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FOKUS | FOCUS
LWO WERKGEWERSORGANISASIE EMPLOYERS ORGANISATION
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Nuusbrief van die LWO Werkgewersorganisasie
Newsletter of the LWO Employers Organisation

'n Verhoogde inkomsteplafon met intrede Maart 2021

Deur Christo Bester

Tesame met die nuwe nasionale minimum loon wat op 1 Maart 2021 inwerking getree het, moet werkgewers ook kennis neem van die **verhoogde jaarlikse inkomsteplafon** wat geïmplementeer is. Die vorige inkomsteplafon is sedert 1 Julie 2014 inwerking en is nou verhoog van R205 433.30 na **R211 596.30**. Die inkomsteplafon het 'n effek op die bepalings van die Wet op Basiese Diensvoorwaardes, 1997 (WBDV), die Wet op Arbeidsverhoudinge, 1995 (WAV) en die Wet op Billike Werksgeleenthede, 1998 (WBW).

Wat is verdienste (inkomste)?

"Verdienste" beteken 'n werknemer se gereelde jaarlikse vergoeding voor aftrekkings (bv. inkomstebelasting, pensioenfondsbydraes, mediese fondsbydraes en soortgelyke betalings), maar sluit uit enige bydraes gemaak deur die werkgewer ten opsigte van die werknemer. Verblyf- en vervoertoelae ontvang, prestasietoekennings en betalings vir oortyd gewerk word ook uitgesluit binne die bestek van verdienste.

WBDV

In terme van die WBDV, word werknemers wat bo die inkomsteplafon verdien uitgesluit van die bepalings wat die volgende reguleer: normale werksure, oortyd, saamgeperste werksweke, gemiddelde werksure, etensbreuke, daaglikse en weeklikse rusperiodes, Sondagbetaling, betaling vir nagwerk en betaling vir werk gedoen op openbare vakansiedae. Dit beteken dat die regulering van voorgenoemde onderling op ooreengekom moet word en nie deur die WBDV gereguleer sal word soos in die geval van werknemers wat onder die inkomsteplafon verdien nie.

WAV

In terme van die WAV, is werknemers wat bo die inkomsteplafon verdien nie onderhewig aan die bepaling dat werknemers wat deur 'n tydelike werksverskaffingsdiens/arbeidsmakelaar aangestel word, geag word as werknemers te wees van die werkgewer/kliënt vir doeleindes van die WAV nie. Daarbenewens val werknemers wat bo die inkomsteplafon verdien, buite die bestek van die bepalings wat verband hou met werknemers op 'n vaste termyn wat geag word as permanente indiensname na drie maande (in die afwesigheid van 'n regverdigbare rede vir die vasstelling van 'n vaste termyn).

MEER OOR DIE LWO

Wie is die LWO?
Die LWO is gedurende 1990 as werkgewersorganisasie tot stand gebring, ten einde werkgewers binne die Suid-Afrikaanse besigheidsgemeenskap te bedien met regsdienste, asook verwante dienste op die gebied van arbeidsreg.
Die LWO is 'n lede-organisasie sonder winsbejag en word bestuur deur 'n Raad wat uit lede bestaan. Die LWO beskik oor die nodige infrastruktuur waardeur lede effektief op 'n nasionale basis bedien kan word.

Die doel van die LWO
Die LWO het ten doel om die werkgewersorganisasie van uitnemendheid te wees vir werkgewers gegrond op die professionele wyse waarop lede van die LWO met arbeidsregtelike dienste bedien word.

MORE ABOUT THE LWO

Who is the LWO?
The LWO was established during 1990 as an employers' organisation in order to assist employers with legal services within the field of labour law.
The LWO is a non-profit members' organisation and is managed by a board consisting of members. The LWO has the necessary infrastructure to assist members effectively on a national basis.

The purpose/goal of the LWO
The LWO aims to be the employers' organisation of excellence for employers based on the professional manner in which members of the LWO is served with labour law services.

WBW

'n Werknemer wat bo die inkomsteplafon verdien en 'n dispuut het onder Hoofstuk II wat verband hou met onregverdige diskriminasie, kan nie die dispuut na die Kommissie vir Versoening, Bemiddeling en Arbitrasie (KVBA ("CCMA")) verwys nie. So 'n werknemer is verplig om die dispuut direk na die Arbeidshof te verwys vir beslegting (tensy die dispuut verband hou met beweerde onregverdige diskriminasie op die gronde van seksuele teistering, of indien die partye almal tot arbitrasie instem).

*Dit is uiters belangrik vir elke werkgewer om te bepaal watter werknemers **bo** die inkomsteplafon verdien en watter werknemers **onder** die inkomsteplafon verdien, aangesien dit 'n groot impak het op die bepalings en voorwaardes van indiensname waarop die werkgewer en werknemer kan ooreenkom.*

Werkgewers moet ingelig en op datum bly van arbeidswetgewing ten einde proaktiewe aksie te kan neem om hul regte, asook besigheid, te beskerm met verwysing na die diensverhouding vorentoe.

Kontak die LWO by 086 110 1828 - ons is 24/7 beskikbaar. Lede kan ook 'n e-pos stuur aan info@lwo.co.za vir advies en/of bystand.

Retrenchment: What is "bumping"?

By Jannine de Klerk

In the current economic climate, many employers struggle to stay competitive and profitable and must consider different options to adjust to a changing environment. Retrenchment is a no fault dismissal, as the employee did nothing wrong and dismissal is due to operational requirements. As with all dismissals, the retrenchment process must be both substantively and procedurally fair. But how does an employer decide who stays and who goes?

Employers are entitled to adopt a multi-rating selection criteria such as:

- Years of service ("Last In, First Out") and "bumping"
- Qualifications and experience
- Direct supervisor review (including an assessment of factors such as commitment to the business and team goals, teamwork and dependability, attendance, flexibility, initiative and career potential)
- Competency, efficiency, key skills retention
- Continued service delivery
- Performance appraisals and past performance (or discipline, for that matter)
- Voluntary severance package
- Retirement package
- Redeployment package

Employers and consulting parties often tend to rely on the "Last In, First Out" ("LIFO") principle, which is based on years of service. However, when employees are selected for retrenchment within a particular division/department as shorter serving employees in that specific division/department, these employees may in fact have longer periods of service with the employer than employees in other divisions/departments.

"Bumping" is when employees with longer service with the employer, are then transferred to positions held by employees with shorter service in other divisions/departments.

There are two forms of "bumping":

- Horizontal "bumping" – where an employee is transferred to a position of similar status, conditions of employment and remuneration; and
- Vertical "bumping" – where an employee is transferred to a position with less favourable status, conditions of employment and remuneration.

An employer must first apply horizontal "bumping" before vertical "bumping".

The Labour Appeal Court has now made it clear that where employers choose to consider LIFO as a selection criterion, employers must consult on the application of "bumping" in selecting employees for retrenchment. Employers must be able to explain why it would not be fair and appropriate to apply "bumping".

We strongly advise employers to implement clear rules in the workplace and follow correct procedures with regards to all labour matters, especially retrenchment and general discipline in the workplace, by being proactive and acting consistently.

Contact the LWO at 086 110 1828 or info@lwo.co.za when you consider restructuring/retrenchment to ensure that you follow the correct procedure and protect your rights as an employer.

Politieke partye en vakbonde in die werksplek

Deur Adv. Michelle Smuts

Wanneer vakbonde aanspraak maak op organisatoriese regte binne die werksplek, is werkgewers dikwels onseker rakende hul eie regte en dié van die vakbond, asook hoe hierdie regte gereguleer word. Daar is huidiglik egter 'n tendens dat sekere politieke partye hulself die regte van vakbonde probeer toe-eien en werkgewers intimideer om te konsulteer en ooreenkomste te bereik rondom bepalings en voorwaardes van indiensneming.

Die Wet op Arbeidsverhoudinge (WAV) verleen die volgende organisatoriese regte aan vakbonde, **onderhewig aan sekere vereistes**:

- Toegang tot die werksplek
- Aftrekking van vakbondregistrasiefooie;
- Vakbondverteenwoordiging in die werksplek
- Verlof vir vakbondaktiwiteite
- Openbaarmaking van informasie

'n Politieke party is 'n politieke organisasie wat poog om die regering se beleid te beïnvloed, gewoonlik deur hul eie kandidate daar te stel en te wedywer vir stemme en regeringsposte.

Geen magtiging of toestemming word aan politieke partye gegee vir soortgelyke regte as dié van vakbonde nie. Werkgewers moet daarteen waak om in gesprek te tree met politieke partye rondom regte in die werksplek.

Indien 'n vakbond wil aanspraak maak op organisatoriese regte in die werksplek, moet die vakbond eerstens geregistreer wees by die Departement van Indiensneming en Arbeid. Die vakbond se konstitusie moet ook ooreenstem met die bedryfsektor van die werkgewer. Dan moet die vakbond ook oor voldoende (±20%) of meerderheid (50% + 1) verteenwoordiging in die werksplek beskik ten einde te kan aanspraak maak op sekere organisatoriese regte. **Voorheen het die Kommissie vir Versoening, Bemiddeling en Arbitrasie (KVBA) ±30% verteenwoordiging in die werksplek as voldoende verteenwoordiging geag, maar huidiglik het die tendens na slegs ±20% verteenwoordiging beweeg.**

Om te kan aanspraak maak op organisatoriese regte, vereis wetgewing dat 'n vakbond 'n prosedure volg, wat behels dat die vakbond die werkgewer skriftelik in kennis moet stel van die regte wat die vakbond in die werksplek wil uitoefen. Die werkgewer moet dan binne 30 dae hierna met die vakbond konsulteer. 'n Erkenningsooreenkoms word dan gesluit indien die vakbond aan die nodige vereistes voldoen, wat die bepalings en voorwaardes stipuleer waarop ooreengekom is.

Kontak die LWO by 086 110 1828 om te verseker dat jou regte as werkgewer beskerm word.

COIDA - regulations & amendments

By Stephan Pietersen, Work Accident Support: 064 360 2638 | support@workaccident.co.za

TARIFFS OF ASSESSMENT

During November 2020 the Minister of Employment and Labour approved new regulations relating to the tariffs of assessment under the Compensation for Occupational Injuries and Diseases Act (COIDA). These tariffs, in combination with a business's declared payroll, are used to calculate the business's account payable annually to the Compensation Fund. These tariffs are associated with an industrial asset class (business industry) and the higher the risk of getting injured, the higher the tariff. There are currently 13 different asset classes.

Once a business declares its annual payroll to the Compensation Fund, an account is issued which is payable within 30 days. **The declaration for 2021 must be done between 1 April 2021 to 31 May 2021 and during this period businesses must declare what their payroll was from 1 March 2020 to 28 February 2021 and estimate what it will be from 1 March 2021 to 28 February 2022.**

Important to note: businesses must declare payroll up to only **R484 200** until 28 February 2021 and R506 472 until 28 February 2022. Failure to declare the payroll, as well as make payment within 30 days will result in a penalty of 20% based on the assessment. This can have a huge impact on the cash flow of any business. During 2018/2019 close to R1 million was calculated in penalties by the Compensation Fund.

Companies who are not in a position to pay their full account, can apply within 30 days of the account being issued for a payment arrangement with the Compensation Fund.

INJURY ON DUTY

COIDA requires that work accidents must be reported within seven days to the Compensation Fund. Failure to do so will result in heavy penalties.

The employer is required to complete an Employer's Report of Accident and submit this report together with a certified copy of the injured employee's ID and payslip on the Compeasy system. The injured employee should take a copy of the Report of Accident to the treating doctor.

Employers must pay the injured employee his/her normal salary if the employee is booked off for at least four days, but can claim this back from the Fund once the employee returns to work. Neither the employer nor the injured employee should pay for medical costs, as the Fund also operates as a medical aid and the treating doctor should submit the claim directly to the Fund.

Benefits payable in terms of COIDA include:

- Payment of salaries to injured employees (refund of paid salaries to employers)
- Permanent disability
- Medical expenses, including chronic medication
- Death benefits: funeral benefits and pension to widow/widower/children
- No compensation is payable for pain and suffering

AMENDMENTS UNDER REVIEW

Several amendments are currently under review by the Compensation Fund regarding penalties for non-compliance. Some of these amendments are as follows:

- Failure by the employer to report an accident within seven days will result in a 10% penalty of the declared annual payroll.
- Failure by the employer to complete the Employer's Report of Accident in full will result in a penalty equal to the full amount of compensation plus interest.
- Failure by the employer to pay an injured employee his/her salary while off duty for more than four days will result in a penalty equal to double the full amount of three months' compensation plus interest.
- Failure by the employer to transport an injured employee to the nearest doctor will result in a fine equal to the full cost of the conveyance.
- Failure by the employer to keep a record of an employee's earnings will result in a penalty of 10% of the actual or estimated annual earnings.

These penalties can have severe consequences for the employer if the correct procedure is not followed. Employers must familiarise themselves with these and educate their employees about what to do when an accident at work happens.

WHAT ABOUT DOMESTIC WORKERS?

On 10 February 2021 the Compensation Fund Commissioner signed into effect the inclusion of domestic workers under COIDA, ensuring that domestic workers will be covered by the Act and qualify for benefits. The Constitutional Court declared on 19 November 2020 that section 1 (xix)(v) of the Act was invalid with immediate and retrospective effect to 27 April 1994.

Private households who employ a domestic worker(s) must register as a domestic employer. Domestic employers will fall under its own sub-class with a rate of 1.04 payable. The following documents must be submitted for an employer to register:

- Application form for the domestic employer to register.
- Copy of the employer's ID/passport/work permit.
- Proof of Employer's residential address.
- Copy of the employee's ID/passport/work permit.
- Copy of the employment contract.

Domestic employers must also submit a record of the annual wages paid to the domestic worker(s) (return of earnings).

Claims for injuries or diseases can be registered online or submitted to the nearest Labour Centre. The earnings must be completed on the prescribed form to calculate and pay benefits. When a domestic worker is employed by more than one employer and an accident/injury occurs, the earnings received by all the employers must be submitted to the Compensation Fund.

As a registered employers' organisation with the Department of Employment and Labour, the LWO specialises in labour law and can therefore only assist employers in this particular field. We do however always explore opportunities to take hands with service providers in other specialist fields to put solutions on the table for our members.

Contact Stephan Pietersen from Work Accident Support for COIDA assistance: 064 360 2638 | support@workaccident.co.za

Kontak die LWO/Contact the LWO

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086 110 1828: LWO regsadvies hulplyn 24/7 legal advice helpline

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LWO bedieningspunte|service points

Nota: dienste sal gelewer word vanaf die naaste bedieningspunt/Note: services will be rendered from the closest service point