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EMPLOYMENT

Remuneration of employees in different provinces

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Duma v Minister of Correctional Services & others

ISSUE

Whether the failure to pay an employee in one province the same remuneration as employees in the same positions in other provinces constitutes unfair discrimination based on the arbitrary ground of 'geographical location' in terms of the Employment Equity Act 55 of 1998 ("EEA").

COURT'S DECISION

In *Duma v Minister of Correctional Services & others* (Case Number: C604/2012, 2 February 2016), Ms Duma, an employee of the Department of Correctional Services, ("Duma"), approached the Labour Court and claimed that she had been discriminated against by her employer on an unlisted ground.

On 8 September 2000 Duma was appointed as a custodial officer at salary level 3 at the Department of Correctional Services ("department"). Duma was later promoted to the post of 'Senior Correctional Officer: Manager Legal Services: Voorberg Management Area: Western Cape'. This post was classified as a salary 'level 8' post. A job advertisement was subsequently placed for a number of Senior Correctional Officer posts. It was decided, by the department, that these posts should be changed to Assistant Director posts. These posts were classified as a salary 'level 9' post.

Duma claimed that her position should, in fact, have been classified as a salary 'level 9' position and she should therefore have received higher remuneration. Relying on section 6(1) of the EEA (prior to its amendment in terms of the Employment Equity Amendment Act 47 of 2013 ("Amendment Act"), Duma claimed that she had been unfairly discrimination against because employees of the department in other geographical areas (Limpopo, Mpumalanga, North-West and Kwazulu-Natal) who had been employed as Managers: Legal Services were being remunerated in accordance with 'level 9' whereas she, who was employed in the Western Cape was being paid in accordance with 'level 8' despite occupying the same post.

The Court noted that an employee seeking relief in terms of section 6(1) of the EEA must be able to prove that there was differential conduct which amount to discrimination and that such discrimination was unfair. Discrimination will be present where the conduct impairs the employee's human dignity.

The Court found that it was entirely arbitrary conduct for an employee who is remunerated more simply because they reside in a particular province. Although this case was decided before the Amendment Act which specifically introduces the notion of an 'arbitrary ground' into the legislation, the Court nonetheless found that the conduct infringed on Duma's dignity. The Court found that this view was fortified by the provisions of section 6(4) of the Amendment Act even though it was not applicable to the matter at hand.

Having regard to the case of *SA Airways (Pty) Ltd v Jansen van Vuuren & Another,* the Court also found that the discrimination was unfair. While the Department offered little more than a bald denial that there had been unfair discrimination, Duma advanced a number of compelling grounds indicating that such discrimination was in fact unfair. One such ground was the fact

that "any distinction between employees based solely on the area of the country in which they work is, given our history, anathema to the society envisaged by the Constitution".

As a result Duma was awarded an amount equivalent to the difference between the remuneration she had received and the remuneration she should have received on the higher post grade. In addition, she was to be paid the higher salary going forward.

IMPORTANCE OF THIS CASE

This case introduces a further ground upon which an employee may not be discriminated against unfairly: geographical location. It also highlights the importance of ensuring that employees employed in the same post throughout the country are remunerated equally unless there is a sound justification for such differentiation. While this case was decided before the Amendment Act came into effect it is nonetheless clear that such ground would be equally valid in terms of the newly amended EEA.

INCREASE IN MINIMUM WAGE FOR FARMWORKERS

On 3 February 2016, the Minister of Labour published an amendment to the minimum wage for Sectoral Determination 13: Farmworkers sector. The Amendment became **effective on 1 March 2016** and will remain in effect until 28 February 2017.

The amendments are set out below.

Minimum Wage for Farmworkers

	2015 – 2016	1 March 2016 – 28 February 2017
Monthly Rate	R2 606.78	R2 778.83
Weekly Rate	R601.61	R641.32
Daily Rate	R120.32	R128.26
Hourly Rate	R13.37	R14.25

INCREASE IN MINIMUM WAGE FOR WHOLESALE AND RETAIL WORKERS

On 9 February 2016, the Minister of Labour repealed in its entirety the Sectoral Determination 9: Wholesale and Retail Workers sector, and replaced it with a new Sectoral Determination for such sector which **came into effect of 1 March 2016**. The new minimum wages are set out below.

Minimum wage for wholesale and retail workers in Area A

Metropolitan and Local Municipality of:
Bergrivier, Breederivier, Buffalo City, Cape Agulhas, Cederberg, City of Cape Town, City of Johannesburg Metropolitan Municipality, City of Tshwane, Drakenstein, Ekurhuleni, Emalahleni, Emfuleni, Ethekwini Metropolitan Unicity, Gamagara, George, Hibiscus Coast, Karoo Hoogland, Kgatelopele, Khara Hais, Knysna, Kungwini, Kouga, Hessequa local authority, Lesedi, Makana, Mangaung, Matzikama, Metsimaholo, Middelburg (Mpumalanga), Midvaal, Mngeni, Mogale, Mosselbaai, Msunduzi, Mtubatuba, Nama Khoi, Nelson Mandela, Nokeng tsa Taemane, Oudtshoorn, Overstrand, Plettenbergbaai, Potchefstroom, Randfontein, Richtersveld, Saldanha Bay, Sol Plaatjie, Stellenbosch, Swartland, Swellendam, Theewaterskloof, Umdoni, uMhlathuze and Witzenberg.

	Rands per hour	Rands per week	Rands per month	27 Hours Rands per hour
Assistant manager	31.96	1437.98	6230.77	33.12
Cashier	18.77	844.74	3660.27	19.44

Clerk	22.09	994.03	4307.14	22.88
Displayer	22.94	1032.39	4473.33	23.76
Gross Vehicle mass: < 3 500kg	17.05	767.19	3324.22	17.66
Gross Vehicle mass: 3 501 < 9000kg	20.41	918.3	3978.98	21.14
Gross Vehicle mass: 9001 < 16 000kg	22.22	999.81	4332.17	23.02
Gross Vehicle mass: 16 001kg >	24.41	1098.58	4760.15	25.28
Forklift operator	16.72	752.37	3260.03	17.32
General assistant/Trolley Collectors	15.4	693.22	3003.74	15.95
Manager	35.04	1576.68	6831.76	36.29
Merchandiser	17.69	796.21	3449.98	18.33
Security Guard	15.64	703.93	3050.15	16.21
Sales Assistant	22.09	994.03	4307.14	22.88
Sales Person	22.09	994.03	4307.14	22.88
Shop Assistant	17.69	796.21	3449.98	18.33
Supervisor	27.17	1222.57	5297.41	28.15
Trainee Manager	29.35	1320.82	5723.1	30.4

Minimum wage for wholesale and retail workers in Area B

Metropolitan and Local Municipalities not listed in Area A.

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