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We Wish you a Feministmas: An open Letter to Santa Claus

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Dear Santa Claus,

While I am aware that the South African branch of your North Pole office is usually inundated with peculiar requests all the way from Tietiesbaai to Tweebuffelsmeteenskoot-morsdoodgeskietfontein, this is perhaps the most significant correspondence that you have received to date. As you may have noted, the global expansion of movements, such as *#MeToo*, *#MenAreTrash*, *#HeForShe*, *#EverydaySexism*, *#ImWithHer* and *#TimesUp*, to protest sexual assault, sexism, misogyny, abuse and patriarchy are indicative of a new breed of feminism. While the extent of the mistreatment suffered by women may not always come to light for a multitude of reasons, one thing is a universal truth - women experience varying forms of inequality in their personal and professional capacities, regardless of their race, age, sexual orientation, marital status, ethnicity, pregnancy status, level of education, profession or income level.

You may also deliver a few gifts to women who have fought or are still fighting for women's rights around the world such as Simone de Beauvoir, Ruth Bader Ginsburg, Beyoncé, Theresa Kachindamoto, Leona Theron, Murunwa Mutele and Lilian Ngoyi to name a few. I do not doubt that Beyoncé's music and concert tickets, with feminism-inspired themes, are in high demand in your workshop at an unprecedented rate. I digress. Matters of systemic discrimination, bias and sexism are often difficult to articulate succinctly as women are

often burdened with the mental toll that comes with speaking up about injustices in society (Hackman, 2016). Candy canes and trifles aside, without any sugarcoating, this letter seeks to ascertain why your office employs so few female elves?

1. *Women in employment*

In your capacity as an employer in South Africa, it is of the utmost importance that I highlight our current employment equity landscape in this plight to you. In 2019, the International Labour Organization (ILO) highlighted that women across the world have lower chances of securing employment as compared to their male counterparts (ILO, 2019). At a national level, the global picture by the ILO is more severe. Year-on-year, South African women account for higher rates of unemployment in society (Statistics South Africa, 2018). In instances where women are fortunate to receive employment opportunities in South Africa, it is usually not in the absence of a substantial gender pay gap. During 2018, women earned approximately 28% less than their male equals (ILO, 2018). PricewaterhouseCoopers (2019) in its latest trends report on executive directors highlights that only 3.3% of chief executive officers of entities on the Johannesburg Stock Exchange are women. Now, now – let me hasten to add that I am not suggesting a dramatic, military-style *coup d'état* of your Jeff Bezos-esque position. I am merely asking for pragmatism and a *soupçon* of your generous and transformative Christmas spirit. Is that too much to ask?

2. *A brief history of Santa's Elves*

As you are aware, the origin of the concept of Santa's elves can be traced back to prior to the mid-1800s when house gnomes were utilised by homeowners to ward off evil (Jakobsson, 2015). After the 1850s, these gnomes underwent the proverbial makeover as a result of the literature of numerous prominent authors. Literature and Christmas carols have taught us that you utilise the services of extremely intelligent and efficient elves in your workshop. Your very first elves were identified as Alabaster Snowball, Bushy Evergreen,

Pepper Minstix, Shinny Upatree, Sugarplum Mary and Wunorse Openslae. While there are varying and vague accounts about the actual number of elves and their functions, for intellectual property and competition law reasons I imagine, it remains apparent that your employment equity practices leave much to be desired in our pluralistic democratic dispensation. Of the six elves listed above, Sugarplum Mary is widely identified as the only female elf employed in your workshop. She is often referred to, in correspondence from your office, as a great cook and the top assistant to Mrs Claus, whereas the remaining five elves are often described as competent engineers, academics, security specialists and the like. This description by your office reinforces the patriarchal view of the "...prevailing societal echelons where women are relegated to the traditional subordinated roles" (Wonci, 2019, p 1). This description by your office is also contrary to the view shared by the Commission for Gender Equality that:

"Women make enormous contributions to economies, whether in businesses, on farms, as entrepreneurs or employees, or by doing unpaid care work at home. Despite their immense contribution, they remain disproportionately affected by poverty, discrimination and exploitation" (2018, p 64).

3. *The legal framework*

It would be remiss of me not to bring our South African employment equity legal framework to your attention. The Constitution of the Republic of South Africa, 1996 as the supreme law of our country serves as the litmus test for all other laws. Section 9 of the Constitution provides that:

"(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3).

(3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair" (1996).

While I am aware that you read large volumes of correspondence with outlandish Christmas requests for new spouses, snow and sports cars daily, and that you probably require some Christmas sherry and cheer at this juncture, the abovementioned section is imperative when interpreting your role as an employer. I have received hundreds of reports from women who have applied for the prestigious position of the elf at your workshop and have all been denied employment opportunities based on their gender alone. This practice contravenes section 9(4) and (5) of the Constitution of the Republic of South Africa, 1996. Section 9 of the Constitution is to be read with the Employment Equity Act, 55 of 1998 as the primary piece of legislation that has been implemented to eliminate unfair discrimination in the workplace and to implement affirmative action measures.

Upon further investigation of the brief legal framework set out above and the evidence at hand, it is unmistakable that your organisation's failure to employ female elves is not related to an inherent requirement of the job or the implementation of affirmative action measures as set out in section 6 (2) of the Employment Equity Act, 55 of 1998 (the Act). Additionally, you have also been identified as a designated employer in terms of section 13(1) of the Act that requires you to implement affirmative action measures in relation to Black people, women and persons with disabilities who are suitably qualified South African citizens. These persons are collectively known as 'designated persons'.

In terms of section 15(1) of the Act, designated employers are required to ensure that suitably qualified designated persons have equal employment opportunities and are represented across all occupational levels and categories.

If you remain unconvinced by my argument thus far, please consult the matter of *Rustenburg Platinum Mines Limited v UASA obo Pietersen and Others* (2018) 39 ILJ 1330 (LC). While this case relates to sexual harassment, Tlhotlhemaje J delivers a compelling argument for legal practitioners and society to consider the workplace through the perspective of women and the various global movements that have sprouted in recent years to combat the discrimination that we face. I am certain that you are very proud of the work that your organisation performs daily but, could you possibly imagine being denied your position as Santa Claus of the world at large simply because of your gender or any other factor such as your race, age, sexual orientation or marital status?

4. *A case for women everywhere*

To conclude, I would like to bring your attention to a few other well-known women in history who have changed the trajectory of many lives by adding value and being exemplary in their respective professions or trades. Charlotte Makgomo Maxeke was a South African religious leader and social and political activist. She was the first black South African woman to graduate with a university degree and the first black African woman to graduate from an American university. I am certain you have delivered some Christmas cheer to Charlotte Maxeke Academic Hospital, named after her of course. In 1843, Ada Lovelace developed the world's first computer algorithm, which, as I am sure you are well aware, forms the basis of your extensive operation, especially when using artificial intelligence techniques and social media to deliver gifts to all the corners of the world.

Most recently, in 2019, Katie Bouman developed an algorithm named 'CHIRP' that allowed researchers to take the world's first image of a black hole. A quick question, Mr Santa Claus – did you know that the

technology that allows us to screen telephone calls before deciding to answer the telephone was also invented by a woman known as Shirley Ann Jackson in the 1970s? I am certain that your office has a very rigorous telephone screening policy to avoid calls from disgruntled children who have been gifted incorrect or dissatisfactory toys on Christmas? Sometimes being employed in customer service is the pits. While countless women could be added to the above list, my point is to demonstrate how valuable women can be, not just for what we can do but simply because of who we are. Creating additional employment opportunities for women within your workshop would not only lead to increased equality and transformation but could also engender the identification of operational efficiencies and synergies as well as a culture of inclusivity and diversity. As Desmond Tutu rightfully states: "If we are going to see real development in the world, then our best investment is women".

If all else fails and you don't agree that a feminism-based approach could be the gift that keeps on giving in your workshop as I have explained herein; Dear Santa, Kind Sir, at the very least please consider sending myself and other feminists across the world a Beyoncé album this Christmas. We require a new, upbeat soundtrack to drown out the monotony of our daily misogynistic and patriarchy-filled experiences. I look forward to your response and humbly request that you never doubt what us women bring to the table because, as my letter reminds you, we are the table!

Kind regards,
A Tired Feminist

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