

# What employers can do about unsecured lending

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Employers may or may not be aware of the fact that a large portion of employees' income is often allocated to debt repayments. Although the National Credit Act (NCA) was introduced in 2007 it did not deter lenders from aggressively pursuing consumers with attractively packaged loans.

Loan consultants are often close to the point of sale and equipped with mobile devices to capture a consumer's identity document and proof of income. "Loans can be processed within a few minutes, though it is debatable whether proper investigations into affordability take place," says Meyer de Waal, a practising attorney and founder of rent2buy and My Budget Fitness.

"Consumers who earn the least are usually the softest targets for such types of lending and in the second term of 2012, an amount of R9bn rand was advanced on unsecured debt to consumers who earn less than R15000 a month, compared to only R1.5bn towards home loans in the same sector," says De Waal. "If one considers the value of the average unsecured loan versus a home loan of R400000 in this sector, it reflects the volume of unsecured transactions processed to consumers."

## Looking at the bigger picture

The interest rates of unsecured loans are usually much higher than normal loans and, as such, unsecured loans are supposed to carry more risk. De Waal regularly investigates these types of loans and he believes that using the 'risk factor' as an excuse to increase the interest rate must be investigated as these loans are often quite close to being 'secured loans' and are only granted to applicants in permanent employment.

"It may perhaps take the lender a little longer to perfect the security of his loan (compared to a home loan, which is registered simultaneously with the release of the funds under the loan), as the lender must follow a legal process to obtain an emoluments attachment order (EAO) against the salary of the employee. But once the order is obtained, the employer is compelled, through an order of a court, to deduct the payment due to the lender and thus there is no difference between this and a 'secured loan,'" says De Waal.

"An extreme situation I encountered was that of a police sergeant whose take-home pay was only R185 a month after he made provision for his rent and his uniform allowance – this was because of an EAO against his salary. The sergeant said it was just too easy to obtain debt. The sergeant's superior told me the situation was 'none of his business', but further discussion showed him how vulnerable his employee had become to bribery and corruption as a result of his dire financial circumstances."

It's worth noting that these orders are often referred to as 'garnishee orders', but this is technically speaking incorrect, according to Reana Steyn, head of legal at the Credit Ombud. The correct term is an 'emoluments attachment order' (EAO), which is the deduction of an amount from an employee's weekly or monthly salary.

### **Restructuring debt to save**

A demand for wage increases led to recent labour unrest in the mining and agriculture sectors. Employees may demand a 10-15% increase, but employers say they can only afford 5%.

"We conducted an analysis for 11 municipal workers during a recent workshop and we established that if the debt portfolios of nine of these workers are restructured they would, on average, each save R17320 a year," says De Waal. "For many, this will be a saving of more than their monthly salary – or it can be regarded as a 12% increase of their income, or 13<sup>th</sup> cheque, without any burden of additional income tax on the increase in wages for the employee or increase in the salary payroll, which would mean an expense for the employer."

De Waal says that employers are now assisting with restructuring their staff debt as it reduces the need to meet the demand for wage increases. He says that educating staff about budgeting will help to keep them out of the debt trap in the future, which means that a 'not my problem' attitude on the part of employers is short-sighted.

If budgeting can be integrated into a social wellness awareness programme, for example, employees can take control of their circumstances and be more productive, stay away from work less often, and not have to dodge debt collectors.

### **Employers should play a bigger role**

Steyn says that employers should be playing a bigger role to assist suffering employees. Playing a more active role in educating staff is one route that employers can take. Payroll may point out that it is not their job to question judgments against employees, but it is possible for employers to request an audit of all the EAOs against their employees' salaries, for example, to ensure that they are all legal, and that they are not being overcharged.

Debt collectors and law firms have come under fire for 'garnishee abuse', and consumers are sometimes charged up to eight times their original loan amounts to clear their debt.

"Employees don't always check their pay-slips, and while it's not payroll's job to check for them companies can certainly hold training sessions to make sure employees know more about the conditions of their loans. If, for example, an employee can't pay the instalment required as it is too high. It is possible to go back to the court or to the collections attorney and ask for a reduction, so he or she can pay a lesser amount. But of course, the longer you pay, the more interest you'll be paying, so it's never in your interest to pay as little as possible," says Steyn.

### **Consumers need to know what they are signing**

"Consumers also need to know what they are signing. They sign a consent to a judgment and an EAO – but they don't always read or understand what they sign, so they need to be educated in this regard. Remember that ignorance of the law is no excuse," says Steyn. Employees should be able to approach their employers if they are uncertain about what effect an EAO will have on their salaries.

"Having assisted consumers with complaints, we know that a great many are invalid, and that they were illegally obtained," says Steyn. "However, employees should be aware that they're often approached at their workplaces and 'bullied' into signing on the spot, leaving them feeling threatened and abused. This is not legal from a consumer protection point of view."

### **Task team appointed**

A task team has been appointed to investigate and research the garnishee system and establish a code of conduct to regulate EAOs in the short term, says Credit Ombud Manie van Schalkwyk.

"Garnishee orders are a favoured method for credit providers to get their money back because the process is time and cost-effective and easy to implement, but there appears to be widespread abuse of the system," says Van Schalkwyk. "The current practice is unsustainable and its continuation will have a significant socio-economic impact on our country."

Independent research conducted by the University of Pretoria has drawn attention to issues of misrepresentation by collecting attorneys, forgery of signatures, unreasonable instalments and high and unnecessary costs, all of which add to the broader problems of a lack of financial and legal literacy skills among consumers and insufficient communication between credit providers and employers.

**Editor's thoughts:**

A lack of knowledge amongst employers needs to be addressed so that they can assist employees with regard to EAOs on their pay-slips. Over-indebtedness puts pressure on employees and they often think the only solution is higher wages, when this is but one part of a greater socio-economic problem. While some of these orders may well be above board and legal, their morality is questionable, and it would be good to see the task team drawing a line in the sand when it comes to over-indebted consumers. Do you think employers can play a greater role in terms of managing employee debt? Comment below or email [fiona@fanews.co.za](mailto:fiona@fanews.co.za).