Equal Pay for Work of Equal Value.

What are the implications and is it really new?

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Presentation: Equal Pay for Work of Equal Value

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- What is the basis of this concept
- 3 key issues requiring scrutiny in determining obligation to comply with Pay Equity
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- 3 Basic Criteria to evaluate jobs / Job Evaluation System
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EQUAL PAY FOR WORK OF EQUAL VALUE.

WHAT DOES THIS MEAN?

Equal pay for equal work is the concept of labor rights that individuals doing the same work should receive the same remuneration. (Wikipedia)
What is the Context?

• **Employment Equity Act Amendments – 1 Aug 14**
  – Non AA provisions affect all employers irrespective of size
  – DoL likely to actively assess compliance

• **Some Key Amendments:**
  – Discriminatory grounds expanded beyond race, gender sex, pregnancy...to include on any **ARBITRARY GROUND**.
  – Psychometric Tests – To be registered with Health Professions Council of SA (HPCSA)
  – CCMA Jurisdiction on discrimination (Previously Labour Court) – Lower paid (<205 2433) employees can **NOW** refer dispute on discrimination including pay claims to CCMA for **ARBITRATION**.
KEY AMENDMENTS CONTINUED.

• **Burden of Proof** - Discrimination Claims involving listed discriminatory grounds: race, gender, sex, pregnancy, disability etc. onus on employer to prove alleged discrimination did not take place, was rational and not unfair/or was otherwise justifiable.
  
  — On discrimination claims based on any other **ARBITRARY GROUND**, the onus is on the employee to prove, alleged discrimination is not rational, amounts to discrimination and the discrimination is unfair.

• **Work of Equal Value** — deals with unfair discrimination in respect of **REMUNERATION** and other **TERMS AND CONDITIONS OF EMPLOYMENT** of employees doing the **SAME OR SIMILAR WORK OR WORK OF EQUAL VALUE**.
KEY AMENDMENTS CONTINUED.

• **Only Apartheid Victims to benefit** – Definition of designated groups amended to ensure beneficiaries of AA are persons who were citizens of SA before 1994.

• **Occupational categories excluded** – in order to avoid confusion, the word categories relating to Affirmative Action has been removed, reference is only made to occupational levels in the workforce.

• **Threshold for DESIGNATED EMPLOYERS** – Turnover increased to three times current amount; Employers with 50 or more employees irrespective of turnover still regarded as designated employers.

• **Annual Reports** – Reports to be submitted annually on 1st October.

• **Enforcement Procedures** – Enforcement procedures shortened to promote more effective and efficient enforcement, e.g. Labour Inspector could issue Compliance Order without first obtaining undertaking from employer.

• **Assessment of Compliance** – The factors that may be taken into account in determining compliance with the act have been revised.

• **Increased fines** – Maximum fines increased three fold to reflect value of money since 1998. Turnover may be taken into account in determining the maximum fine that may be imposed for substantive failure to comply with AA provisions of the Act.
What makes up remuneration?

• Remuneration is any payment in money or in kind, or both in money and in kind, includes deferred remuneration, commission and other forms of variable pay,

• Remuneration is payment made or owing to any person in return for services rendered. Employers must:
  – ensure that remuneration policies and practices are applied consistently without unfair discrimination on the basis of any one or combination of the prohibited factors or arbitrary grounds (s6.1)
  – continuously audit their existing remuneration policies to ensure that they are based on the principles of PAY EQUITY. This requires a comparison of jobs as well as a JOB EVALUATION SYSTEM THAT IS OBJECTIVE, RATIONAL AND APPLIED CONSISTENTLY to all job functions

• Provide clear set of rules for determining pay – Policy & Rem Committee
What makes up remuneration? Continued.

– Remuneration should be based on the value of the post:
  • Performance and Outputs: the employee's outputs, measured by the performance management process, should carry the most weight in determining individual remuneration levels.
  • Employee potential: This involves estimated ability and competence, as well as the capacity to develop these over time.
  • Employers should monitor income differentials to ensure that these do not contribute to unfair discrimination.
  • s27 of the Act requires employers to submit a statement on remuneration and benefits received in each occupational level of the workforce.
So what constitutes unfair discrimination in pay?

• The Act provides that 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 prohibited grounds or on any other arbitrary ground, is unfair discrimination.

• The Labour Court has held that the prohibition against unfair discrimination in section 6(1) of the Employment Equity Act incorporates claims of EQUAL REMUNERATION FOR WORK OF EQUAL VALUE.
What is the basis of this concept?

The ILO Equal Remuneration Convention 1951 (No. 100), which South Africa ratified in 1995, obliges ratifying member states to give effect to the principle of equal remuneration for men and women workers for work of equal value.

The principle of equal remuneration for work of equal value applies equally to equal value claims based on race, or any other ground listed in section 6(1) or any other arbitrary ground.
What is the basis...continued.

the Labour Court has pointed out, equal pay for work of equal value is - "consistent with the substantive conception of equality that the Constitution and the EEA adopt, and in particular, a recognition that since race historically played a role in the value attributed to particular jobs, a systemic approach to the elimination of what might often be structural inequality is necessary."
What 3 key issues require scrutiny when determining obligation to comply with Pay Equity?

• Are the jobs that are being compared \textbf{THE SAME, SUBSTANTIALLY THE SAME OR OF EQUAL VALUE} in terms of an objective assessment?

• Is there a difference in the terms and conditions of employment, \textbf{INCLUDING REMUNERATION}, of the employees in the jobs that are being compared?

• If there are differences in the terms and conditions of employment, \textbf{can these be JUSTIFIED ON FAIR AND RATIONAL GROUNDS?}
WHEN ARE DIFFERENCES IN PAY NOT UNFAIR?

Differences in terms and conditions of employment, including remuneration, of employees of the same employer are not unfair discrimination where the complainant and the comparator do not perform the same or similar work or work of equal value.

A difference in remuneration will only be unfair discrimination if the differences are directly or indirectly based on race, sex, gender, disability or any other grounds listed in section 6(1) or any other arbitrary ground established in terms of section 11 of the Act.
How to ensure compliance?

Regulation 43 of the Companies Regulations (Companies Act), 2011 require all state-owned companies, listed public companies and certain other companies to establish a Social and Ethics Committee.

The functions of a Social and Ethics Committee include amongst others:

• Monitoring the company's standing in terms of all aspects of the Employment Equity Act and the ILO's Protocol on decent work and working conditions.
How to ensure compliance?...Continued

- King 111 recommends that all employer entities establish a REMUNERATION COMMITTEE which should annually review all remuneration and benefits received by employees to ascertain whether they are appropriate and competitive.

- Where an employer has established a Remuneration Committee, its annual review should include ascertaining whether the employer is in compliance with relevant legislative requirements, including the elimination of unfair discrimination in respect of remuneration under the Act.
How to ensure Compliance? Continued.

King III, further recommends that the Remuneration Committee should assist the board of a company in setting up and administering a REMUNERATION POLICY. Employers should specify that compliance with the Act is an integral aspect of its remuneration policy.
EVALUATING JOBS

Article 3 of the ILO Equal Remuneration Convention 1951 (No. 100) requires that "measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed". While the Convention only applies to equal remuneration for work of equal value between men and women, the need to conduct an objective appraisal of jobs is a necessary element of applying the principle in all contexts, in particular to eliminate residual structural inequalities related to legislated and practiced racial discrimination that applied in the labour market and workplace in South Africa.
What 3 basic criteria should be used to determine value of Jobs?

• The responsibility demanded of the work, including responsibility for people, finances and material.

• The skills, qualifications, including prior learning and experience required to perform the work, whether formal or informal.

• Physical, mental and emotional effort required to perform the work.
Job Evaluation System

- There is no legal requirement for employers to use a job evaluation system.

- However, businesses that use formal systems of job evaluation to grade jobs within their establishment must ensure that the job evaluation system it uses does not have the effect of discriminating unfairly on grounds of race, sex, gender, disability or any other grounds listed in section 6(1) of the Act or any other arbitrary ground.

- In the absence of an established grading system, employers may elect to use the six occupational levels listed in codes of good practice.
What happens to sectorial determinations?

• If jobs are accorded the same value and minimum remuneration in a sectoral determination, an employer covered by the determination is justified in basing its remuneration on that classification.

• If an employee or trade union claims that minimum wages set by a sectoral determination violates the principle of equal remuneration for work of equal value, they may make representations to the Employment Conditions Commission or bring a legal challenge to the relevant sectoral determination.
And What about Collective Agreements?

In the case of a collective agreement concluded in a bargaining council, any challenge on this basis would have to be directed at the employer and trade union parties that concluded the collective agreement.
What constitutes unfair discrimination?

6.1 Prohibition of unfair discrimination

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.

It is not unfair discrimination to-

• Take affirmative action measures consistent with the purpose of this Act; or

• Distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.
What is your sense of fairness?

https://www.youtube.com/watch?v=-dM0K48QGL8
What am I concluding out of all of this?

• s27 of the Act was aimed at addressing income differentials in the workforce
  – Employers to submit statement of differentials to the EEC

• The extension of the CCMA’s jurisdiction in what was the preserve of the Labour Court, effectively means individuals will approach the CCMA in claims of unfair discrimination (Employers and CCMA are going to be busy)
  – Job Evaluation Systems and their application will have to be objective and fair
  – Remuneration Policies and practices will be put under Public Scrutiny
  – Performance Management and Measurement tools and approaches – fair/well structured

• Equal Opportunities as another critical part of the EE Act is at last receiving attention in this Country (narrative has intensely been on Affirmative Action)
Any Questions?
End

Thank you for your attention.