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Equal Pay for Work of Equal Value NEWSFLASH - EDITION 2/2017

Time to stop negotiating salaries with new employees?

The advent of Equal Pay for Work of Equal Value legislation means that companies need to pay closer attention, not just to their remuneration policies and pay scales, but to the practices that exist within their businesses each time a line manager is tasked with employing new skill into his/her department.

Despite many companies confirming that they have structured pay scales, largely linked to formalised grading systems and industry benchmarks, just as many companies acknowledge that these ‘rules’ are often bent, to allow operational managers to make the ‘best hire’ for their departments. This inevitably is explained away by arguing that the skill in demand is scarce or subject to a market premium but interestingly, there are almost as many instances where individuals find themselves short-changed because they happen to be working for a lower salary than they should.

To ensure that your practices are not putting your business at risk when it comes to equal pay compliance, ask yourself the following 4 questions…

1. Do you still ask for a payslip from a prospective employee?

If the answer is ‘yes,’ don’t worry, it is still common practice for hiring managers (HR) to request a copy of an individual’s pay slip when considering them for employment. And, whilst most will defend this practice on the premise that they need to understand what the individual’s current income expectations really are, most often this practice is used – whether purposely or not – to enable the organisation the chance to make an offer that is simply a nominal increase on the potential employee’s current salary.

As an ex-recruiter, this was one of my pet peeves! After all, the job has been scoped according to its size and the impact on the business, graded accordingly and allocated a pay scale in line with the internal remuneration structure. Why then should the prospective employee’s current remuneration impact this at all? Either the person is competent to do the job, or not?

The impact of the Equal Pay legislation has already begun challenging this practice. In fact, in several states within the US this practice has been expressly outlawed. Companies are required to make known the salary bracket allocated to the job and expected to offer a salary within this bracket to an individual based on how they would be paid within the organisation relative to their experience, qualifications and other justifiable differentiating factors. However, this means that you may be paying someone a hefty increase when they take up employment, in the case of someone who was previously (relatively) underpaid, or potentially lose out on individuals whose current remuneration is far outside of your remuneration bracket.

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In the case of these highly-paid individuals, two options exist:

(1) the individual wants the job and is prepared to make a salary sacrifice, or

(2) you would need to make a careful assessment, within the context of the legislation and your company policies, whether the individual could justifiably be paid a premium for the role.

2. Do you allow hiring managers to make (motivate) salary adjustments and/or increases on a per individual basis?

Whilst individuals should always be considered as individuals relative to their performance and unique attributes, the Equal Pay legislation now requires that the process of salary adjustment and annual increase be done in the context of the broader business, considering the impact that each adjustment could have on the overall parity in the organisation.

To this end, organisations need to carefully consider how their current performance management and salary adjustment processes are structured and, more importantly, practiced, to eliminate any potential bias and resulting inequality. Whilst performance can be a justifiable factor, it can only be deemed to be fair discrimination if the process is robust, well documented and fairly applied. In my experience, no matter the documented policy and procedure, performance reviews and the resulting salary adjustment process are still very subjective and would prove difficult for an organisation to defend if taken to task at the CCMA.

3. When negotiating salaries above (outside) your normal pay scale do you document the reasons and process in detail?

We know that there are many reasons that a company might have to pay a premium for the right skill, including scarce and critical skill sets and the supply and demand implications associated with Employment Equity targeted PDI. And whilst this may seem like common sense, the challenge in defending these pay anomalies rarely happens in the first instance, rather the questions get answered months – and even years – down the line when pay differentials have moved further and further apart given annual increases, performance pay factors and possibly even retention scheme pay-outs.

Good practice would dictate that at the time that any salary is being offered or extended outside of the normal pay scale that the reasons therefor are documented in the employee's file. Ideally, any premium paid would also be included in the package as an allowance, such as a '*scarce skills allowance*', making the differential clearly identifiable on the pay slip and/or payroll system. This would allow for easy explanation and identification and for monitoring and evaluation going forward, including the possibility, if it is structured as an allowance, to make changes to such an allowance in the case that circumstances linked to that allowance changed, e.g. a sudden increase/decrease in availability of said scarce skill.

4. Can you afford to stop negotiating salaries with employees?

The theoretical answer is simply 'yes'. You have a policy and an associated remuneration structure and everyone should be offered salaries in accordance with it.

The practical answer on the other hand is 'not always' as market forces will dictate the type of skill you need to acquire and retain to compete in the global marketplace.

Within the very real context of a market that ostensibly has millions of people looking for work and only a relative handful who have the necessary skills, qualification and experience you need, the power regarding salaries does lie with these individuals.

What you must do as an organisation, to balance your compliance obligations and the need to maintain the skills required to remain profitable, is to ensure that you have taken the time to properly assess your needs and to document these. Exercises such as reviewing your organogram and identifying critical skills and roles, updating (or creating) job profiles per role that clearly include information about the required skills, qualifications, experience and impact, consider implementing a grading system, refining an objective performance review model that rewards productivity, formalising your remuneration policies and, arguably, most importantly - training your line managers to understand their important role in keeping this going.

If you're interested in learning more about what you need to do to assess your risk in respect of Equal Pay for Work of Equal Value, or how we might help in getting your house in order when it comes to handling the tricky subject of remuneration, please don't hesitate to give me a call for a no-obligation discussion.

GBS has partnered with remuneration experts Emergence Growth and our combined expertise and experience enables us to provide innovative solutions that are not only compliant, but business-growth oriented. For more information, or to discuss your unique needs, please contact natalies@globalbusiness.co.za

Kind Regards

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