

22 AUGUST 2016

EMPLOYMENT ALERT

Our programme on Conducting a Disciplinary Enquiry has been accredited by the Services SETA.

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MASS EQUAL PAY FOR EQUAL WORK REFERRAL: ARBITRATION OR ADJUDICATION?

The impact of the amendments to the Employment Equity Act, No 55 of 1998 (EEA) are starting to emerge as the Labour Court delivers judgments that provide much needed guidance on how to deal with the amendments.



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MASS EQUAL PAY FOR EQUAL WORK REFERRAL: ARBITRATION OR ADJUDICATION?

In the recent Famous Brands Management Company (Pty) Ltd v CCMA and Others (JR738/16) [2016] ZALCJHB 290 case what essentially had to be determined was whether the CCMA could arbitrate an unfair discrimination dispute regarding equal pay for equal work which involved more than one employee.

The CCMA ruled that it did have jurisdiction to arbitrate the matter involving approximately 632 employees. The ruling was taken on review to the Labour Court.



The impact of the amendments to the Employment Equity Act, No 55 of 1998 (EEA) are starting to emerge as the Labour Court delivers judgments that provide much needed guidance on how to deal with the amendments.

The EEA was amended to include what is commonly referred to as the equal pay for equal work provision. The provision states 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 grounds listed in the EEA amounts to unfair discrimination.

The EEA prohibits unfair discrimination. A dispute concerning unfair discrimination may be referred to the CCMA within 6 months of the act constituting unfair discrimination.

The CCMA will initially try to resolve the dispute through conciliation. However, if the dispute remains unresolved, the dispute may be adjudicated by the Labour Court or, in certain circumstances, arbitrated by the CCMA.

The option to have the dispute arbitrated by the CCMA also came about as a result of an amendment to the EEA. In terms of the amendment, "an employee may refer the dispute to the CCMA for arbitration if:

- the employee alleges unfair discrimination on the grounds of sexual harassment;"
- in any case other than sexual harassment, if the employee earns less than R205 433.30; or

- the parties to the dispute consent to the dispute being arbitrated.

In the recent *Famous Brands Management Company (Pty) Ltd v CCMA and Others (JR738/16) [2016] ZALCJHB 290* case what essentially had to be determined was whether, in terms of the EEA amendments, the CCMA could arbitrate an unfair discrimination dispute regarding equal pay for equal work which involved more than one employee. In this case, approximately 632 employees had referred an unfair discrimination dispute regarding equal pay for equal work to the CCMA for arbitration.

The employer argued that the CCMA did not have jurisdiction to hear the matter involving 632 employees as the amendment to the EEA only permits "an employee" to refer the dispute to the CCMA for arbitration and not a number of employees. It was the employer's case that the amendment only allows individual disputes to be arbitrated at the CCMA and disputes involving more than one employee should be referred to the Labour Court for adjudication.

The CCMA ruled that it did have jurisdiction to arbitrate the matter involving approximately 632 employees. The ruling was taken on review to the Labour Court.

The court held that just because more than one individual is involved in the dispute does not mean that the dispute

MASS EQUAL PAY FOR EQUAL WORK REFERRAL: ARBITRATION OR ADJUDICATION?

CONTINUED

The court dismissed the review application and confirmed that more than one employee can refer an unfair discrimination dispute the CCMA for arbitration.



is more complex even though there may be additional logistical challenges when dealing with a dispute involving many employees. The court referred to several sections in the Labour Relations Act, No 66 of 1995 where the term "employee" in the singular has been interpreted to mean "employees".

The court dismissed the review application and confirmed that more than one employee can refer an unfair discrimination dispute the CCMA for arbitration.

Although the judgment does not deal with the merits of the equal pay equal work claim, it does confirm that the option to have an unfair discrimination dispute arbitrated at the CCMA is not confined to circumstances where an individual employee refers the dispute. In terms of the amendment, the CCMA is permitted to arbitrate an unfair discrimination dispute relating to equal pay for equal work where more than one employee is involved, where the employees involved earn less than R205 433.30 per annum.

Aadil Patel and Samantha Coetzer

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6

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Employment STRIKE GUIDELINE

Our Employment practice's new
EMPLOYMENT STRIKE GUIDELINE
answers our clients' FAQs.

Topics discussed include strikes, lock-outs and picketing.

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Aadil Patel ranked by CHAMBERS GLOBAL 2015 - 2016 in Band 2: Employment.

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Michael Yeates named winner in the **2015 and 2016 ILO Client Choice International Awards** in the category 'Employment and Benefits, South Africa'.



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BBBEE STATUS: LEVEL THREE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 3 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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