an employee’s pay

after demotion until it aligns with fellow workers, shortage of a particular skill, or any other non-discriminatory factor.

Employers should familiarise themselves with the Act and the Code of Good Practice to ensure that they satisfy all requirements. “Although they’ll receive ample opportunity to get their houses in order,” warns Leggat, “non-compliance will eventually amount to legal woes which are better avoided.”

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