

# Practical legislative guidelines for employers in 2013

By [Rob Cooper](#)

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Changes proposed to South Africa's Basic Conditions of Employment Act (BCEA), Labour Relations Act (LRA) and Employment Equity Amendment Bill (EEAB) will have a significant impact on how employers conduct their business in 2013.

In the draft Employment Equity Amendment Bill (EEAB), specific attention should be paid to the concept of equal pay for work of equal value, which can result in a new form of unfair discrimination.

In cases where employment conditions, including remuneration, are applied differently to employees who do the same or similar work, then the employer must be able to show that the differences are based on fair criteria, such as experience, skills, responsibility and qualifications. If the employer cannot do this, the differentiation would constitute unfair discrimination.

In practice it would mean that if a company employed factory workers on a permanent basis and at times of high demand took on additional workers from a labour broker, and they worked side by side doing the same job, then both permanent and labour broker-supplied workers must be paid at the same rate.

Because the employer must pay the labour broker his fee on top of the wages for the workers, the result will be that brokered labour will cost more than permanent labour. This is logical and the premium that the employer must pay for flexibility.

Importantly, the intention is to align the Employment Equity Act with other general labour laws that need to be applied in cases where an individual supplied to a client by a labour broker is seen as an employee of that client. One can only assume at this early stage that these employees, supplied by the labour broker, will have to be included in the client's equity plan as well as in the labour broker's equity plan.

The draft Employment Equity Act further changes the way in which companies implement affirmative action. The groups of people who benefit from the affirmative action provisions will be limited to those who were South African citizens before democracy (April 1994) or to those who were prevented by the policies of apartheid from becoming citizens before 1994, and their descendants. This means that the employment of foreign nationals or those who became citizens after the democratic era (April 1994) will not assist employers to meet their affirmative action targets.

## Employment Services Bill

The Employment Services Bill is another very important piece of legislation for employers to be aware of as it moves towards finalisation.

The overall intention of this brand new piece of legislation is to empower the Department of Labour to provide a comprehensive range of employment services (free of charge) to members of the public in an attempt to achieve the government's objectives of more jobs, decent work and sustainable livelihoods. Any initiative that reduces unemployment is to be welcomed.

The government is aiming at making employment services open and accessible to all. This includes the following:

- Registering work vacancies and seekers, matching resulting opportunities, and facilitating the placement of seekers with employers or other work opportunities.
- Provision of advisory services for training, social security benefits, dealing with vulnerability, vocational and career counselling, assessment of work seekers to determine suitability, and improving work-related life skills.

## **UIF (Unemployment Insurance Fund) legislation**

Changes to the UIF legislation have been pending for quite some time and will, hopefully, move through parliament towards the end of this year. Broadly, the proposed changes envisage increasing the value of the UIF benefit, as well as extending the grace period during which benefits can be claimed, from six to 18 months.

There is also an intention to remove certain exclusions of which there are no details but I hope that this will include the exclusion of commission from the remuneration on which the contribution is calculated, which results in commission being excluded from the value of the contribution and the benefit. Unemployed people who were earning a low basic salary plus commission, are negatively affected by a benefit that is in line with only their basic salary.

I encourage employers to attend Sage VIP's Payroll and Tax Seminar in March and April 2013. The seminar is regarded by many as a definitive guide to the changes in payroll and tax legislation and we endeavour to present it in a practical and interactive manner that does not focus on the legal aspects alone. The presentation will also aim at communicating future trends that will impact payroll and HR.

## **ABOUT ROB COOPER**

Rob Cooper is a tax expert and director of legislation updates and proposed legislation of Sage VIP.

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