

SUMMARY OF THE EMPLOYMENT EQUITY ACT, 55 OF 1998, AS AMENDED ISSUED IN TERMS OF SECTION 25(1)

1. Chapter I – Definition, purpose, interpretation and application

Definitions: Section 1

- (a) Designated groups mean black people, women and people with disabilities who are citizens of the Republic of South Africa by birth or descent, or became citizens of the Republic of South Africa by naturalisation: before 27 April 1994 or after 26 April 1994 and who would have been entitled to acquire citizenship by naturalization prior to that date but were precluded by apartheid policies.
- (b) Designated employer means an employer who employs 50 or more employees, or an employer who employs fewer than 50 employees, but has a total annual turnover as reflected in Schedule 4 of the Act; municipalities and organs of State. Employers can also volunteer to become designated employers.
- (c) Temporary employees are employees who are employed for less than three months.

Purpose of the Act: Section 2

The purpose of this act is to achieve equity in the workplace by-

- (a) Promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and
- (b) Implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups to ensure their equitable representation in all occupational levels in the workforce.

Application of the Act: Section 4

- (a) Chapter II applies to all employers and employees. Chapter III applies to designated employers and people from designated groups.
- (b) The South African National Defence Force, National Intelligence Agency, and South African Secret Services are excluded from this Act.

2. Chapter II – prohibition of unfair discrimination

- (a) No person may unfairly discriminate, directly or indirectly, against an employee in any employment policy or practice, on one or more grounds including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth or on any other arbitrary ground.
- (b) It is not unfair discrimination to promote affirmative action consistent with the Act or to prefer or exclude any person on the basis of an inherent job requirement.

2.1. Equal pay for work of equal value: Section 6(4)

- (a) Employers may not unfairly discriminate against employees by providing different terms and conditions of employment between employees of the same employer performing the same or

substantially the same work or work of equal value that is directly or indirectly based on any one or more grounds listed in subsection 6(1) or on any other arbitrary ground.

2.1. Medical testing: Section 7

- (a) Medical testing of an employee is permissible only when legislation requires testing or when this is justifiable for various reasons.
- (b) HIV testing is prohibited unless such testing is determined to be justifiable by the Labour Court.

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2.2. Psychometric testing: Section 8

Psychometric testing and other similar assessments of an employee are prohibited unless the test or assessment being used has been scientifically shown to be valid and reliable, can be applied fairly to all employees, is not biased against any employee; and has been certified by the Health Professions Council of South Africa (HPCSA) established under the Health Professions Act, 56 of 1974 or any other body which may be authorized by law to certify such tests or assessments.

2.3. Disputes concerning Chapter 2: Section 10

- (a) An employee, or applicant for employment, may refer a dispute concerning alleged unfair discrimination, medical or psychological testing to the CCMA for conciliation. This must be done within six months of the alleged discrimination or testing.
- (b) If a dispute is not resolved after conciliation, any party to the dispute may refer it to the Labour Court for adjudication. The parties to a dispute may also agree to refer the dispute for arbitration.
- (c) Unfair dismissal disputes in which unfair discrimination is alleged must be dealt with in terms of the Labour Relations Act. The dismissal must be referred to the CCMA within 30 days.
- (d) An employee may refer a dispute to the CCMA for arbitration if :–
 - (i) the employee alleges sexual harassment; and
 - (ii) in any other case, where the employee earns less than the amount prescribed by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act; or
- (e) Any party may refer the dispute to the CCMA for arbitration.

3. Chapter III – Affirmative Action

3.1 Duties of a designated employer: Section 13

- (a) A designated employer must implement affirmative action measures for designated groups to achieve employment equity.
- (b) In order to implement affirmative action measures, a designated employer must-
 - (i) Consult with employees;
 - (ii) Conduct analysis;
 - (iii) Prepare an Employment Equity Plan; and
 - (iv) Report to the Director-General on progress made in the implementation of the plan.

3.2 Affirmative action measures: Section 15

- (a) Affirmative action measures are measures intended to ensure that suitably qualified employees from designated groups have equal employment opportunities and are equitably represented in all occupational levels of the workforce.
- (b) Such measures must include:
 - (i) Identification and elimination of barriers with an adverse impact on designated groups;
 - (ii) Measures which promote diversity;
 - (iii) Making reasonable accommodation for people from designated groups;
 - (iv) Retention, development and training of designated groups (including skills development); and

- (v) Preferential treatment and numerical goals to ensure equitable representation, which exclude quotas.
- (c) Designated employers are not required to take any decision regarding an employment policy or practice that would establish an absolute barrier to prospective or continued employment or advancement of people not from designated groups.

3.3 Consultation: Section 16 and 17

- (a) A designated employer must consult with its employees and their representatives on employment equity matters
- (b) Designated employers should consult with employees both from designated and non-designated groups, and employees representing the interests of individuals from the various occupational levels.
- (c) Matters for consultation must include issues relating to the conducting of an analysis, preparing and implementing an Employment Equity Plan and preparation and submission of employment equity reports.

3.4 Disclosure of information: Section 18

To ensure meaningful consultation, the employer must disclose relevant information to the consulting parties, subject to section 16 of the Labour Relations Act 66 of 1995.

3.5 Analysis: Section 19

A designated employer must conduct an analysis of employment policies, practices, procedures and the work environment so as to identify employment barriers that adversely affect members of the designated groups. The analysis must also include the development of a workforce profile to determine to what extent designated groups are under-represented in the workplace.

3.6. Employment Equity Plan: Section 20

- (a) A designated employer must prepare and implement an Employment Equity Plan, which must not be shorter than one year and not longer than five years, and should include a timetable for the achievement of goals and objectives for each year of the plan.
- (b) The Director-General may apply to the Labour Court to impose a fine in terms of Schedule 1 for failure to prepare and implement an Employment Equity Plan.

3.7. Report: Section 21

- (a) A designated employer must submit a report to the Director-General annually on the first working day of October or by 15 January of the following year in the case of electronic reporting.
- (b) The Labour Court may, on application by the Director-General, impose a fine contemplated in Schedule 1 of this Act for failure to report.

3.8. Designated employer must assign a manager: Section 24

A designated employer must assign one or more senior managers to ensure implementation and monitoring of the Employment Equity Plan and must make available necessary resources for this purpose.

3.9. Income Differentials: Section 27

- (a) A statement of remuneration and benefits received in each occupational level of that employer's workforce must be submitted by a designated employer to the Employment Conditions Commission (ECC).

- (b) Where disproportionate income differentials or unfair discrimination in terms and conditions of employment as contemplated by section 6(4) of the Act are reflected in the statement contemplated in sub-regulation (a), a designated employer must take measures to progressively reduce such differentials subject to guidance as may be given by the Minister as contemplated in the regulations.

4. Chapter V - Monitoring, Enforcement and Legal Proceedings

4.1 Monitoring: Section 34

Employees or trade union representatives can monitor the implementation of the Act and report any contraventions to the relevant bodies.

4.2 Powers of the Labour Inspector: Section 35

Labour Inspectors are authorised to conduct an inspection as provided for in section 65 and 66 of the Basic Conditions of Employment Act, 1997.

4.3 Undertaking to comply: Section 36

- (a) If the inspector has reasonable grounds to believe a designated employer has failed to comply with its obligations in terms of the Act, the inspector may request and obtain a written undertaking to comply within a specified period.
- (b) If an employer fails to comply with an undertaking, the Director-General may apply to the Labour Court to make such an undertaking an order of the Labour Court.

4.4 Compliance Order: Section 37

- (a) A labour inspector may issue a compliance order to a designated employer if that employer has failed to comply with sections 16, 17, 19, 22, 24, 25, or 26 of this Act.
- (b) If an employer fails to comply with an undertaking, the Director-General may apply to the Labour Court to make such an undertaking an order of the Labour Court.

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4.5 Review by Director-General: Section 43 , 44 and 45

- (a) The Director-General may conduct a review to determine whether an employer is complying with the Act.
- (b) The outcome of the review may result in the Director-General approving the designated employers' Employment Equity Plan: or may make recommendations to fulfil the requirements of the Act.
- (c) If an employer fails to comply with a request made by the Director-General in terms of section 43(2) or a recommendation made by the Director-General in terms of section 44 (b), the Director-General may apply to the Labour Court for an order directing the employer to comply with the request or recommendation or to impose a fine in terms of Schedule 1 of this Act.

4.6 Powers of the Labour Court: Section 50

The Labour Court has the powers to make any appropriate orders, award compensation or impose fines.

4.7 Protection of employee Rights: Section 51

The Act protects employees who exercise their rights and obligations under the Act against victimisation, obstruction and undue influence.

5. Chapter VI – General Provisions

5.1 State contracts: Section 53

Designated employers and employers who voluntarily comply with Chapter III, and who seek to do business with any organ of state, will have to apply for a certificate from the Minister confirming their compliance with chapter II and III of the Act. Non-designated employers' compliance certificate will pertain to chapter II.

5.2 Liability of Employers: Section 60

Should employees contravene any provision of this Act while performing their duties; the employer will be liable, unless the employer can prove that it did everything in its power to prevent the undesired act.

