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Human Resources Notes

"*The aim of* Human Resources Notes *is to provide concise information on topical human resource management issues to guide effective people management practices.*"
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In this issue

Are work performance ratings credible?

Employers around the world are transforming their performance management processes.

The movement started in organisations such as Deloitte and Adobe where there was a realisation that performance management absorbed a huge amount of time and the results were not seen as credible by either the evaluators or the evaluated. At Deloitte, for example, around 2-million hours was spent on performance reviews and much of that time was being spent on talking about the ratings themselves.

The wave of change in performance management systems has seen many organisations drop performance rating systems altogether. Some reinstated them later. Others have persisted with a ratings free system and are happy

Performance ratings, where managers score employees' performance on a rating scale are still widely used but their efficacy remains controversial. (See a typical rating scale in Fig. 1)

When introducing a ratings-based performance appraisal, organisations need to decide on the size of the rating scale to use. Psychologists, doing psychometric assessments use stanines (9-point scale) and stens (10-point scale). However, for performance appraisals, these large scales tend to offer too many choices and to necessitate too much fine tuning of decision making which opens the door to arguments and ultimately to the credibility of ratings being questioned.

For performance appraisals, a five-point scale is the most widely adopted scale. The mid-point (3) can be used for an average rating and the other ratings can be made from there.

Fig. 1 Typical 5-point performance rating scale (Bussin)

A reason for mistrust of performance ratings (including the popular 5-point scale) is that managers are prone to biases which may prejudice the employees being rated. Common rating errors are the following:

- **Conscious or unconscious biases** which may stem from personal characteristics such as seniority, participation in social activities and friendships. Research has shown that managers

tend to favour people of their own gender or culture.

- The **halo effect** which occurs when a manager lets one aspect of an employee's performance influence her appraisal of other aspects of performance. This happens, for example, when a manager gives an overall good appraisal when an employee produces outstanding performance against one or two KPIs but performs poorly on the other KPIs.

- **Central tendency** happens when a manager fails to differentiate between employees and evaluates everyone as average.

- **Leniency / strictness** – For inappropriate reasons managers appraise employees too leniently or too strictly. Some managers are anxious to be popular and so rate employees better than they deserve. Others want people to perceive them as hard taskmasters and therefore rate employees lower than they deserve.

- **Recency / primacy effect** – A manager remembers more of what their employees have done just before the appraisal than in previous months and allow this to unduly influence their appraisals. For example, a sales person has five poor months and then in the sixth lands a great deal. At the appraisal, the manager overlooks the poor months because of the recent success.

- **Contrast effects**. When managers appraise several employees one after the other, they may carry forward a particularly good or a particularly poor appraisal outcome from one employee to the next.

To avoid these errors undermining the integrity of the performance management system, managers responsible for performance appraisals should be given training in objective performance rating. They must ensure any subjective influence is minimised and their objective interpretations of information given by the employees being appraised must remain the point of focus.

There should also be monitoring of appraisals completed to check for consistent application of rating standards.

Alternatively, organisations can drop the ratings-based system and adopt a continuous performance conversation-based system where the focus is on analysis of substantive work results; problem solving; redefining goals; identifying development opportunities; and enhancing customer centric business performance. ■

References:

1. Bussin M. (2017) Performance Management Reboot Randburg pp 35 – 36
2. Rock, D & Jones B (2015) Why more and more companies are ditching performance ratings Harvard Business Review (online) https://hbr.org/2015/09/why-more-and-more-companies-are-ditching-performance-ratings&ab=Article-Links-End_of_Page_Recirculation accessed 21 Feb 2017
3. Saunders E. (2002) *Assessing Human Competence* Randburg: Knowres Publishing pp.124 – 126, 138

Quote:

"Training Forever: Getting better and getting ready is an obsession of those moving to the top and particularly those attempting to stay there." Tom Peters

Annual report of the Commission for Employment equity

If you read the 2018, 18th annual report of the Commission for Employment Equity ("the Commission"), you could be forgiven for thinking it is the previous year's report with a new cover on. Again, designated employers, those with more than fifty employees and those with fewer than 50 but revenue exceeding prescribed levels, are criticised for not making progress in transforming the racial, gender and the people with disabilities composition of South African workplaces.

The report is a milestone because it marks the 20th year since the Employment Equity Act was made law in South Africa and this is the Commission's 18th annual "progress" report.

The Commission, established in terms of Chapter 4 of the Employment Equity Act (EEA), is a body of representatives of government, organised labour, employers and community. The Commission advises the Minister of Labour on employment equity implementation; recognises achievements of progressive employers and conducts research and submits reports to the Minister of Labour on the EEA.

The 18th annual report, like its predecessors, provides detailed analysis. It is not a "how to transform" guide. The data collected from the 2017 mandatory reports of 27'163 employers, has led the Commission to make the following findings:

- There are still pockets of employers who report "just for the sake of compliance" and who appear not to be committed to the spirit of the law at all.
- The shift achieved from white to black incumbents in Top Management positions at a rate of 1% year on year over the 20-year lifespan of employment equity legislation is a very slow rate of transformation.
- At the Top Management level in the Private Sector the representation of the White Population Group is more than seven times their EAP and in the Government Sector they are just above their EAP. The private sector employs about eight times more Foreign Nationals when compared to the Government sector at this occupational level.
- The picture in terms of gender transformation in South African workplaces remains discouraging. For example, at the top management level over the period 2015 – 2017, there has been an insignificant increase in the representation of females, where their representation remains at half of their National EAP.
- In 2001, designated employers reported that 1% of their total employees were persons with disabilities across all occupational levels of their organisations compared to the 1.3%, in 2017, which is an insignificant increase. (Statistics South Africa has yet to establish the EAP for Persons with Disabilities, which would provide a benchmark to which employers can be compared.
- The Skills Development Act, legislation introduced in tandem with the Employment Equity Act with the goal of using a national skills development programme to address inequalities and unfair discrimination in the labour market, has had a minimal impact.

The Commission believes that there is simply no political will and commitment by top managers to comply with the employment equity act. In her foreword to the report, the Commission Chairperson refers to a paradigm of low ethical leadership being the obstacle to workplace transformation. She says that the country needs to be preoccupied with answering the questions "How do we create ethical leadership and how do we reward ethical leadership?"

A concluding sentiment from the Commission Chairperson is that "twenty years on and we are still nowhere near celebrating effective implementation of transformation legislation. We cannot even begin to contemplate the implementation of a 'sunset' clause on this legislation". ■

Source: 18th Commission for Employment Equity Annual Report 2017 - 2018

Death knell for labour broking in South Africa?

The Labour Relations Act (LRA) provides for Temporary Employment Services, more commonly known as labour brokers, who at a fee procure employees to perform work for a client. The employees sign employment contracts with labour brokers and are remunerated by the labour broker. The employees perform duties required by the client companies.

This non-standard form of employment has become popular in South Africa. On average close to 1 million[1] staff are provided daily to employers in the country. For comparison purposes, that's about as many people as are employed in the transport industry in South Africa.[2]

The union movement, with COSATU in the vanguard, have campaigned vigorously for the demise of the

labour broking industry. The unions' argument, voiced by COSATU, is that labour brokers perpetuate the exploitation of workers. In their view:

1. Labour brokers do not create jobs, they access jobs that already exist, and which in many cases would have existed previously as permanent full-time jobs.
2. Labour broker jobs are characterised by insecure contractual relations and downgrading of wages and employment terms.
3. Labour broker workers are paid less than permanent workers, and do not get the same benefits.
4. Labour brokers also provide scab labour and therefore serve as strike breakers.
5. Labour brokering allows employers to evade their LRA obligations. They offer a way of outsourcing labour relations to a third party, and making it much more difficult for workers to exercise their rights.[3]

The Constitutional Court has made a landmark judgement which concerned the interpretation of section 198A(3)(b) of the LRA.[4] The section was part of the 2015 amendments to the LRA and sought to restrict labour broker usage to temporary employment needs. The judgement is likely to change the labour broker industry in South Africa forever.

In 2015, Assign Services, a labour broker, placed with a client "Krost", 22 workers, several of whom were members of NUMSA (metalworkers' union). The placed workers provided services to Krost for a period exceeding three months and on a full-time basis. Assign Services' view was that section 198A(3)(b) created a dual employer relationship between it and Krost with the placed workers, while NUMSA contended that a sole employer relationship between Krost and the placed employees resulted from the section.

At the first level of dispute, the CCMA found in favour of NUMSA's contention. The union's success was reversed by the Labour Court and thereafter the Labour Appeal Court. The matter then moved up to the Constitutional Court for the final say.

The Constitutional Court in a 9:1 majority decision found that, for the first three months the labour broker is the employer and then after that time lapse the client becomes the sole employer. The majority found that the language used by the legislature is plain and that when the language is interpreted in the context of the right to fair labour practices in section 23 of the Constitution and the purpose of the LRA, it supports the sole employer interpretation.

The labour broking industry has relied on long term placement of employees at client companies. With this arrangement no longer permitted, employers will be hard pressed to find value in using labour brokers other than for limited temporary employee needs as envisaged by the LRA. The labour broking industry will battle to survive this setback to its reason for existence. ■

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1. Origin Consulting (2018) What do Labour Brokers Do? (online) http://www.labourbroker.co.za/method.html Accessed: 1 September 2018 and National Association of Bargaining Councils, referred to in COSATU Today (online) http://www.cosatu.org.za/show.php?ID=6359 Accessed 1 September 2018

2. Stats SA (2018) Quarterly Labour Force Survey Quarter 2: 2018 http://www.statssa.gov.za/publications/P0211/P02112ndQuarter2018.pdf Accessed: 1 September 2018

3. COSATU Today *op cit*

4. Assign Services (Pty) Limited v National Union of Metalworkers of South Africa and Others [2018] ZACC 22

Not all job applicants are honest:

"We had a candidate send a text with a photo of his car after he had an "accident" which is why he didn't show up to the interview. He had mentioned in a previous phone conversation that he drove a truck... picture was a BMW. Also, the photo he sent was the first result when you search Google for wrecked BMW. The final kicker? The photo was taken in India. We emailed back with the visual of the search results and he never responded again."

Source: https://www.inc.com/jt-odonnell/5-hilarious-lies-job-seekers-told-employers-and-the-valuable-recruiting-lesson-l.html Accessed 24 August 2018 (Direct quote from source)

Whistle-blowing on Facebook

Employers should have a social media policy which regulates (1) the nature of posts that employees are permitted to share or post; (2) the use of social media during working hours; and (3) informs employees of the disciplinary outcomes of online misconduct. In addition to the policy a programme of awareness training will be valuable. Although employers often win in court cases about employees' reputation harming social media activities, the damage is already done.

In the widespread and fast-growing social media environment the scope of case subject matter is ever broadening. Here's a case about 'whistle-blowing' on Facebook.

Cape Town's Groote Schuur Hospital dismissed an employee who published complaints on Facebook about the state of the toilets at the hospital, as well as allegations that the health of patients and staff was being compromised, because dirty air was being circulated through the hospital via the air conditioning system. He was told to stop. He did not. The employee's refusal to heed the instruction was persistent and deliberate, and the employer dismissed him for gross insubordination.

The employee claimed his disclosure was protected in terms of the Protected Disclosures Act, 2000 and therefore his dismissal was automatically unfair.

The employee perceived several health hazards in the hospital and on a few occasions over a three-year period he raised them with the medical doctor in charge of staff health. Although the doctor acknowledged there was merit in some of his assertions, she did not agree with most of them.

The employee then resorted to airing his views on the health hazards on Facebook. He substantiated his allegations with photographic material. The head of the employee's department wrote to him and told him to stop the posts. The HOD said the employee was bringing the name of Groote Schuur Hospital into disrepute. The employee did not stop his Facebook posts, which resulted in the HOD issuing the employee a final written instruction to stop the posts with immediate effect or face dismissal for gross insubordination. Again, the employee did not stop his Facebook activities and he was dismissed.

The Labour Court had to decide whether the employee's disclosures on Facebook qualified as a "protected disclosure" thereby making his dismissal automatically unfair.

The Labour Court found that notwithstanding the employee's concerns about health hazards being genuine, the employee erred in using Facebook to disclose his concerns. The Protected Disclosures Act requires an employee to disclose information regarding improprieties by his employer in a *responsible manner*. This requirement balances the employer's interest in protecting its reputation against the public interest in disclosure of irregularities. Information ought preferably to be disclosed to the employer or to a body which, in the ordinary course, deals with the irregularity in question (here, the Department of Labour which administers the Occupational Health and Safety Act).

In this case, the employee did first raise his concerns with his employer (which were taken seriously) and thereafter, he continued to publicise his allegations to the world, on the internet. It was unnecessary to publish to the international community, who could do little to help.

The internet is, unlike the press, not subject to editorial policy. There was no prospect of a moderator contacting the Hospital for its side of the story so that the public be given a balanced perspective. The publication was therefore unfair as well as unreasonable. In all the circumstances, the disclosure was unreasonable. Nor was it made in a responsible manner. Therefore, the disclosure does not meet the requirements set out in the Protected Disclosures Act. The employee's dismissal for his insubordinate Facebook campaign was held by the court to be fair. ■

Source: Beaurain v Martin N.O. and Others (C16/2012) [2014] ZALCCT 16; (2014) 35 ILJ 2443 (LC) (16 April 2014)

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HUMAN RESOURCES SERVICES

We advise and help clients implement HR practices for business success

lower costs ● reduced risks ● productivity ● growth
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We resolve clients' employee issues and harness the worth of employees

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1.	Outsourced HR partner	Regular on-site presence to identify, prioritise and proactively deal with employee issues affecting business performance.
2.	HR strategy	Identify people challenges and opportunities and implement initiatives to lever business performance.
3.	Governance	Implement a framework of policies, procedures and practices which are compliant with employment laws and support business operations.
4.	Training	Develop and facilitate training in industrial relations, supervisory and management skills, negotiation, employment equity.
5.	Fair dismissal	Execute all aspects of the disciplinary process including investigation, charge formulation, initiation, chairing.

"Our goal is to provide HR consulting services which make client companies more profitable" – Tennant Human Capital Solutions

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