

The year ahead for employers

 By [Johan Botes](#)

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Three big issues that employers are considering as they prepare for 2022 include the opportunities, risks and challenges relating to working from home; implementing mandatory vaccination policies after a return to the office; and increased scrutiny of the gender and ethnicity pay gap.



Johan Botes

Working from home

Post-pandemic, working from home is fast becoming a standard business practice, with many opportunities, but also risks, associated with establishing a permanently remote workforce. The numerous factors to be considered during the planning and implementation of remote work policies include employment law stipulations, corporate and employee tax repercussions, workplace health and safety regulations and employee monitoring and data privacy concerns.

There are numerous opportunities associated with remote work. Research confirms that many employees feel happier working from home, it cuts down on the time and costs of commuting and the flexibility brings an element of freedom to the working day. Remote work can also help in recruitment, for example - employers are no longer limited to a pool of potential employment candidates within a commutable distance of where they are based.

Practically, however, there are many challenges that must be addressed before remote working is made a permanent policy. For example, employers must look at the ability of each job to be effectively performed remotely, what changes there might be to working hours, and whether remote work will be permanent. Legally, the employer must consider the restrictions of each country in which employees are based, as well as immigration and tax issues for employees who might be working from home in other countries.

Employers must also be mindful of the cost of home equipment and expenses, including insurance and compliance monitoring, and if they or the employee will bear the cost. Data security and protection laws must also be considered when setting up remote working capabilities. Protecting the workplace culture and keeping a check on employee mental health, as well as updating policies around job performance assessments and career progression must also be considered.

Further, a diverse and inclusive team is essential to drive innovation and improve competition in the post pandemic business environment, and employers must address this in their remote working policies. Employers must also consider how diversity and inclusion are impacted by the work-from-home scenario and how home-based settings differ for different segments of the workforce. The key is in being able to unlock the positive results of the work-from-home experience whilst managing the downside.

Mandatory vaccine policies

For employers asking employees to head back to the office, we expect that the implementation mandatory vaccination policies will be a key challenge. In South Africa, an amendment to the Consolidated Direction on Occupational Health and Safety Measures in Certain Workplaces (Directive) was published in June 2021. This Directive made provision for employers to implement a mandatory vaccination policy. Per the Directive, employers were given a period to undertake risk assessments of their businesses, after which they had to develop plans setting out implementable measures to deal with employee vaccination. The Directive set out employer guidelines regarding the drafting and implementing of a mandatory vaccination policy, with importance placed on "public health, the constitutional rights of employees and the efficient operation of the employer's business."

The Directive states that where an employer makes vaccination mandatory, it must notify each employee identified in the plan that they must be vaccinated as and when the vaccination is available to them, and that they may consult with a health and safety worker or trade union representative, should they wish to do so. Further, the employer must inform the employee of their right to refuse the vaccine on certain grounds. These grounds make provision for an employee to refuse the vaccine on the medical basis of a "contraindication" of the vaccine (ie. an allergic reaction to the first dose of the vaccine or to a component of the vaccine), or the constitutional basis of the employee's right to bodily integrity and/or right to freedom of conscience, religion, thought, belief and opinion, as set out in the Constitution.

The Directive prescribes that where an employee does raise one of these objections, the employer is required to counsel the employee, refer them for a medical evaluation for any allergic reaction to the vaccine and, where necessary, reasonably accommodate them in accordance with the Code of Good Practice: Employment of People with Disabilities, as published in terms of the Employment Equity Act. Such accommodation may include allowing the employee to work at home, in isolation at the workplace, or in limited circumstances, to wear a mask at work.

Navigating the minefield of mandatory vaccinations versus the right to bodily integrity is no easy feat, and employers will have to ensure they communicate clearly, sensitively and with empathy as they manage the process of keeping their employees physically safe, while also respecting their rights.

Scrutiny of income inequality

As the world grasps the imbalanced impact of the pandemic on women and disadvantage communities, we expect further scrutiny of the gender pay gap and, of particular importance in South Africa, the ethnicity pay gap.

Recent reports show that South Africa is one of the world's most unequal countries when it comes to income. Research by Aroop Chatterjee, Léo Czajka and Amory Gethin found that, before taxes, the share of average income going to the top 1% of earners in South Africa increased by 50% in the period 1993 to 2019, while the income of the poorest 50% decreased by more than 30%, after inflation.

Unemployment in South Africa is at the heart of inequality - in the second quarter of 2021, the unemployment rate was 34.4%. Further, the StatsSA Quarterly Labour Force Survey in the 2nd quarter of 2021, found that the South African labour market suited men better than women. Men are more likely to be in paid employment than women, regardless of race. The rate of unemployment among women was 36.8% in the 2nd quarter of 2021 compared to 32.4% amongst men. Ethnicity gaps, especially when combined with gender income inequality, are concerning - the unemployment rate among black African women was 41% during this period compared to 8.2% among white women, 22.4% among Indian/Asian women and 29.9% among coloured women.

In South Africa, Section 27 of the Employment Equity Act (EEA) requires designated employers (employers who employ more than 50 employees or meet a certain annual turnover threshold specific to their threshold) to report income differentials across both race and gender groups, but this is a confidential document submitted to the Department of Labour and it does not have to be made transparent.

In addition to complying with these legal requirements, employers are addressing income inequality within their businesses through analysing data on pay differentials and conducting audits of their employment policies and practices. Income equality considerations should permeate all business processes that relate to and influence the employee experience - from recruitment to inclusive on-boarding initiatives, teambuilding culture, performance reviews, succession planning, mentoring and sponsorship, for example. The focus should be on empowering employees to have, not only equal pay for work of equal value, but also, for example, equitable access to work opportunities and training, the right to capital assets, as well as access to programmes that focus on, for example, women's health and well-being in the workplace.

Employers should set targets and measurable goals to address income and ensure that such targets are published in the public domain. Transparency has been noted as key in addressing and being held accountable for reducing global income inequality.

Beyond the need to do the right thing, as well as to comply with country-specific employment regulations, there are other reasons for addressing income equality – most notably the high correlation between income equality and diversity, workforce productivity and business profits.

While the pandemic has exacerbated already existing employment challenges, it also gave businesses the opportunity to test and implement updated policies that often proved to be more beneficial to both their workforce and their bottom line. The challenge going forward will be in deciding which of these policies should be made permanent, and how they should be implemented to ensure both measurable, transparent equality and consideration for the rights and needs of the workforce.

ABOUT JOHAN BOTES

Johan Botes is Head of the Employment Practice for Baker McKenzie in Johannesburg. He has a Master's Degree in Labour Law, and regularly appears in the CCMA, Bargaining Councils, Labour Court and High Court. Contact Johan: Tel: +27 (0) 11 911 4400, mobile: +27 (0) 82 418 0157, switchboard: +27 (0) 11 911 4300, fax: +27 (0) 11 784 2855
Johan.Botes@bakermckenzie.com

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