

# How the rise of online shopping could shake up retail employment

Motorcycle drivers delivering goods ranging from groceries to clothing have become ubiquitous on South Africa's roads, especially since the start of the COVID-19 pandemic. The question that arises is: are these drivers part of the wholesale and retail sector, or are they part of the road freight and logistics industry?



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The answer could have important implications for wholesale and retail employers in terms of salary costs. It even raises the possibility of certain employees bringing equal-pay-for-equal work claims, says Rosalind Davey, partner in the Employment and Benefits Practice of African law firm, Bowmans.

While some bargaining council agents argue that drivers in general fall into the road freight and logistics industry – where minimum wages tend to be higher than in the wholesale and retail sector – this is an oversimplification, says Davey.

She adds that there is significant overlap between the two industries, specifically in the areas of warehousing and distribution. However, the classification of employees into one sector or the other would depend on the business model of the employer.

"You need to look at what the primary business is and what business is ancillary. You also need to look at who owns the goods being transported. Are you storing and distributing your own goods in your own facilities, or are you storing and

distributing someone else's goods for reward?"

Using the example of drivers delivering your online shopping, Davey explains that they would in all likelihood fall under the wholesale and retail industry if directly employed by the retail business. "But if the retail business outsources its deliveries, the drivers will in all likelihood fall under the road freight and logistics industry because the service provider would be providing the delivery service for reward," she says.

## Cost implications

The cost implications could be substantial, says Davey. "The minimum wages in the road freight and logistics industry are different from those in the wholesale and retail sector, so the wage bill could go up quite significantly if a retail business which employed its own drivers subsequently outsourced the distribution function to a service provider."

Davey says a scenario that could present particular complications for employers is insourcing a service that had previously been outsourced.

"When the service is outsourced, the employees are no longer part of the wholesale and retail industry and become part of the road freight industry. But when the service is insourced again, the employees do not suddenly become wholesale and retail industry employees. They remain covered by the main collective agreement that was reached during the outsourcing process, specifically where there was a 197 transfer under the Labour Relations Act."



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The reason is that collective agreements are transferred with the employees. "Even after the collective agreement has expired, employees who were transferred to the new employer would continue to enjoy those terms and conditions. It would be tricky to change those terms and conditions if this resulted in the employees being worse off after the transfer," says Davey.

This means an employer may find itself paying the same employees considerably more than the rate it was paying them before the service was outsourced.

"It also begs the question of how easy it is to ring-fence those employees and whether it opens the employer to equal-pay-for-equal work claims from ordinary retail employees who are governed by the wholesale and retail sectoral determination."

These possible consequences illustrate how important it is for companies to look ahead when making decisions that affect their business models. "It is very important to look at your long-term strategy to ensure you avoid greater difficulty in realigning your employees down the line," says Davey.

In the meantime, drivers are on the move, whether in wholesale and retail or as part of the road freight and logistics industry, as online shopping continues to gain momentum in South Africa.