



IN THIS ISSUE

Do You Pay Too Much Or Perhaps Not Enough ?...p1

*Consumer's Right to Fair and Responsible Marketing
(Consumer's Fifth Right)...p2*

BBBEE Calendar 2012...p4

DO YOU PAY TOO MUCH OR PERHAPS NOT ENOUGH?

“Earnings Threshold” Payment for Overtime and Sundays

Employers should be aware of the fact that there is a difference between “earnings” and “remuneration”, when it comes to calculating certain payments to particular employees, as well as when determining whether an employee is entitled to overtime pay and extra payment for work on Sundays.

Employers who do not understand the differences between these concepts, (including “earnings threshold”) may unnecessarily be paying employees overtime rates or extra payments for work done on Sundays.

Employees earning R172 000 or more per year, thereby exceeding the “earnings threshold”, are not entitled to extra payments for overtime and work on Sundays. This is due to the fact that they are excluded from the rights conferred in Chapter II of the Basic Conditions of Employment Act, 1997 prescribing inter alia, hours of work per week and per day, payment for overtime worked

and payment for work on Sundays.

Although employers may require employees to work overtime in urgent circumstances, they may not force anybody (including employees earning above the threshold) to work any hours in excess of their normal, or prescribed hours.

The term “earnings” means the regular annual remuneration before deductions (i.e. income tax, pension, medical aid and similar payments), but excluding similar payments

(contributions) made by the employer in respect of the employee. However, subsistence and transport allowances, achievement awards and intermittent payments for occasional overtime worked shall not be regarded as remuneration for the purpose of calculating the earnings threshold.

The above basically means that only the actual “wage” earned for normal hours worked may be used to determine whether an employee earns above the earnings threshold or not.

Employees earning R172 000 or more per year, thereby exceeding the “earnings threshold”, are not entitled to extra payments for overtime and work on Sundays.



Calculation of Retrenchment Package, Leave and Notice Pay

For purposes of calculating leave pay, notice pay, and severance packages, the employer must base the calculations on the employee's remuneration as referred to in section 35 of the BCEA and the Schedule to the BCEA issued by the Minister of Labour in GG24889 dated 23 May 2003. In terms of this Schedule, remuneration has a

different meaning, or includes more than what is entailed in determining the earning threshold as discussed above. Note that these provisions do not apply to employees whose conditions of employment are regulated by a Collective Agreement concluded in a Bargaining Council, as they have their own determinations.

Remuneration here includes:

- Housing or accommodation allowance or subsidy for housing or accommodation received as a benefit in kind;
- Car allowance or provision of a car, except where the car is exclusively provided to enable the employee to work;
- Any cash payments made to an employee, except those listed as

exclusions in terms of this schedule;

- Any other payment in kind received by an employee, except those listed as exclusions in terms of this schedule;
- Employers' contributions to medical aid, pension, provident fund or similar schemes;
- Employers' contributions to funeral or death benefit schemes.

In terms of the above schedule, the following items do not form part of remuneration:

- Any cash payment or payment in kind provided to enable the employee to work (for example equipment, tools or similar allowances for the provision of transport or the payment of a transport allowance to enable the employee to

travel to and from work);

- A relocation allowance;
- Gratuities (for example tips received from customers) and gifts from the employer;
- Share incentive schemes;
- Discretionary payments not related to an employee's hours of work or performance (for example a discretionary profit sharing scheme);
- An entertainment allowance;
- An education or schooling allowance.

Employers should therefore ensure that they understand the differences between the concepts of "wages" and "remuneration" in order to avoid over-paying or under-paying employees.

CONSUMER'S FIFTH RIGHT

Consumer's Right to Fair and Responsible Marketing

A consumer has the right to be protected against Bait Marketing:

- Suppliers may not mislead consumers through advertisements in respect of pricing, the nature, properties, advantages or uses of goods or services, and goods or services must be available for purchase in accordance with the advertisements; and
- Suppliers must include any limitations in respect of the availability of the goods or services when the goods or services are advertised.

A consumer has the right to be protected against Negative Option Marketing:

- Suppliers may not promote any goods or services or automatically enter consumers into an agreement for the supply of any goods or services without the consumer's expressed consent. If a supplier supplies any unwanted or unsolicited goods or services to a consumer, the consumer is under no obligation to pay for those goods or services.

A Consumer has the right to be protected against Direct Marketing:

- All suppliers and services providers that make use of direct marketing, must inform the consumer of his/her right to cancel the agreement without penalty within five (5) business days from date of the transaction, if the consumer wishes not to continue with the agreement; and

- Suppliers or service providers embarking on direct marketing, may not require any payment from consumers should these goods or services become unsolicited.

Consumers right to be protected in Catalogue Marketing:

Catalogue marketing is an agreement entered into by telephone, fax or postal order, where the consumer does not have the opportunity to inspect the goods prior to delivery.

If suppliers make use of catalogue marketing, they must disclose the following information to a consumer before concluding the agreement:

- The supplier's name and registration/license number;
- The address of the supplier's physical business premises and related contact details;
- Sales record;
- The currency in which amounts under the agreement are payable;
- The supplier's delivery arrangements, including -
 - o The identity of the shipper;
 - o The mode of transportation; and
 - o The place of delivery to the consumer;
- The supplier's cancellation, return, exchange and refund policies; and
- The manner and form in which a complaint may be lodged.

Consumer's right to be protected in Customer Loyalty Programmes:

- A customer loyalty programme are loyalty credits or awards, which are a legal medium of exchange when offered or tendered as payment/consideration for any goods or services offered by a person;
- A person may not offer any participation in a loyalty programme, or offer any loyalty credit or award with the intention of not providing it or providing it differently than offered; and
- Any document supplied by a person, setting out an offer must clearly state the following:
 - o The nature of the programme, credit or award being offered;
 - o The goods or services to which the offer relates;
 - o The steps required by a consumer to participate in the programme or to receive any benefit in terms of the programme; and
 - o Any person from whom, any place where, and any date and time on or at which, the consumer may gain access to the programme, or to any loyalty credit or awards in terms of the programme.

Consumer's right pertaining to Trade Coupons and Similar Promotions:

- A person may not make promotional offers with the intention of not fulfilling them, or fulfilling them in a manner which is different than as offered;
- A person making a promotional offer must clearly state the following:
 - o The nature of the prize, reward, gift, free good or service, price reduction or concession, enhancement of quality or quantity of goods or services, or other discount or free thing being offered;
 - o The goods or services to which the offer relates;



- o The steps required by the consumer to accept the offer or to receive the benefit of the offer;
- o The particulars of any person from whom, any place where, and any date and time on or at which, the consumer may receive the prize, free good or service, price reduction or concession, enhancement of quality or quantity of goods or services, or other discount or free thing being offered;
- A person who makes or sponsors a promotional offer must:
 - o Ensure that the supply of the particular prize, reward, gift, free product or service, price reduction or concession, enhancement of quality or quantity of goods or services, or other discount or free thing being offered, is sufficient to accommodate all reasonable anticipated demands resulting from the offer;
 - o Not limit or restrict the supply of the goods or services (i.e prizes) at the point in time when the winner of such promotional competition has accepted the offer. The goods or services must be supplied in accordance with the promotional competition;
 - o Not require the consumer to accept an inferior quality of any such goods or services than those generally available to any other consumer on the same date who tenders a different form of consideration; and
 - o Not impose a monetary charge for the administration, processing or handling of the transaction in respect of which the consumer tenders a trade coupon.

The discussed rights place a great responsibility on the supplier or service provider who embarks on any marketing campaign. This will furthermore result in more carefully planned marketing techniques, and ensuring that the marketing method used communicates a clear and understandable picture to the ordinary consumer.

The **2012 SEESA BEE Calendar** will provide BBBEE clients, irrespective of their turnover, with a timeline pertaining to the timeous submission of plans and relevant contributions in order to **obtain a successful BBBEE certificate.**

Qualifying Small Enterprise (QSE)

(Annual turnover between R5 - R 35 Million.)

Generic Enterprise

(Annual turnover above R35 Million.)

QSE's are verified on 4 of the 7 BBBEE elements available.

Generic Enterprises are verified on all of the 7 BBBEE elements.

Should a QSE or a Generic Enterprise decide to be verified on the elements listed below for their 2012 BBBEE Certificate, the following dates should be kept in mind before contributions are made.

EMPLOYMENT EQUITY :

Employment Equity Reports

Should the business employ more than 150 employees, or alternatively if this is the first time the company submits an Employment Equity report, this report must be submitted online prior to **15 January 2012** to the Department of Labour. (For 2011 submissions.)

If your business is a member of SEESA Skills, the cut-off date for submitting documentation to SEESA Skills is **30 September 2011**. SEESA Skills will submit the above reports not later than **15 December 2011**.

EMPLOYMENT EQUITY :

Employment Equity Reports

Should the business employ more than 150 employees, or alternatively if this is the first time the company submits an Employment Equity report, this report must be submitted online prior to **15 January 2012** to the Department of Labour. (For 2011 submissions.)

If your business is a member of SEESA Skills, the cut-off date for submitting documentation to SEESA Skills is **30 September 2011**. SEESA Skills will submit the above reports not later than **15 December 2011**.

NB: The above submissions are only relevant in terms of online submissions.

Should you prefer to submit your EE-Report manually to the Department of Labour, this should be done prior to **1 October 2011**.

Skills Development

All QSE's should submit WSP Reports to their SETA prior to **30 June 2012**.

If your business is a member of SEESA Skills, the cut-off date for submitting documentation to SEESA Skills is **30 April 2012**. SEESA Skills will submit the above reports not later than **10 June 2012**.

Skills Development

All Generic Enterprises should submit their WSP Reports to their SETA prior to **30 June 2012**.

If your business is a member of SEESA Skills, the cut-off date for submitting documentation to SEESA Skills is **30 April 2012**. SEESA Skills will submit the above reports not later than **10 June 2012**.

Skills Development Expenditure

(For companies with a financial year-end on **29 February 2012**.)

Expenditure towards Skills Development for BBBEE purposes (training of black employees) should be paid not later than **29 February 2012**.

Should your company not have a Skills Development Facilitator to assist you with the above, kindly contact the SEESA Skills Department who will explain the costs and process to you.
(Jaco Horn - 012 810 2221)

SOCIO ECONOMIC DEVELOPMENT:

(For companies with a financial year-end on **29 February 2012**.)

Kindly remember that all donations should be made prior to **29 February 2012**. Donations to the value of 1% of Nett Profit after Tax will contribute to **25 points** on the entity's BBBEE scorecard.

Please contact your legal advisor for approved initiatives.

ENTERPRISE DEVELOPMENT:

(For companies with a financial year-end on **29 February 2012**.)

Kindly remember that all Enterprise Development initiatives should be paid prior to **29 February 2012**. Enterprise Development initiatives to the value of 2% of Nett Profit after Tax will contribute to **25 points** on the entity's BBBEE scorecard.

Please contact your legal advisor for approved initiatives.

Skills Development Expenditure

(For companies with a financial year-end on **29 February 2012**.)

Expenditure towards Skills Development for BBBEE purposes (training of black employees) should be paid not later than **29 February 2012**.

Kindly note that points will only be awarded towards the Skills Development Expenditure if the company's WSP was submitted before **June 2011**.

Should your company not have a Skills Development Facilitator to assist you with the above, kindly contact the SEESA Skills Department who will explain the costs and process to you.
(Jaco Horn - 012 810 2221)

SOCIO ECONOMIC DEVELOPMENT:

(For companies with a financial year-end on **29 February 2012**.)

Kindly remember that all donations should be paid prior to **29 February 2012**. Donations to the value of 1% of Nett Profit after Tax will contribute to **5 points** on the entity's BBBEE scorecard.

Please contact your legal advisor for approved initiatives.

ENTERPRISE DEVELOPMENT:

(For companies with a financial year-end on **29 February 2012**.)

Kindly remember that all Enterprise Development initiatives should be paid prior to **29 February 2012**. Enterprise Development initiatives to the value of 3% of Nett Profit after Tax will contribute to **15 points** on the entity's BBBEE scorecard.

Please contact your legal advisor for approved initiatives.

Important notice: Should your business fall within the following sectors, it is important to consult your legal advisor before any payment is made towards Socio-Economic or Enterprise Development initiatives:

Construction | Transport | Forestry | Tourism | Financial Accounting