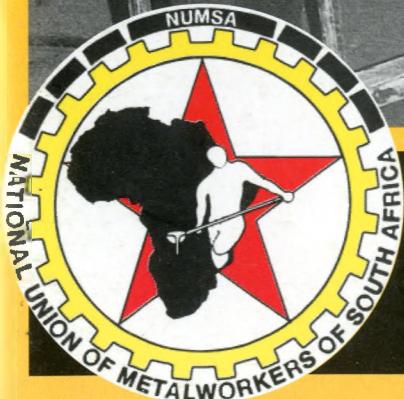
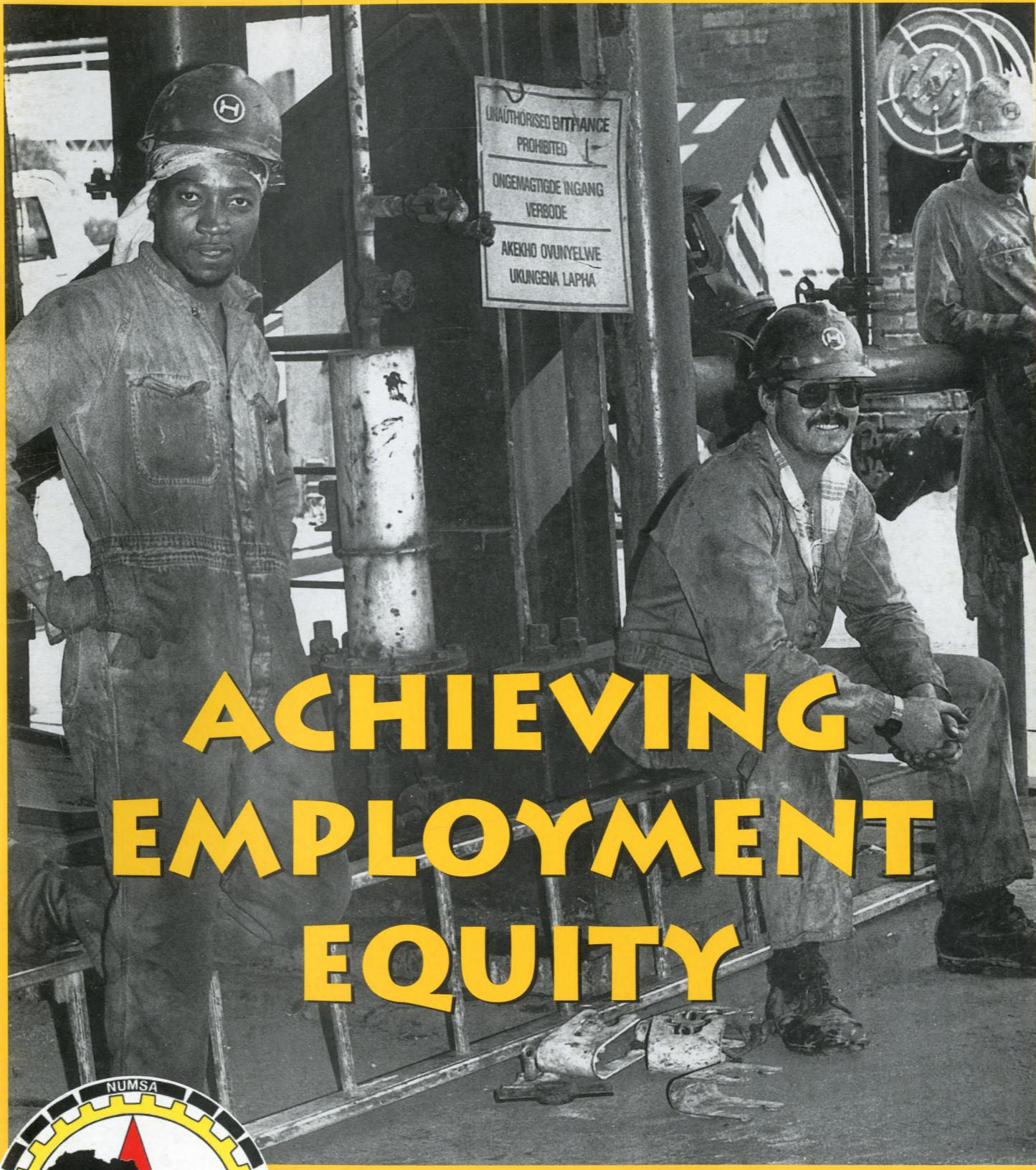


Trade union Training box

02002/01/04

## APPENDIX



**Numsa course on the  
Employment Equity Act**

# To all shop stewards

## Welcome to the Numsa Employment Equity Course!

Numsa has developed this course to help you use the new Employment Equity Act effectively. There are three books that go with this course:

- Shopsteward's Workbook (Book 1) and
- These Appendices (Book 2)
- A Resource Book (Book 3)

In the **Shopsteward's Workbook** you will find:

- brief explanations and activities around different parts of the Act to make you familiar with what is in the Act.
- We have left space for you to fill in your answers for the different activities. Your answers can then help you when you are back in your factory.

In this **Appendix** we include various material to help you answer the different activities in the Workshop. You will find the following documents:

- the Employment Equity Act
- extracts from the Department of Labour's User's Guide
- Numsa's Code of Practice around affirmative action and employment equity
- Forms that the employer (sometimes the employee) must fill in for the Employment Equity Act

The **Resource Book**, will give you further information and advice on how to tackle this new law. The Resource Book covers:

- explanations and summaries of the new law
- suggestions on how as workers we can fight against unfair discrimination by employers
- proposals on achieving equity in our workplaces
- solutions to the exercises that are in the Shopsteward's Workbook.

**Advance workers' rights – use the Employment Equity Act now!**

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**EMPLOYMENT EQUITY ACT**  
**NO. 55 OF 1998**  
**[ASSENTED TO 12 OCTOBER, 1998]**  
**[DATE OF COMMENCEMENT TO BE PROCLAIMED]**  
(Unless otherwise indicated)  
(*English text signed by the President*)  
**ACT**

**To provide for employment equity; and to provide for matters incidental thereto.**

**Preamble.**

Recognising:

- that as a result of apartheid and other discriminatory laws and practices, there are disparities in employment, occupation and income within the national labour market; and
- that those disparities create such pronounced disadvantages for certain categories of people that they cannot be redressed simply by repealing discriminatory laws,

Therefore, in order to--

- promote the constitutional right of equality and the exercise of true democracy;
- eliminate unfair discrimination in employment;
- ensure the implementation of employment equity to redress the effects of discrimination;
- achieve a diverse workforce broadly representative of our people;
- promote economic development and efficiency in the workforce; and
- give effect to the obligations of the Republic as a member of the International Labour Organisation,

**BE IT ENACTED** by the Parliament of the Republic of South Africa as follows:

## ARRANGEMENT OF SECTIONS

### CHAPTER I **DEFINITIONS, PURPOSE, INTERPRETATION AND APPLICATION**

1. Definitions
2. Purpose of this Act
3. Interpretation of this Act
4. Application of this Act

### CHAPTER II **PROHIBITION OF UNFAIR DISCRIMINATION**

5. Elimination of unfair discrimination
6. Prohibition of unfair discrimination
7. Medical testing
8. Psychometric testing
9. Applicants
10. Disputes concerning this Chapter
11. Burden of proof

### CHAPTER III **AFFIRMATIVE ACTION**

12. Application of this Chapter
13. Duties of designated employers
14. Voluntary compliance with this Chapter
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## CHAPTER I

### DEFINITIONS, PURPOSE, INTERPRETATION AND APPLICATION

**1. Definitions.**--In this Act, unless the context otherwise indicates--

**"Basic Conditions of Employment Act"** means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);

**"black people"** is a generic term which means Africans, Coloureds and Indians;

**"CCMA"** means the Commission for Conciliation, Mediation and Arbitration, established by section 112 of the Labour Relations Act;

**"code of good practice"** means a document issued by the Minister in terms of section 54;

**"collective agreement"** means a written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded by one or more registered trade unions, on the one hand and, on the other hand--

- a. one or more employers;
- b. one or more registered employers' organisations; or
- c. one or more employers and one or more registered employers' organisations;

**"Commission"** means the Commission for Employment Equity, established by section 28;

**"Constitution"** means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

**"designated employer"** means--

- a. a person who employs 50 or more employees;
- b. a person who employs fewer than 50 employees but has a total annual turnover that is equal to or above the applicable annual turnover of a small business in terms of the Schedule 4 of this Act;
- c. a municipality, as referred to in Chapter 7 of the Constitution;
- d. an organ of state as defined in section 239 of the Constitution, but excluding local spheres of government, the National Defence Force, the National Intelligence Agency and the South African Secret Service; and
- e. an employer bound by collective agreement in terms of section 23 or 31 of the Labour Relations Act, which appoints it as a designated employer in terms of this Act, to the extent provided for in the agreement.

**"designated groups"** means black people, women and people with disabilities;

**"Director-General"** means the Director-General of the Department of Labour;

**"dismissal"** has the meaning assigned to it in section 186 of the Labour Relations Act;

**"dispute"** includes an alleged dispute;

**"employee"** means any person other than an independent contractor who--

- a. works for another person or for the State and who receives, or is entitled to receive, any remuneration; and
- b. in any manner assists in carrying on or conducting the business of an employer,

and "employed" and "employment" have corresponding meanings;

**"employment law"** means any provision of this Act or any of the following Acts:

- a. The Unemployment Insurance Act, 1966 (Act No. 30 of 1966);
- b. the Guidance and Placement Act, 1981 (Act No. 62 of 1981);
- c. the Manpower Training Act, 1981 (Act No. 56 of 1981);
- d. the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
- e. the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);
- f. the Labour Relations Act, 1995 (Act No. 66 of 1995);
- g. the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
- h. any other Act, whose administration has been assigned to the Minister.

**"employment policy or practice"** includes, but is not limited to--

- a. recruitment procedures, advertising and selection criteria;
- b. appointments and the appointment process;
- c. job classification and grading;
- d. remuneration, employment benefits and terms and conditions of employment;
- e. job assignments;
- f. the working environment and facilities;
- g. training and development;
- h. performance evaluation systems;
- i. promotion;
- j. transfer;
- k. demotion;
- l. disciplinary measures other than dismissal; and
- m. dismissal.

**"family responsibility"** means the responsibility of employees in relation to their spouse or partner, their dependant children or other members of their immediate family who need their care or support;

**"HIV"** means the Human Immunodeficiency Virus;

**"labour inspector"** means a person appointed in terms of section 65 of the Basic Conditions of Employment Act;

**"Labour Relations Act"** means the Labour Relations Act, 1995 (Act No. 66 of 1995);

**"medical testing"** includes any test, question, inquiry or other means designed to ascertain, or which has the effect of enabling the employer to ascertain, whether an employee has any medical condition;

**"Minister"** means the Minister of Labour;

**"NEDLAC"** means the National Economic, Development and Labour Council established by section 2 of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994);

**"organ of state"** means an organ of state as defined in section 239 of the Constitution;

**"people with disabilities"** means people who have a long-term or recurring physical or mental impairment which substantially limits their prospects of entry into, or advancement in, employment;

**"pregnancy"** includes intended pregnancy, termination of pregnancy and any medical circumstances related to pregnancy;

**"prescribed"** means prescribed by a regulation made under section 55;

**"public service"** means the public service referred to in section 1 (1) of the Public Service Act, 1994 (promulgated by Proclamation No. 103 of 1994), and includes any organisational component contemplated in section 7 (4) of that Act and specified in the first column of Schedule 2 to that Act, but excluding--

- a. the National Defence Force;
- b. the National Intelligence Agency; and
- c. the South African Secret Service.

**"reasonable accommodation"** means any modification or adjustment to a job or to the working environment that will enable a person from a designated group to have access to or participate or advance in employment;

**"registered employers' organisation"** means an employers' organisation as defined in section 213 of the Labour Relations Act and registered in terms of section 96 of that Act;

**"registered trade union"** means a trade union as defined in section 213 of the Labour Relations Act and registered in terms of section 96 of that Act;

**"remuneration"** means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State;

**"representative trade union"** means a registered trade union, or two or more registered trade unions acting jointly, that are sufficiently representative of the employees employed by an employer in a workplace;

**"Republic"** means the Republic of South Africa as defined in the Constitution;

**"serve"** or **"submit"**, in relation to any communication, means either--

- a. to send it in writing delivered by hand or registered post; or
- b. to transmit it using any electronic mechanism as a result of which the recipient is capable of printing the communication;

**"suitably qualified person"** means a person contemplated in sections 20 (3) and (4);

**"this Act"** includes any regulations made under section 55, but excludes any footnote;

**"trade union representative"** means a member of a registered trade union who is elected to represent employees in a workplace;

**"workplace forum"** means a workplace forum established in terms of Chapter V of the Labour Relations Act.

## 2. Purpose of this Act

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, in order to ensure their equitable representation in all occupational categories and levels in the workforce.

## 3. Interpretation of this Act

This Act must be interpreted –

- a) in compliance with the Constitution
- b) so as to give effect to its purpose
- c) taking into account any relevant code of good practice issued in terms of this Act or any other employment law; and
- d) in compliance with the international law obligations of the Republic, in particular those contained in the International Labour Organisation Convention (No 111) concerning Discrimination in Respect of Employment and Occupation.

## 4. Application of this Act

- 1) Chapter II of this Act applies to all employees and employers.
- 2) Except where Chapter III provides otherwise, Chapter III of this Act applies only to designated employers and people from designated groups.
- 3) This Act does not apply to members of the National Defence Force, the National Intelligence Agency, or <sup>1</sup>the South African Secret Service<sup>1</sup>.

# CHAPTER II

## PROHIBITION OF UNFAIR DISCRIMINATION

### 5. Elimination of unfair discrimination.

Every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice.

### 6. Prohibition of unfair discrimination.

- (1) 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 and birth.
- (2) It is not unfair discrimination to--
  - a. take affirmative action measures consistent with the purpose of this Act; or
  - b. distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.

<sup>1</sup> These persons are not defined as “employees” under the Labour Relations Act. However, they could bring unfair discrimination matters before the Constitutional Court, or lodge complaints with the Human Rights Commission.

(3) Harassment of an employee is a form of unfair discrimination and is prohibited on any one, or a combination of grounds of unfair discrimination listed in subsection (1).

#### 7. **Medical testing.**—

- (1) Medical testing of an employee is prohibited, unless—
  - a. legislation permits or requires the testing; or
  - b. it is justifiable in the light of medical facts, employment conditions, social policy, the fair distribution of employee benefits or the inherent requirements of a job.
- (2) Testing of an employee to determine that employee's HIV status is prohibited unless such testing is determined justifiable by the Labour Court in terms of section 50 (4) of this Act.

#### 8. **Psychological testing and other similar assessments**

Psychological testing and other similar assessments of an employee are prohibited unless the test or assessment being used—

- a. has been scientifically shown to be valid and reliable;
- b. can be applied fairly to employees; and
- c. is not biased against any employee or group.

#### 9. **Applicants**

For purposes of sections 6, 7 and 8, "employee" includes an applicant for employment.

#### 10. **Disputes concerning this Chapter.**

- (1) In this section, the word "dispute" excludes a dispute about an unfair dismissal, which must be referred to the appropriate body for conciliation and arbitration or adjudication in terms of Chapter VIII of the Labour Relations Act.
- (2) Any party to a dispute concerning this Chapter may refer the dispute in writing to the CCMA within six months after the act or omission that allegedly constitutes unfair discrimination.
- (3) The CCMA may at any time permit a party that shows good cause to refer a dispute after the relevant time limit set out in subsection (2).
- (4) The party that refers a dispute must satisfy the CCMA that—
  - a. a copy of the referral has been served on every other party to the dispute; and
  - b. the referring party has made a reasonable attempt to resolve the dispute.
- (5) The CCMA must attempt to resolve the dispute through conciliation.
- (6) If the dispute remains unresolved after conciliation—
  - a. any party to the dispute may refer it to the Labour Court for adjudication; or
  - b. all the parties to the dispute may consent to arbitration of the dispute.
- (7) The relevant provisions of Parts C and D of Chapter VII of the Labour Relations Act, with the changes required by context, apply in respect of a dispute in terms of this Chapter.

#### 11. **Burden of proof.**

Whenever unfair discrimination<sup>2</sup> is alleged in terms of this Act, the employer against whom the allegation is made must establish that it is fair.

<sup>2</sup> Section 6(1) lists the following as prohibited grounds of discrimination:

"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 and birth"

## CHAPTER III

### AFFIRMATIVE ACTION

#### **12. Application of this Chapter.**

Except where otherwise provided, this Chapter applies only to designated employers.

#### **13. Duties of designated employers.**

(1) Every designated employer must, in order to achieve employment equity, implement affirmative action measures for people from designated groups in terms of this Act.

(2) A designated employer must--

- a. consult with its employees as required by section 16;
- b. conduct an analysis as required by section 19;
- c. prepare an employment equity plan as required by section 20; and
- d. report to the Director-General on progress made in implementing its employment equity plan, as required by section 21.

#### **14. Voluntary compliance with this Chapter.**

An employer that is not a designated employer may notify the Director-General that it intends to comply with this Chapter as if it were a designated employer.

#### **15. Affirmative action measures.**

(1) Affirmative action measures are measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce of a designated employer.

(2) Affirmative action measures implemented by a designated employer must include--

- a. measures to identify and eliminate employment barriers, including unfair discrimination, which adversely affect people from designated groups;
- b. measures designed to further diversity in the workplace based on equal dignity and respect of all people;
- c. making reasonable accommodation for people from designated groups in order to ensure that they enjoy equal opportunities and are equitably represented in the workforce of a designated employer;
- d. subject to subsection (3), measures to--
  - i. ensure the equitable representation of suitably qualified people from designated groups in all occupational categories and levels in the workforce; and
  - ii. retain and develop people from designated groups and to implement appropriate training measures, including measures in terms of an Act of Parliament providing for skills development.

(3) The measures referred to in subsection (2) (d) include preferential treatment and numerical goals, but exclude quotas.

(4) Subject to section 42, nothing in this section requires a designated employer to take any decision concerning an employment policy or practice that would establish an absolute barrier to the prospective or continued employment or advancement of people who are not from designated groups.

#### **16. Consultation with employees.**

(1) A designated employer must take reasonable steps to consult and attempt to reach agreement on the matters referred to in section 17--

- a. with a representative trade union representing members at the workplace and its employees or representatives nominated by them; or
- b. if no representative trade union represents members at the workplace, with its employees or representatives nominated by them.

(2) The employees or their nominated representatives with whom an employer consults in terms of subsection (1) (a) and (b), taken as a whole, must reflect the interests of--

- a. employees from across all occupational categories and levels of the employer's workforce;
- b. employees from designated groups; and
- c. employees who are not from designated groups.

(3) This section does not affect the obligation of any designated employer in terms of section 86 of the Labour Relations Act to consult and reach consensus with a workplace forum on any of the matters referred to in section 17 of this Act.

### **17. Matters for consultation.**

A designated employer must consult the parties referred to in section 16 concerning--

- a. the conduct of the analysis referred to in section 19;
- b. the preparation and implementation of the employment equity plan referred to in section 20; and
- c. a report referred to in section 21.

### **18. Disclosure of information.**

(1) When a designated employer engages in consultation in terms of this Chapter, that employer must disclose to the consulting parties all relevant information that will allow those parties to consult effectively.

(2) Unless this Act provides otherwise, the provisions of section 16<sup>3</sup> of the Labour Relations Act, with the changes required by context, apply to disclosure of information.

### **19. Analysis.**

(1) A designated employer must collect information and conduct an analysis, as prescribed, of its employment policies, practices, procedures and the working environment, in order to identify employment barriers which adversely affect people from designated groups.

(2) An analysis conducted in terms of subsection (1) must include a profile, as prescribed, of the designated employer's workforce within each occupational category and level in order to determine the degree of underrepresentation of people from designated groups in various occupational categories and levels in that employer's workforce.

### **20. Employment equity plan.**

(1) A designated employer must prepare and implement an employment equity plan which will achieve reasonable progress towards employment equity in that employer's workforce.

(2) An employment equity plan prepared in terms of subsection (1) must state--

- a. the objectives to be achieved for each year of the plan;
- b. the affirmative action measures to be implemented as required by section 15 (2);
- c. where underrepresentation of people from designated groups has been identified by the analysis, the numerical goals<sup>4</sup> to achieve the equitable representation of suitably qualified

<sup>3</sup> Section 16 of the Labour Relations Act contains detailed provisions about disclosure of information, and disputes concerning disclosure. Regulations concerning the conduct of an analysis may, under section 55, read with section 19, be made. However, the employment policies and practices defined in section 1 are an indication of the potential areas of both direct and indirect discrimination that should be subject to analysis.

people from designated groups within each occupational category and level in the workforce, the timetable within which this is to be achieved, and the strategies intended to achieve those goals;

- d. the timetable for each year of the plan for the achievement of goals and objectives other than numerical goals;
- e. the duration of the plan, which may not be shorter than one year or longer than five years;
- f. the procedures that will be used to monitor and evaluate the implementation of the plan and whether reasonable progress is being made towards implementing employment equity;
- g. the internal procedures to resolve any dispute about the interpretation or implementation of the plan;
- h. the persons in the workforce, including senior managers, responsible for monitoring and implementing the plan; and
- i. any other prescribed matter.

(3) For purposes of this Act, a person may be suitably qualified for a job as a result of any one of, or any combination of that person's--

- a. formal qualifications;
- b. prior learning;
- c. relevant experience; or
- d. capacity to acquire, within a reasonable time, the ability to do the job.

(4) When determining whether a person is suitably qualified for a job, an employer must--

- a. review all the factors listed in subsection (3); and
- b. determine whether that person has the ability to do the job in terms of any one of, or any combination of those factors.

(5) In making a determination under subsection (4), an employer may not unfairly discriminate against a person solely on the grounds of that person's lack of relevant experience.

(6) An employment equity plan may contain any other measures that are consistent with the purposes of this Act.

## 21. Report<sup>5</sup>.

(1) A designated employer that employs fewer than 150 employees must--

- a. submit its first report to the Director-General within 12 months after the commencement of this Act or, if later, within 12 months after the date on which that employer became a designated employer; and
- b. thereafter, submit a report to the Director-General once every two years. on the first working day of October.

(2) A designated employer that employs 150 or more employees must--

- a. submit its first report to the Director-General within six months after the commencement of this Act or, if later, within six months after the date on which that employer became a designated employer; and
- b. thereafter, submit a report to the Director-General once every year on the first working day of October.

(3) Despite subsections (1) and (2), a designated employer that submits its first report in the 12-month period preceding the first working day of October, should only submit its second report on the first working day of October in the following year.

<sup>4</sup> Guidelines regarding the factors to be taken into account in determining numerical goals will be included in a Code of Good Practice. However the factors listed in section 42(a) (Assessment of compliance) are relevant to setting numerical goals in each organisation.

<sup>5</sup> The first report will refer to the initial development of and consultation around an employment equity plan. The subsequent reports will detail the progress made in implementing the employment equity plan.

(4) The reports referred to in subsections (1) and (2) must contain the prescribed information and must be signed by the chief executive officer of the designated employer.

(5) An employer who becomes a designated employer in terms of the Act must--

- report as contemplated in this section for the duration of its current employment equity plan; and
- notify the Director-General in writing if it is unable to report as contemplated in this section, and give reasons therefor.

(6) Every report prepared in terms of this section is a public document.

## **22. Publication of report.**

(1) Every designated employer that is a public company must publish a summary of a report required by section 21 in that employer's annual financial report.

(2) When a designated employer within any organ of state has produced a report in terms of section 21, the Minister responsible for that employer must table that report in Parliament.

## **23. Successive employment equity plans.**

Before the end of the term of its current employment equity plan, a designated employer must prepare a subsequent employment equity plan.

## **24. Designated employer must assign manager.**

(1) Every designated employer must--

- assign one or more senior managers to take responsibility for monitoring and implementing an employment equity plan;
- provide the managers with the authority and means to perform their functions; and
- take reasonable steps to ensure that the managers perform their functions.

(2) The assignment of responsibility to a manager in terms of subsection (1) does not relieve the designated employer of any duty imposed by this Act or any other law.

## **25. Duty to inform.**

(1) An employer must display at the workplace where it can be read by employees a notice in the prescribed form, informing them about the provisions of this Act<sup>6</sup>.

(2) A designated employer must, in each of its workplaces, place in prominent places that are accessible to all employees--

- the most recent report submitted by that employer to the Director-General;
- any compliance order, arbitration award or order of the Labour Court concerning the provisions of this Act in relation to that employer; and
- any other document concerning this Act as may be prescribed.

(3) An employer who has an employment equity plan, must make a copy of the plan available to its employees for copying and consultation.

## **26. Duty to keep records.**

An employer must establish and, for the prescribed period, maintain records in respect of its workforce, its employment equity plan and any other records relevant to its compliance with this Act.

---

<sup>6</sup> Regulations may, under section 55, be made containing a standard notice, in all official languages, summarising the provisions of this Act, which all employers should display in every workplace.

## 27. Income differentials.

(1) Every designated employer, when reporting in terms of section 21 (1) and (2), must submit a statement, as prescribed, to the Employment Conditions of Commission established by section 59 of the Basic Conditions of Employment Act, on the remuneration and benefits received in each occupational category and level of that employer's workforce.

(2) Where disproportionate income differentials are reflected in the statement contemplated in subsection (1), a designated employer must take measures to progressively reduce such differentials subject to guidance as may be given by the Minister as contemplated in subsection (4).

(3) The measures referred to in subsection (2) may include--

- collective bargaining;
- compliance with sectoral determinations made by the Minister in terms of section 51 of the Basic Conditions of Employment Act;
- applying the norms and benchmarks set by the Employment Conditions Commission;
- relevant measures contained in skills development legislation;

(4) The Employment Conditions Commission must research and investigate norms and benchmarks for proportionate income differentials and advise the Minister on appropriate measures for reducing disproportional differentials.

(5) The Employment Conditions Commission may not disclose any information pertaining to individual employees or employers.

(6) Parties to a collective bargaining process may request the information contained in the statement contemplated in subsection (1) for the collective bargaining purposes subject to section 16 (4) and (5) of the Labour Relations Act.

## CHAPTER IV

### COMMISSION FOR EMPLOYMENT EQUITY

#### 28. Establishment of Commission for Employment Equity.

The Commission for Employment Equity is hereby established.

(Date of commencement 14 May, 1999)

#### 29. Composition of Commission for Employment Equity.

(1) The Commission consists of a chairperson and eight other members appointed by the Minister to hold office on a part-time basis.

(2) The members of the Commission must include--

- two people nominated by those voting members of NEDLAC who represent organised labour;
- two people nominated by those voting members of NEDLAC who represent organised business;
- two people nominated by those voting members of NEDLAC who represent the State; and
- two people nominated by those voting members of NEDLAC who represent the organisations of community and development interests in the Development Chamber in NEDLAC.

(3) A party that nominates persons in terms of subsection (2) must have due regard to promoting the representivity of people from designated groups.

(4) The Chairperson and each other member of the Commission--

- must have experience and expertise relevant to the functions contemplated in section 30;
- must act impartially when performing any function of the Commission;
- may not engage in any activity that may undermine the integrity of the Commission; and

- d. must not participate in forming or communicating any advice on any matter in respect of which they have a direct financial interest or any other conflict of interest.

(5) The Minister must appoint a member of the Commission to act as chairperson whenever the office of chairperson is vacant.

(6) The members of the Commission must choose from among themselves a person to act in the capacity of chairperson during the temporary absence of the chairperson.

(7) The Minister may determine--

- a. the term of office for the chairperson and for each member of the Commission, but no member's term of office may exceed five years;
- b. the remuneration and allowances to be paid to members of the Commission with the concurrence of the Minister of Finance; and
- c. any other conditions of appointment not provided for in this section.

(8) The chairperson and members of the Commission may resign by giving at least one month's written notice to the Minister.

(9) The Minister may remove the chairperson or a member of the Commission from office for--

- a. serious misconduct;
- b. permanent incapacity;
- c. that person's absence from three consecutive meetings of the Commission without the prior permission of the chairperson, except on good cause shown; or
- d. engaging in any activity that may undermine the integrity of the Commission.

(Date of commencement of s. 29: 14 May, 1999)

### **30. Functions of Commission for Employment Equity.**

(1) The Commission advises the Minister on--

- a. codes of good practice issued by the Minister in terms of section 54;
- b. regulations made by the Minister in terms of section 55; and
- c. policy and any other matter concerning this Act.

(2) In addition to the functions in subsection (1) the Commission may--

- a. make awards recognising achievements of employers in furthering the purpose of this Act;
- b. research and report to the Minister on any matter relating to the application of this Act, including appropriate and well-researched norms and benchmarks for the setting of numerical goals in various sectors; and
- c. perform any other prescribed function.

(Date of commencement of s. 30: 14 May, 1999)

### **31. Staff and expenses.**

Subject to the laws governing the public service, the Minister must provide the Commission with the staff necessary for the performance of its functions.

(Date of commencement 14 May, 1999)

### **32. Public hearings.**

In performing its functions, the Commission may--

- a. call for written representations from members of the public; and
- b. hold public hearings at which it may permit members of the public to make oral representations.

(Date of commencement of s. 32: 14 May, 1999)

**33. Report by Commission for Employment Equity.**

The Commission must submit an annual report to the Minister.

(Date of commencement 14 May, 1999)

## CHAPTER V

### MONITORING, ENFORCEMENT AND LEGAL PROCEEDINGS

**PART A****34. Monitoring by employees and trade union representatives.**

Any employee or trade union representative may bring an alleged contravention of this Act to the attention of--

- a. another employee;
- b. an employer;
- c. a trade union;
- d. a workplace forum;
- e. a labour inspector;
- f. the Director-General; or
- g. (g) the Commission.

**35. Enforcement - Powers of labour inspectors.**

A labour inspector acting in terms of this Act has the authority to enter, question and inspect as provided for in sections 65 and 66 of the Basic Conditions of Employment Act.

**36. Undertaking to comply.**

A labour inspector must request and obtain a written undertaking from a designated employer to comply with paragraphs (a) to (j) within a specified period, if the inspector has reasonable grounds to believe that the employer has failed to--

- a. consult with employees as required by section 16;
- b. conduct an analysis as required by section 19;
- c. prepare an employment equity plan as required by section 20;
- d. implement its employment equity plan;
- e. submit an annual report as required by section 21;
- f. publish its report as required by section 22;
- g. prepare a successive employment equity plan as required by section 23;
- h. assign responsibility to one or more senior managers as required by section 24;
- i. inform its employees as required by section 25; or
- j. keep records as required by section 26.

**37. Compliance order.**

(1) A labour inspector may issue a compliance order to a designated employer if that employer has--

- a. refused to give a written undertaking in terms of section 36, when requested to do so; or
- b. failed to comply with a written undertaking given in terms of section 36.

(2) A compliance order issued in terms of subsection (1) must set out--

- a. the name of the employer, and the workplaces to which the order applies;
- b. those provisions of Chapter III of this Act which the employer has not complied with and details of the conduct constituting non-compliance;

- c. any written undertaking given by the employer in terms of section 36 and any failure by the employer to comply with the written undertaking;
- d. any steps that the employer must take and the period within which those steps must be taken;
- e. the maximum fine, if any, that may be imposed on the employer in terms of Schedule 1 for failing to comply with the order; and
- f. any other prescribed information.

(3) A labour inspector who issues a compliance order must serve a copy of that order on the employer named in it.

(4) A designated employer who receives a compliance order served in terms of subsection (3) must display a copy of that order prominently at a place accessible to the affected employees at each workplace named in it.

(5) A designated employer must comply with the compliance order within the time period stated in it, unless the employer objects to that order in terms of section 39.

(6) If a designated employer does not comply with an order within the period stated in it, or does not object to that order in terms of section 39, the Director-General may apply to the Labour Court to make the compliance order an order of the Labour Court.

### **38. Limitations.**

A labour inspector may not issue a compliance order in respect of a failure to comply with a provision of Chapter III of this Act if--

- a. the employer is being reviewed by the Director-General in terms of section 43; or
- b. the Director-General has referred an employer's failure to comply with a recommendation to the Labour Court in terms of section 45.

### **39. Objections against compliance order.**

- (1) A designated employer may object to a compliance order by making written representations to the Director-General within 21 days after receiving that order.
- (2) If the employer shows good cause at any time, the Director-General may permit the employer to object after the period of 21 days has expired.
- (3) After considering the designated employer's representations and any other relevant information, the Director-General--

  - a. may confirm, vary or cancel all or any part of the order to which the employer objected; and
  - b. must specify the time period within which that employer must comply with any part of the order that is confirmed or varied.

- (4) The Director-General must, after making a decision in terms of subsection (3), and within 60 days after receiving the employer's representations, serve a copy of that decision on that employer.
- (5) A designated employer who receives an order of the Director-General must either--

  - a. comply with that order within the time period stated in it; or
  - b. appeal against that order to the Labour Court in terms of section 40.

- (6) If a designated employer does not comply with an order of the Director-General, or does not appeal against that order, the Director-General may apply to the Labour Court for that order to be made an order of the Labour Court.

### **40. Appeal from compliance order.**

- (1) A designated employer may appeal to the Labour Court against a compliance order of the Director-General within 21 days after receiving that order.
- (2) The Labour Court may at any time permit the employer to appeal after the 21-day time limit has expired, if that employer shows good cause for failing to appeal within that time limit.

(3) If the designated employer has appealed against an order of the Director-General, that order is suspended until the final determination of--

- the appeal by the Labour Court; or
- any appeal against the decision of the Labour Court in that matter.

#### **41. Register of designated employers.**

(1) The Minister must keep a register of designated employers that have submitted the reports required by section 21.

(2) The register referred to in subsection (1) is a public document.

#### **42. Assessment of compliance.**

In determining whether a designated employer is implementing employment equity in compliance with this Act, the Director-General or any person or body applying this Act must, in addition to the factors stated in section 15, take into account all of the following:

- The extent to which suitably qualified people from and amongst the different designated groups are equitably represented within each occupational category and level in that employer's workforce in relation to the--
  - demographic profile of the national and regional economically active population;
  - pool of suitably qualified people from designated groups from which the employer may reasonably be expected to promote or appoint employees;
  - economic and financial factors relevant to the sector in which the employer operates;
  - present and anticipated economic and financial circumstances of the employer; and
  - the number of present and planned vacancies that exist in the various categories and levels, and the employer's labour turnover;
- progress made in implementing employment equity by other designated employers operating under comparable circumstances and within the same sector;
- reasonable efforts made by a designated employer to implement its employment equity plan;
- the extent to which the designated employer has made progress in eliminating employment barriers that adversely affect people from designated groups; and
- any other prescribed factor.

#### **43. Review by Director-General.**

(1) The Director-General may conduct a review to determine whether an employer is complying with this Act.

(2) In order to conduct the review the Director-General may--

- request an employer to submit to the Director-General a copy of its current analysis or employment equity plan;
- request an employer to submit to the Director-General any book, record, correspondence, document or information that could reasonably be relevant to the review of the employer's compliance with this Act;
- request a meeting with an employer to discuss its employment equity plan, the implementation of its plan and any matters related to its compliance with this Act; or
- request a meeting with any--
  - employee or trade union consulted in terms of section 16;
  - workplace forum; or
  - other person who may have information relevant to the review.

**44. Outcome of Director-General's review.**

Subsequent to a review in terms of section 43, the Director-General may--

- a. approve a designated employer's employment equity plan; or
- b. make a recommendation to an employer, in writing, stating--
  - i. steps which the employer must take in connection with its employment equity plan or the implementation of that plan, or in relation to its compliance with any other provision of this Act; and
  - ii. the period within which those steps must be taken; and
  - iii. any other prescribed information.

**45. Failure to comply with Director-General's recommendation.**

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 refer the employer's non-compliance to the Labour Court.

**PART B****Legal proceedings****46. Conflict of proceedings.**

(1) If a dispute has been referred to the CCMA by a party in terms of Chapter II and the issue to which the dispute relates also forms the subject of a referral to the Labour Court by the Director-General in terms of section 45, the CCMA proceedings must be stayed until the Labour Court makes a decision on the referral by the Director-General.

(2) If a dispute has been referred to the CCMA by a party in terms of Chapter II against an employer being reviewed by the Director-General in terms of section 43, there may not be conciliation or adjudication in respect of the dispute until the review has been completed and the employer has been informed of the outcome.

**47. Consolidation of proceedings.**

Disputes concerning contraventions of this Act by the same employer may be consolidated.

**48. Powers of commissioner in arbitration proceedings.**

A commissioner of the CCMA may, in any arbitration proceedings in terms of this Act, make any appropriate arbitration award that gives effect to a provision of this Act.

**49. Jurisdiction of Labour Court.**

The Labour Court has exclusive jurisdiction to determine any dispute about the interpretation or application of this Act, except where this Act provides otherwise.

**50. Powers of Labour Court.**

(1) Except where this Act provides otherwise, the Labour Court may make any appropriate order including--

- a. on application by the Director-General in terms of section 37 (6) or 39 (6) making a compliance order an order of the Labour Court;
- b. subject to the provisions of this Act, condoning the late filing of any document with, or the late referral of any dispute to, the Labour Court;
- c. directing the CCMA to conduct an investigation to assist the Court and to submit a report to the Court;

- d. awarding compensation in any circumstances contemplated in this Act;
- e. awarding damages in any circumstances contemplated in this Act;
- f. ordering compliance with any provision of this Act; including 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);
- g. imposing a fine in accordance with Schedule 1 for a contravention of certain provisions of this Act;
- h. reviewing the performance or purported performance of any function provided for in this Act or any act or omission of any person or body in terms of this Act on any grounds that are permissible in law;
- i. in an appeal under section 40, confirming, varying or setting aside all or part of an order made by the Director-General in terms of section 39; and
- j. dealing with any matter necessary or incidental to performing its functions in terms of this Act.

(2) If the Labour Court decides that an employee has unfairly discriminated against, the Court may make any appropriate order that is just and equitable in the circumstances, including--

- a. payment of compensation by the employer to that employee;
- b. payment of damages by the employer to that employee;
- c. an order directing the employer to take steps to prevent the same unfair discrimination or a similar practice occurring in the future in respect of other employees;
- d. an order directing an employer, other than a designated employer, to comply with Chapter III as if it were a designated employer;
- e. an order directing the removal of the employer's name from the register referred to in section 41; or
- f. the publication of the Court's order.

(3) The Labour Court, in making any order, may take into account any delay on the part of the party who seeks relief in processing a dispute in terms of this Act.

(4) If the Labour Court declares that the medical testing of an employee as contemplated in section 7 is justifiable, the court may make any order that it considers appropriate in the circumstances, including imposing conditions relating to--

- a. the provision of counselling;
- b. the maintenance of confidentiality;
- c. the period during which the authorisation for any testing applies; and
- d. the category or categories of jobs or employees in respect of which the authorisation for testing applies.

## PART C

### Protection of employee rights

#### 51. Protection of employee rights.

(1) No person may discriminate against an employee who exercises any right conferred by this Act.

(2) Without limiting the general protection conferred by subsection (1), no person may threaten to do, or do any of the following:

- a. Prevent an employee from exercising any right conferred by this Act or from participating in any proceedings in terms of this Act; or
- b. prejudice an employee because of past, present or anticipated--

- i. disclosure of information that the employee is lawfully entitled or required to give to another person;

- ii. exercise of any right conferred by this Act; or
- iii. participation in any proceedings in terms of this Act.

(3) No person may favour, or promise to favour, an employee in exchange for that employee not exercising any right conferred by this Act or not participating in any proceedings in terms of this Act.

(4) Nothing in this section precludes the parties to a dispute arising out of an alleged breach of any right conferred by this Part, from concluding an agreement to settle the dispute.

(5) For the purposes of this section "employee" includes a former employee or an applicant for employment.

## 52. Procedure for disputes.

- (1) If there is a dispute about the interpretation or application of this Part, any party to the dispute may refer it in writing to the CCMA.
- (2) The CCMA must attempt to resolve a dispute referred to it in terms of this Part through conciliation.
- (3) If the dispute remains unresolved after conciliation--
  - a. any party to the dispute may refer it to the Labour Court for adjudication; or
  - b. all the parties to the dispute may consent to arbitration of the dispute by the CCMA.
- (4) In respect of a dispute in terms of this Part, the relevant provisions of Part C and D of Chapter VII of the Labour Relations Act apply, read with the changes required by the context.

## CHAPTER VI

### GENERAL PROVISIONS

#### 53. State contracts.

- (1) Every employer that makes an offer to conclude an agreement with any organ of state for the furnishing of supplies or services to that organ of state or for the hiring or letting of anything--
  - a. must--
    - i. if it is a designated employer, comply with Chapters II and III of this Act; or
    - ii. if it is not a designated employer, comply with Chapter II of this Act; and
  - b. attach to that offer either--
    - i. a certificate in terms of subsection (2) which is conclusive evidence that the employer complies with the relevant Chapters of this Act; or
    - ii. a declaration by the employer that it complies with the relevant Chapters of this Act, which, when verified by the Director-General, is conclusive evidence of compliance.
- (2) An employer referred to in subsection (1) may request a certificate from the Minister confirming its compliance with Chapter II, or Chapters II and III, as the case may be.
- (3) A certificate issued in terms of subsection (2) is valid for 12 months from the date of issue or until the next date on which the employer is obliged to submit a report in terms of section 21, whichever period is the longer.
- (4) A failure to comply with the relevant provisions of this Act is sufficient ground for rejection of any offer to conclude an agreement referred to in subsection (1) or for cancellation of the agreement<sup>7</sup>.

<sup>7</sup> Regulations under section 13 of the State Tender Board Act, No 86 of 1986, may provide that supplies and service shall not be procured for and on behalf of the State, unless an employer has attached to its offer a certificate in terms of section 53(1)(b)(ii) of the Employment Equity Act.

**54. Codes of good practice.**

(1) The Minister may, on the advice of the Commission--

- issue any code of good practice<sup>8</sup>; and
- change or replace any code of good practice.

(2) Any code of good practice, or any change to, or replacement of, a code of good practice must be published in the Gazette.

**55. Regulations.**

(1) The Minister may, by notice in the Gazette and on the advice of the Commission, make any regulation regarding--

- any matter that this Act requires or permits to be prescribed; and
- any administrative or procedural matters that may be necessary or expedient to achieve the proper and effective administration of this Act.

(2) The Minister must by notice in the Gazette make a regulation providing for separate and simplified forms and procedures in respect of the obligations created by sections 19, 20, 21, 25 and 26 for employers that employ 150 or fewer employees.

**56. Delegations.**

(1) The Minister may delegate any power conferred, or assign any duty imposed, upon the Minister in terms of this Act, except the powers and duties contemplated in sections 29 (1), (5) and (7), 53 (2), 54, 55, 59 (4) and 61 (4).

(2) A delegation or assignment must be in writing and may be subject to any conditions or restrictions determined by the Minister.

(3) The Minister may at any time--

- withdraw a delegation or assignment made in terms of subsection (1); and
- withdraw or amend any decision made by a person exercising a power or performing a duty delegated or assigned in terms of subsection (1).

(4) The Director-General may delegate any power conferred, or assign any duty imposed, upon the Director-General in terms of this Act, to any employee in the Department.

(5) Subsections (2) and (3) apply with the changes required by the context to any delegation or assignment by the Director-General under subsection (4).

**57. Temporary employment services.**

(1) For purposes of Chapter III of this Act, a person whose services have been procured for, or provided to, a client by a temporary employment service is deemed to be the employee of that client, where that person's employment with the client is of indefinite duration or for a period of three months or longer.

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<sup>8</sup> This is an enabling Act. The codes of good practice are intended to provide employers with information that may assist them in implementing this Act, particularly Chapter III. Issues that are likely to be the subject of codes include the following:

- the preparation of employment equity plans;
- advertising, recruitment procedures and selection criteria;
- special measures to be taken in relation to persons with disabilities including benefit schemes;
- special measures to be taken in relation to persons with family responsibilities;
- sexual harassment and racial harassment;
- internal procedures to resolve disputes about the interpretation or application of this Act; and sector-specific issues;
- guidelines for employees on the prioritisation of certain designated groups.

(2) Where a temporary employment service, on the express or implied instructions of a client, commits an act of unfair discrimination, both the temporary employment service and the client are jointly and severally liable.

#### **58. Designation of organs of state.**

The President must, within six months after the commencement of this Act, and after consultation with the Minister responsible for the Public Service and Administration, publish a notice in the Gazette listing every designated employer within any organ of state.

#### **59. Breach of confidentiality.**

(1) Any person who discloses any confidential information acquired in the performance of a function in terms of this Act, commits an offence.

(2) Subsection (1) does not apply if the information--

- a. is disclosed to enable a person to perform a function in terms of this Act; or
- b. must be disclosed in terms of this Act, any other law or an order of court.

(3) A person convicted of an offence in terms of this section may be sentenced to a fine not exceeding R10 000,00.

(4) The Minister may, with the concurrence of the Minister of Justice and by notice in the Gazette, amend the maximum amount of the fine referred to in subsection (3), in order to counter the effect of inflation.

#### **60. Liability of employers.**

(1) If it is alleged that an employee, while at work, contravened a provision of this Act, or engaged in any conduct that, if engaged in by that employee's employer, would constitute a contravention of a provision of this Act, the alleged conduct must immediately be brought to the attention of the employer.

(2) The employer must consult all relevant parties and must take the necessary steps to eliminate the alleged conduct and comply with the provisions of this Act.

(3) If the employer fails to take the necessary steps referred to in subsection (2), and it is proved that the employee has contravened the relevant provision, the employer must be deemed also to have contravened that provision.

(4) Despite subsection (3), an employer is not liable for the conduct of an employee if that employer is able to prove that it did all that was reasonably practicable to ensure that the employee would not act in contravention of this Act.

#### **61. Obstruction, undue influence and fraud.**

(1) No person may--

- a. obstruct or attempt to improperly influence any person who is exercising a power or performing a function in terms of this Act; or
- b. knowingly give false information in any document or information provided to the Director-General or a labour inspector in terms of this Act.

(2) No employer may knowingly take any measure to avoid becoming a designated employer.

(3) A person who contravenes a provision of this section commits an offence and may be sentenced to a fine not exceeding R10 000,00.

(4) The Minister may, with the concurrence of the Minister of Justice and by notice in the Gazette, amend the maximum amount of the fine referred to in subsection (3) in order to counter the effect of inflation.

**62. This Act binds the State.**--This Act binds the State.

**63. Application of Act when in conflict with other laws.**

If any conflict relating to a matter dealt with in this Act arises between this Act and the provisions of any other law other than the Constitution or an Act of Parliament expressly amending this Act, the provisions of this Act prevail.

**64. Repeal of laws and transitional arrangements.**

Each of the laws referred to in the first two columns of Schedule 2 is repealed to the extent specified opposite that law in the third column of that Schedule.

**65. Short title and commencement.**

- (1) This Act is called the Employment Equity Act, 1998.
- (2) This Act takes effect on a date to be determined by the President by proclamation in the Gazette. The President may determine different dates in respect of different provisions of this Act.
- (3) If, in terms of subsection (2), different dates are determined for particular provisions of this Act-
  - a. Schedule 2 must take effect at the same time as section 6 (1) takes effect; and
  - b. a reference in a provision of this Act to a time when this Act took effect must be construed as a reference to the time when that provision takes effect.

**Schedule 1****MAXIMUM PERMISSIBLE FINES THAT MAY BE IMPOSED FOR CONTRAVENTING THIS ACT**

This Schedule sets out the maximum fine that may be imposed in terms of this Act for the contravention of certain provisions of this Act.

<i>Previous Contravention</i>	<i>Contravention of any Provision of Sections 16, 19, 20, 21, 22 and 23</i>
No previous contravention	R500 000
A previous contravention in respect of the same provision	R600 000
A previous contravention within the previous 12 months or two previous contraventions in respect of the same provision within three years	R700 000
Three previous contraventions in respect of the same provision within three years	R800 000
Four previous contraventions in respect of the same provision within three years	R900 000

**Schedule 2****LAWS REPEALED**

<i>Number and year of law</i>	<i>Short title</i>	<i>Extent of repeal</i>
Act No. 66 of 1995	Labour Relations Act, 1995	Item 2 (1) (a), 2 (2) and 3 (4) (a) of Schedule 7

**Schedule 3****TRANSITIONAL ARRANGEMENTS****1. Definitions.**

In this Schedule, unless the context indicates otherwise--

"**pending**" means existing immediately before this Act came into operation; and

"**repealed provisions of the Labour Relations Act**" means the provisions of the Labour Relations Act repealed by Schedule 2.

**2. Disputes arising before commencement of this Act.**

Any dispute contemplated in item (2) (1) (a) of Schedule 7 of the Labour Relations Act that arose before the commencement of this Act, must be dealt with as if the repealed provisions of the Labour Relations Act had not been repealed.

**3. Courts.**

(1) In any pending dispute contemplated in item (2) (1) (a) of Schedule 7 of the Labour Relations Act in respect of which the Labour Court or the Labour Appeal Court had jurisdiction and in respect of which proceedings had not been instituted before the commencement of this Act, proceedings must be instituted in the Labour Court or Labour Appeal Court (as the case may be) and dealt with as if the repealed provisions of the Labour Relations Act had not been repealed.

(2) Any dispute contemplated in item (2) (1) (a) of Schedule 7 of the Labour Relations Act in respect of which proceedings were pending in the Labour Court or Labour Appeal Court must be proceeded with as if the repealed provisions of the Labour Relations Act had not been repealed.

(3) Any pending appeal before the Labour Appeal Court must be dealt with by the Labour Appeal Court as if the repealed provisions of the Labour Relations Act had not been repealed.

(4) When acting in terms of subitems (1) to (3), the Labour Court or Labour Appeal Court may perform or exercise any function or power that it had in terms of the repealed provisions of the Labour Relations Act.

**Schedule 4****TURNOVER THRESHOLD APPLICABLE TO DESIGNATED EMPLOYERS**

<i>Sector or subsectors in accordance with the Standard Industrial Classification</i>	<i>Total annual turnover</i>
Agriculture	R2,00 m
Mining and Quarrying	R7,50 m
Manufacturing	R10,00 m
Electricity, Gas and Water	R10,00 m
Construction	R5,00 m
Retail and Motor Trade and Repair Services	R15,00 m
Wholesale Trade, Commercial Agents and Allied Services	R25,00 m
Catering, Accommodation and other Trade	R5,00 m
Transport, Storage and Communications	R10,00 m
Finance and Business Services	R10,00 m
Community, Special and Personal Services	R5,00 m

# **Extracts from Department of Labour's User's Guide**

# Preparing an Employment Equity Plan

## Section 2: Ten steps to preparing and implementing an Employment Equity Plan

Drawn from the Code of Good Practice: Preparation, Implementation and Monitoring of Employment Equity Plans

**The process of developing a plan should have three sequential phases:**

Phase 1 PREPARATION	Phase 2 IMPLEMENTATION	Phase 3 MONITORING
<b>Step 1</b> Assign responsibility	<b>Step 5</b> Corrective measures and objectives	<b>Step 9</b> Monitor, evaluate, and review
<b>Step 2</b> Communication, awareness and training	<b>Step 6</b> Time frames established	<b>Step 10</b> Report
<b>Step 3</b> Consultation	<b>Step 7</b> Allocation of resources	
<b>Step 4</b> Analysis	<b>Step 8</b> Plan communication	

Some steps may overlap while others, such as communication and consultation continues throughout the process.

### Phase 1: Preparation

The preparation phase contains the relevant steps that an employer need to take in order to produce an employment equity plan.

#### STEP 1 : ASSIGNING RESPONSIBILITY TO ONE OR MORE SENIOR MANAGER

The first step in the process is to assign responsibility for the development, implementation, and monitoring of the plan to one or more senior managers.

These managers should

- Be permanent employees
- Report directly to the CEO
- Have key employment equity outcomes incorporated into their performance contracts  
(In fact, all managers should have key employment equity outcomes incorporated into their performance contracts.)

and need

- The necessary authority or mandate
- An appropriate budget
- Time off from other duties and commitments
- Access to other required resources

The assignment of responsibility does **not** relieve the employer of any responsibility imposed by the Act.

The assigned managers could be employed to manage employment equity only or could be managers who have been assigned this role as part of their other responsibilities.

## STEP 2 : COMMUNICATION, AWARENESS AND TRAINING

**This step should focus on positive outcomes such as**

- Better utilisation of human resources
- A more diverse and productive workforce
- A workforce that reflects the relevant labour market

### **What should employees know?**

All employees should

- be made aware and informed of the content and application of the Act
- be sensitised with regard to employment equity and anti-discrimination issues
- be informed regarding the process to be followed
- understand the importance of their participation in the process
- be made aware of the need for participation of all stakeholders

through a variety of methods which could include one or more of the following

- pamphlets
- newsletters
- workshops
- videos
- training sessions

### **What about managers?**

Managers should

- be informed of their obligations in terms of the Act
- be offered training in diversity management and related skills
- understand that discrimination can be direct, indirect, or as a result of inaction or victimisation.

## STEP 3 : CONSULTATION

Consultation should start as early as possible in the process

### How should this happen?

A consultative forum should be established or an existing forum used if this is appropriate, for example, an existing diversity committee, affirmative action or employment equity forum.

### Who should be included?

All stakeholders such as:

- Representative trade unions
- Employee representatives from
  - designated groups
  - non-designated groups
  - all occupational categories and levels
- Senior management, including the managers assigned with responsibility

### What is proper consultation?

Proper consultation includes

- the opportunity to meet and report back to employees and management
- reasonable opportunity for employee representatives to meet with the employer
- the request, receipt and consideration of relevant information
- adequate time allowed for each of the above steps.

Ongoing interaction with and accessibility to senior management with regard to employment equity issues is critical to the success of this process.

### What would be considered relevant information?

Relevant information could include that relating to

- the particular business environment and circumstances of the employer
- the relevant economic sector or industry
- relevant local, regional, and national demographic information about the economically active population
- the anticipated growth or reduction of the employer's workforce
- the turnover of employees in the employer's workforce
- the internal and external availability for appointment or promotion of suitably qualified people from the designated groups
- the degree of representation of designated employees in each occupational category and level in the employer's workforce
- employment policies and practices of the employer.

Relevant information is not limited to information supplied by the employer. Employees may be in a position to provide employers with valuable information that could be considered in developing an employment equity plan.

### How often should the consultative forum meet?

This will vary from employer to employer depending on size, sophistication, existing levels of diversity, and what has already been accomplished in the workplace with regard to employment equity. Meetings should, however, take place regularly and employers should allow time off for these meetings.

## STEP 4 : CONDUCTING AN ANALYSIS

### Why an analysis?

For two reasons

**Firstly**, to assess all employment policies, practices, procedures, and the working environment in order to identify barriers that may

- contribute to the under-representation or under-utilisation of employees from the designated groups
- contribute to the lack of affirmation of diversity in the workplace
- adversely affect designated groups
- and also**
- to identify practices or factors that positively promote employment equity and diversity in the workplace.

**Secondly**, to determine the extent of under-representation of employees from the designated groups in the different occupational categories and levels of the employer's workforce.

#### *a) Review of policies, practices and working conditions*

##### **What should be reviewed?**

- all employment practices such as recruitment, selection, pre-employment testing, and induction
- practices related to succession and experience planning, and related promotions and transfers
- utilisation and job assignments
- current training and development methodologies and strategies, and access to training
- remuneration structures and practices
- employee benefits arrangements
- disciplinary practices
- working conditions
- the number and nature of dismissals, voluntary terminations and retrenchments
- corporate culture
- practices relating to the management of HIV/AIDS in the workplace which could be discriminatory
- any other practices or conditions that are tabled by the consultative forum.

##### **What to look for?**

- Factors that adversely affect employees from designated groups
- Subtle or indirect forms of discrimination and stereotyping

All practices should be checked to see if they are fair and do not result in unfair discrimination. Discrimination can take the form of any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of reducing equality of opportunity or treatment in employment and occupations.

**For example**

Consideration should be given to whether pre-employment tests are based on competency sets generated through job analyses or whether they are tests which could be considered biased in favour of one or more groups?

Another example would be to monitor disciplinary action, to check whether there is consistency in the application among different groups of employees in the workplace.

**b) Workforce Profile****How do you establish a workforce profile?**

**Firstly**, by establishing which employees are members of designated groups.

Employers can do this by getting the information from employees themselves using form EEA1 of the Regulations.

If employers have alternative and reliable sources of this information, such as the information captured on employment application forms, they may use this as long as employees are able to verify or change such information.

Many larger employers will have this information stored on some form of computer system. While they will be able to use this information they will need some mechanism to enable employees to verify and change their personal details.

**Secondly**, by comparing the number of employees from designated groups with relevant demographics.

There are many sources of information that employers are able to use in order to do this.

At a more general level employers can look at the distribution of the economically active population in the regions in which they operate and compare this to the distribution of their workforce overall as well as by occupational category and level.

Demographic information is available from Statistics South Africa. Form EEA8 of the Regulations provides information relating to the distribution of the economically active population per province. Forms EEA8 and EEA9 of the regulations provide information regarding occupational levels and categories. Copies of all forms are included in Section 5 of this user's guide.

The source and use of more specific information for comparative purposes will depend on the nature of the organisation and its activities. For instance, employers providing professional services will often be affiliated with related professional bodies who have access to information regarding the availability and source of specialised resources.

**How do you establish meaningful comparisons?**

There are a number of bases on which employers can benchmark their diversity profiles. An employer can compare his workforce profile

- with those of organisations of a similar size
- with those of organisations within the same sector or industry
- with those of organisations which are structurally similar and whose activities are spread over a similar geographic area

Most employers are willing to share information on a reciprocal basis and there are a number of existing research services in which employers can participate in order to establish comparative information.

Meaningful comparisons are not once-off. After an employer has established a comparative position at a point in time, this should be reviewed on an ongoing basis and the changes tracked. Sections B and C of the report form EEA2 are useful in establishing what information employers should collect and track over time.

The Commission for Employment Equity (CEE) is mandated by the Act to do research in order to develop norms and benchmarks for the setting of numerical goals.

## Phase 2: Implementation

The second phase contains all the steps that an employer needs to take to implement the employment equity plan

### STEP 5 : SETTING OBJECTIVES AND FORMULATING MEASURES

#### How to go about setting goals and objectives?

The preparation done in phase one should provide employers with:

- a snapshot of their organisation profile and valuable information on their organisation's profile in respect of race, gender and disability
- an understanding of which practices or working conditions adversely affect members of designated groups
- which practices and working conditions are conducive to diversity
- internal statistics regarding the rate of labour turnover at the various levels
- internal statistics regarding movements such as promotions and transfers at the various levels
- information regarding the profile of the economically active in their region
- comparisons between the organisation's workforce profile and those of similar organisations.

This information, together with their business plan, should enable employers to set realistic and achievable goals.

#### What are affirmative action measures?

Affirmative action measures are those measures that need to be taken to address those employment policies, practices, and working conditions that were identified in Step 4 as having an adverse effect on the employment and advancement of members of designated groups.

For each specific practice identified, an affirmative action measure or measures need to be formulated and developed.

Some examples are

- where pre-employment psychological tests are found to be culturally biased, employers need to consider introducing acceptable competency based tests
- where there is an unusually high resignation rate of members of designated groups, reasons should be investigated and action taken to address these problems
- where vacancies are inappropriately advertised in terms of distribution to members of designated groups, more suitable media should be found.

Employers might also choose to develop **pro-active measures** as part of their social responsibility programmes such as

- using community organisations and educational institutions to highlight and promote the development of scarce skills in the community
- using the same institutions to distribute career counselling and information regarding the opportunities and career paths within the industry
- provide a combination of learnerships and bursaries to support these initiatives.

Corrective measures will differ from one organisation to another depending on the barriers identified.

## STEP 6 : ESTABLISHING A TIME FRAME

### Duration of a plan?

As specified in the Act, the duration of a plan should be between one and five years. Employers should decide on the duration of their plans given their particular circumstances and the timeframe in which they can make meaningful progress.

The time frame should set out more than the duration of the plan. It should specify milestones and the target dates set for reaching these.

Before the end of the term for a current plan, an employer must prepare a subsequent plan.

## STEP 7 : ALLOCATE RESOURCES

### What resources?

- Budgets should be appropriately allocated in order to implement the agreed components of the plan. Research into best practice indicates that successful programmes have separate budgets designated solely for employment equity purposes.
- **People** such as the manager(s) assigned with responsibility.
- Time off for stakeholders involved in the process.
- **Infrastructure** such as a project office or meeting room.
- **Training** and information sharing
- Any **other** resources that may be appropriate in the circumstances.

## STEP 8 : COMMUNICATE THE PLAN

**The plan should be communicated to all stakeholders.**

### What should this include?

Communication should inform stakeholders

- Who is responsible for the implementation of the plan
- Where information regarding the plan can be obtained

- Objectives and duration of the plan
- Dispute resolution procedures
- Roles and responsibilities of the role players tasked with ensuring the success of the plan.

## Phase 3: Monitoring

Phase 3 contains the steps that an employer takes to monitor and review the implementation of the employment equity plan

### STEP 9 : MONITORING AND EVALUATING THE PLAN

#### What should employers do?

Employers should

- Keep records of the plan. They need to be able to review their starting position and track the movements in that position over the duration of the plan.
- Implement one or more mechanisms to monitor and evaluate the implementation of the plan. These mechanisms may form part of their business monitoring systems. Adequate information systems are very useful in this regard.
- Evaluate progress at structured and regular intervals. If this is integrated into business monitoring processes, enough time should be set aside specifically to deal with employment equity issues.
- Report on progress to the consultative forum and all stakeholders.
- Where progress is unsatisfactory or flaws emerge in the plan, review and revise the plan through the consultation process.

### STEP 10 : REPORTING TO THE DEPARTMENT OF LABOUR

Section 3 of the guide deals with when and how to report to the Department and also deals with some frequently asked questions.

# **Code of Good Practice –**

## **Employment Equity Act**

(taken from the Department of Labour's booklet – "Preparing an Employment Equity Plan – A User's Guide")

### **Preparation, implementation and monitoring of employment equity plans**

Notice is hereby given under Section 54 of the Employment Equity Act, 1998, that the Minister of Labour, having been advised by the Commission for Employment Equity, has issued a Code of Good Practice on the preparation, implementation and monitoring of an Employment Equity Plan, as set out in this schedule.

#### **1. OBJECTIVE**

The objective of this code is to provide guidelines of good practice, in terms of the requirements of the Employment Equity Act, 1998 (Act No 55 of 1998) (*hereafter referred to as "the Act"*), for the preparation and implementation of an employment equity plan (*hereafter referred to as "the plan"*).

#### **2. LEGAL FRAMEWORK**

- 2.1** This code is issued in terms of Section 54 of the Employment Equity Act, No. 55 of 1998 and relates to Section 20.
- 2.2** This code does not impose any legal obligations in addition to those in the Act and the failure to observe it does not, by itself, render a designated employer liable in any proceedings, except where the code refers to obligations that are required by the Act
- 2.3** When interpreting the Act, any relevant code of good practice must be taken into account.<sup>1</sup>

#### **3. SCOPE**

- 3.1** This code is relevant to all employers that are regarded as designated employers in the Act.<sup>2</sup>
- 3.2** Designated employers and the employees of designated employers should apply the guidelines set out in this code to develop their employment equity plans, taking into account the specific circumstances of their own organisations.
- 3.3** This code may be read in conjunction with other codes of good practice that may be issued by the Minister of Labour.

#### **4. PURPOSE AND RATIONALE FOR THE PLAN**

- 4.1** The plan reflects a designated employer's employment equity implementation program.
- 4.2** The plan represents the critical link between the current workforce profile and possible barriers in employment policies and procedures, and the implementation of remedial steps to ultimately result in employment equity in the workplace.

#### **5. STRUCTURE OF THE PLAN**

- 5.1** The plan may be a separate document or a component of a broader document such as a business plan.
- 5.2** In terms of the manner in which it is set out, the plan may closely follow the sections of the Act and the relevant items of the Code, or may be organised differently, as long as the statutory requirements in Section 20 of the Act are reflected in the plan.
- 5.3** The plan should be accessible and structured in such a way that it is easy to understand.

#### **6. PROCESS FOR CONSTRUCTING A PLAN**

- 6.1** The development of a plan should be undertaken as an inclusive process that will result in a documented plan.
- 6.2** The process of developing a plan has three sequential phases: planning, development, and implementation and monitoring.
- 6.3** The planning phase of the process should include –
  - assignment of responsibility and accountability to one or more senior managers;
  - a communication, awareness and training programme;
  - consultation with relevant stakeholders;
  - an analysis of existing employment policies, procedures, and practices;
  - an analysis of the existing workforce profile;
  - an analysis of relevant demographic information such as that contained in form EEA 8, and
  - an appropriate benchmarking exercise, such as comparing the organisation's workforce profile with those of other organisations

within the same sector, or the development of other meaningful comparisons.

**6.4** In the development phase, in consultation with the identified role players, should include –

- objectives set;
- corrective measures formulated;
- time frames established;
- the plan drawn up;
- resources identified and allocated for the implementation of the plan, and
- the plan communicated.

**6.5** **Implementation and monitoring is an ongoing process and should continue to include components of the earlier phases, such as consultation, communication, awareness and training. This phase should include –**

- implementation
- monitoring and evaluating progress;
- reviewing the plan, and
- reporting on progress.

## 7. PLANNING PHASE

### 7.1 Assignment of senior manager<sup>3</sup>

**7.1.1** The planning phase should commence with the assignment of one or more senior managers who should have the responsibility for the development, implementation and monitoring of the plan. They should –

- be permanent employees, and
- report directly to the Chief Executive Officer.

**7.1.2 The assignment of one or more senior managers implies that –**

- the employer should also provide the assigned managers with the necessary authority and means, such as an appropriate budget, to perform their allocated functions;
- the employer is not relieved of any duty imposed by this Act or any other law, and
- the employer should take reasonable steps to ensure that these managers perform their allocated functions. This could be done through the incorporation of key employment equity outcomes in performance contracts of the responsible managers as well as line managers throughout the organisation.

## 7.2 Communication, Awareness and Consultation<sup>4</sup>

**7.2.1** All employees should be made aware and informed of –

- the content and application of the Act as preparation for their participation and consultation;
- employment equity and anti-discrimination issues;
- the proposed process to be followed by the employer;
- the advantages to employees of participation in the process, and
- the need for the involvement of all stakeholders in order to promote positive outcomes.

**7.2.2** Employers are required to consult with regard to conducting an analysis, the preparation and implementation of the plan, and the submission of employment equity reports to the Department of Labour.

**7.2.3** To ensure the successful implementation of a plan, employers should make every effort to include employee representatives in all aspects of the plan, especially the planning and development phases.

**7.2.3** Managers should be informed of their obligations in terms of the Act, and training should be provided to them where particular skills do not exist. Examples of required training could include diversity management, coaching and mentoring programmes.

**7.2.4** The communication of an employment equity strategy should focus on positive outcomes, such as the better utilisation of all of the employer's human resources and the creation of a diverse and more productive workforce.

**7.2.5** Communication should also include employees from non-designated groups<sup>5</sup> and focus on the contribution that can be made by them.

**7.2.6** Consultation with employees should commence as early as possible in the process.

**7.2.7** A consultative forum should be established or an existing forum utilised. The forum should include employee representatives reflecting the interests of employees from both designated and non-designated groups and across all occupational categories and levels of the workforce. Representative trade unions, where these exist, or representatives nominated by such trade unions must be included in the consultation process.

**7.2.8** The employer should be represented by one or more members of senior management.

**7.2.9** Consultation would include –

- the opportunity to meet and report back to employees and management;
- reasonable opportunity for employee representatives to meet with the employer;
- the request, receipt and consideration of relevant information, and
- adequate time allowed for each of these steps.

**7.2.10** To ensure an informed and constructive consultation process, structured and regular meetings of the consultative forum or forums should be held.

**7.2.11** The disclosure of relevant information by designated employers is vital for the successful implementation of the plan. Such information could include –

- the particular business environment and circumstances of the employer;

- information relating to the relevant economic sector or industry;
- relevant local, regional, and national demographic information relating to the economically active population;
- the anticipated growth or reduction of the employer's workforce;
- the turnover of employees in the employer's workforce;
- the internal and external availability for appointment or promotion of suitably qualified people from the designated groups;
- the degree of representation of designated employees in each occupational category and level in the employer's workforce, and
- employment policies and practices of the employer.

**7.2.12** All parties should, in all good faith, keep an open mind throughout the process and seriously consider proposals put forward.

**7.2.13** Where a representative body or trade union refuses to take part in the consultation process, the employer should record the circumstances, in writing, including those steps that the employer has taken to communicate and initiate the consultation process. A copy of this document should be provided to the representative body or trade union concerned.

### **7.3 Conducting an analysis<sup>6</sup>**

The purpose of the analysis is –

- a. to assess all employment policies, practices, procedures, and the working environment so as to –
  - identify any barriers that may contribute to the under-representation or under-utilisation of employees from the designated groups;
  - identify any barriers or factors that may contribute to the lack of affirmation of diversity in the workplace;
  - identify other employment conditions that may adversely affect designated groups;

- identify practices or factors that positively promote employment equity and diversity in the workplace; and
- b. to determine the extent of under-representation of employees from the designated groups in the different occupational categories and levels of the employer's workforce.

While the first type of analysis is of a more qualitative and legal nature, the second is mainly a statistical and data processing exercise.

### **7.3.1      Review of employment policies, practices, procedures, and working environment**

A review of all employment policies, practices, procedures, and of the working environment should be undertaken in order to identify any barriers that may be responsible for the under-representation or under-utilisation of employees from designated groups.

- a. The review should include a critical examination of all established policies, practices, procedures and working environment. These would include –
  - employment policy or practices, such as recruitment, selection, pre-employment testing, and induction that could be biased, inappropriate, or unaffirming;
  - practices related to succession and experience planning, and related promotions and transfers to establish whether designated groups are excluded or adversely impacted;
  - utilisation and job assignments to establish whether designated groups are able to meaningfully participate and contribute;
  - current training and development methodologies and strategies, including access to training for designated groups;
  - remuneration structures and practices such as equal remuneration for work of equal value;
  - employee benefits related to retirement, risk, and medical aid to establish whether designated groups have equal access;

- disciplinary practices that may have a disproportionately adverse effect on designated groups and that may not be justified;
- working conditions that may not accommodate cultural or religious differences, such as the use of traditional healers and observance of religious holidays;
- the number and nature of dismissals, voluntary terminations and retrenchments of employees from designated groups that may indicate internal or external equity-related factors contributing to such terminations;
- corporate culture, which may be characterised by exclusionary social and other practices;
- practices relating to the management of HIV/AIDS in the workplace, to ensure that people living with HIV/AIDS are not discriminated against, and
- any other practices or conditions that are tabled arising out of the consultative process.

b. All practices should be assessed in terms of cross-cultural and gender fairness.

c. The review should take into account more subtle or indirect forms of discrimination and stereo-typing which could result in certain groups of people not being employed in particular jobs, or which could preclude people from being promoted. Examples would include pregnancy, family responsibility<sup>7</sup>, exclusionary social practices, sexual harassment, and religious or cultural beliefs and practices.

### 7.3.2 Workforce profile

a. The first step in conducting an analysis of the workforce profile is to establish which employees are members of designated groups. This information should be obtained from employees themselves, either from a declaration as provided for in Regulation 2(1) or from existing and dependable sources. An example of an existing and dependable source would be an employer's database that

contains the information required on employment application forms. If such existing records are utilised for this purpose, each employee should have the opportunity to verify or request changes to this information.

- b. An analysis of the workforce profile should provide a comparison of designated groups by occupational categories and levels to relevant demographic data. Form EEA 8 contains some demographic data for this purpose, but there are many other sources of information that could be utilised and might be more relevant.
- c. In addition to the demographics, both the availability of suitably qualified people from designated groups in the relevant recruitment area, as well as the internal skills profile of designated employees, should be taken into account. The 'relevant recruitment area' is that geographic area from which the employer would reasonably be expected to draw or recruit employees.
- d. Recruitment areas may vary depending upon the level of responsibility and the degree of specialisation of the occupation. Usually, the higher the degree of responsibility or specialisation required for the job, the broader the recruitment area.
- e. The standard occupational classification as defined in form EEA 10 should form the basis for determining occupational categories. Occupational levels could be determined by any of the professional job grading systems (Paterson, Peromnes, Hay, etc.) or their equivalents as detailed in form EEA 9. In the absence of a formal job grading system, designated employers may use equivalent occupational levels as the basis for the workforce analysis.
- f. Sections B and C of the Employment Equity Report as defined by form EEA 2 should guide employers in establishing information requirements to develop a plan, and provide the basis for developing a workforce profile.

## 8. DEVELOPING THE PLAN

### 8.1 Duration of the plan <sup>8</sup>

The duration of the plan should be for a period that will allow the employer to make reasonable progress towards achieving employment equity. This

period should be no shorter than one year and no longer than five years, as specified in the Act.

## 8.2 Broad objectives of the plan

The broad objectives of the plan should be specified and a timetable developed for the fulfilment of each objective. These objectives should -

- take into account the output of the planning phase;
- the particular circumstances of the employer, and
- be aligned with and included in the broader business strategy of the employer.

## 8.3 Affirmative action measures<sup>9</sup>

**8.3.1** Affirmative action measures, to address the barriers identified during the analysis, should be developed to improve the under-representation of designated group members. Such measures relate to, but are not limited to the following:

- **Appointment of members from designated groups**  
This would include transparent recruitment strategies such as appropriate and unbiased selection criteria and selection panels, and targeted advertising.
- **Increasing the pool of available candidates**  
Community investment and bridging programmes can increase the number of potential candidates.
- **Training and development of people from designated groups**  
These measures include access to training by members of designated groups, structured training and development programmes like learnerships and internships; on the job mentoring and coaching, and accelerated training for new recruits. Where required, diversity training should be provided to responsible managers as well as training in coaching and mentoring skills.
- **Promotion of people from designated groups**  
This could form part of structured succession and experience planning and would include appropriate and accelerated training.
- **Retention of people from designated groups**  
Retention strategies would include the promotion of a

more diverse organisational culture; an interactive communication and feedback strategy; and ongoing labour turnover analysis.

- **Reasonable accommodation<sup>10</sup> for people from designated groups**

These measures include providing an enabling environment for disabled workers and workers with family responsibilities so that they may participate fully and, in so doing, improve productivity. Examples of reasonable accommodation are accessible working areas, modifications to buildings and facilities, and flexible working hours where these can be accommodated.

- **Steps to ensure that members of designated groups are appointed in such positions that they are able to meaningfully participate in corporate decision-making processes**

A conscious effort should be made to avoid all forms of tokenism. Candidates must be appointed with commensurate degrees of authority.

- **Steps to ensure that the corporate culture of the past is transformed in a way that affirms diversity in the workplace and harnesses the potential of all employees**

Such steps could include programmes for all staff, including management, contextualising employment equity and sensitising employees with regard to the grounds of discrimination such as race, diversity, gender, disability, and religious accommodation.

- **Any other measures arising out of the consultative process**

**8.3.2** All corrective measures to eliminate any barriers identified during the analysis should be specified in the plan.

**8.3.3** The employer is under no obligation to introduce an absolute barrier relating to people who are not from designated groups, for example having a policy of not considering white males at all for promotion or excluding them from applying for vacant positions.

## **8.4 Numerical goals<sup>11</sup>**

**8.4.1** Numerical goals should be developed for the appointment and promotion of people from designated groups. The purpose of

these goals would be to increase the representation of people from designated groups in each occupational category and level in the employer's workforce, where under-representation has been identified and to make the workforce reflective of the relevant demographics as provided for in form EEA 8.

**8.4.2** In developing the numerical goals, the following factors should be taken into consideration –

- The degree of under-representation of employees from designated groups in each occupational category and level in the employer's workforce;
- present and planned vacancies;
- the provincial and national economically active population as presented in form EEA 8;
- the pool of suitably qualified persons from designated groups, from which the employer may be reasonably expected to draw for recruitment purposes;
- present and anticipated economic and financial factors relevant to the industry in which the employer operates;
- economic and financial circumstances of the employer;
- the anticipated growth or reduction in the employer's workforce during the time period for the goals;
- the expected turnover of employees in the employer's workforce during the time period for the goals, and
- labour turnover trends and underlying reasons, specifically for employees from designated groups.

## **8.5 Consensus**

In setting objectives and developing corrective measures, parties to the consultative processes should attempt to reach consensus on what would constitute reasonable progress over the duration of the plan.

## **8.6 Resources**

Resources, including budgets, should be appropriately allocated in order to implement the agreed components of the plan.

## **8.7 Assignment of responsibility**

Responsibility for implementation and monitoring of the plan, as assigned during the planning phase, should be confirmed and noted.

## **8.8 Dispute Resolution**

- 8.8.1** Internal procedures for resolving any dispute about the interpretation and implementation of the plan should be agreed and specified.
- 8.8.2** The use of existing dispute resolution procedures should be encouraged provided that they are appropriate, and if necessary adapted to the needs of employment equity.
- 8.8.3** Alternatively, a mechanism with appropriate representation from employer and employees may be established in order to address and resolve such disputes.

## **8.9 Communication**

- 8.9.1** The plan should be appropriately and comprehensively communicated to employees. This communication mechanism should indicate the parties responsible for the implementation of the plan and the agreed dispute resolution procedures. Information about the plan should be easily accessible to all levels of employees.

# **9. MONITORING AND EVALUATING THE PLAN**

- 9.1** Records should be kept to effectively monitor and evaluate the plan.
- 9.2** Mechanisms to monitor and evaluate the implementation of the plan should be agreed and include benchmarks that would permit assessment of reasonable progress.
- 9.3** The plan should be evaluated at regular intervals to ensure that reasonable progress is made. This evaluation should be integrated into mechanisms that the employer normally utilises to monitor its operations.
- 9.4** The consultative forum(s) should continue to meet on a regular basis, and should receive progress reports. Progress should be recorded and communicated to employees. Such meetings should take place at reasonable intervals to ensure feedback and inform the ongoing implementation process.
- 9.5** The plan should be reviewed and revised, as necessary, through consultation.

## 9.6 Reporting <sup>12</sup>

**9.6.1** Larger employers, with 150 or more employees, will be required to submit first reports by 1 June 2000 and thereafter annually on the first working day of October, starting in 2001.

**9.6.2** Smaller employers, with fewer than 150 employees, will be required to submit their first reports by 1 December 2000 and thereafter every second year, on the first working day of October, starting in 2002.

**9.6.3** The reporting format for employers is contained in the Employment Equity Report as defined in form EEA2.

**9.6.4** Designated employers whose operations extend across different geographical areas, functional units, workplaces or industry sectors may elect to submit either a consolidated or a separate report for each of these. This decision should be made by employers after consultation with the relevant stake-holders.

### Footnotes

1. Section 3(c) of the Act
2. See the definition of "designated employer" in the Act.
3. See section 24 of the Act.
4. See sections 16 and 17 of the Act.
5. See the definition of "designated groups" in the Act.
6. See section 19 of the Act.
7. See the definition of "family responsibility" in the Act.
8. See section 20(2)(e) of the Act.
9. See sections 15 and 20(2)(b) of the Act.
10. See the definition of "reasonable accommodation" in the Act.
11. See section 20(2)(e) of the Act.
12. See section 21 of the Act.

# **Affirmative Action to Remove All Barriers To Equality And Discrimination In Employment Practices**

(Numsa document submitted to employers but never agreed to by employers)

## **Guidelines to Affirmative Action**

### **1. General**

- 1.1 The parties to this programme commit themselves to a set of procedures aimed at proactively addressing the disadvantages experienced.
- 1.2 Affirmative action shall mean, the implementation of a programme aimed at removing barriers to equality and discrimination.

### **2. Recruitment Procedure**

- All jobs shall clearly define in brief the:
  - job analysis
  - job description
  - job requirements.
- All jobs shall be open to all applicants irrespective of race or gender.
- The policy of equal opportunity shall be emphasised at all stages of recruitment.
- Both parties to negotiate selection criteria which will be appropriate for the needs of the job, the employer and society.

#### **2.1 Internal Recruitment**

- 2.1.1 Numsa shop stewards shall be informed timeously of all vacancies.
- 2.1.2 All vacancies shall be advertised internally as follows:
  - all workers to be advised of details of vacancies by notice in their wage packets.
  - Notices on vacancies to be posted on special notice board.

#### **2.2 Recruitment of Retrenched workers**

- 2.2.1 Where retrenchment has occurred and where an employer is unable to recruit internally, the company shall make all attempts to recruit workers from the ranks of workers retrenched by the company.
- 2.2.2 If 2.2 is not applicable, an employer is to make attempts to recruit from the ranks of the retrenched workers within the industry.
- 2.2.3 To facilitate 2.2.2 all industries shall forward schedules of retrenched employees and their employment details to the union and the industrial council.

#### **2.3 External Recruitment – Advertisement**

- 2.3.1 The press statement shall state that the company is an equal opportunity employer and that the vacancy is open to all irrespective of race and gender.
- 2.3.2 Procedures outlined in 2 shall be clearly stated.
- 2.3.3 Recruitment agencies:  
Only those employment agencies that comply and subscribe to this programme may be used.
- 2.3.4 Recruitment of foreign labour skills.
  - Priority shall be given to local South Africans.

- Foreign skilled labour may only be recruited after negotiations with Numsa shop stewards and after it has been established that there are no South Africans capable of occupying the position.
- Any foreign employee so employed shall train local South Africans within a specified period of time.

### **3. Selection standards and procedures**

- Selection criteria shall be related to the inherent requirement of the job and consistently applied to all applicants irrespective of gender or race.
- Non-job related qualifications and higher than necessary qualifications such as educational degrees or length of service shall not be used to justify selection of a person from an advantaged group over a person from a disadvantaged group.
- Qualifications required for a job shall be based on current job description or skills requirements which accurately identify the nature and functions of the job.
- Qualifications for position shall be without traditional notions of who should be performing the job.
- The mere existence of a prior detention, arrest or conviction record shall not constitute sufficient grounds for refusal to select any applicant for employment.
- Recognition of prior learning may be requested by an applicant.

#### **3.1 Application Forms**

The format shall be simple and shall be available in all applicable languages.

#### **3.2 Interviews**

- The number of interviews shall be negotiated at factory level.
- All interviews to be recorded to justify decision.
- Interviews should provide evidence upon which a prediction can be made of the applicants future performance in the job for which s/he is being considered.

#### **3.3 Testing**

Job experience is more important than testing. Intelligence and personality testing shall not be compulsory to applicants.

#### **3.4 Reference checks**

- 3.4.1 Reference checks shall only be done with the prior permission of the applicant.
- 3.4.2 All reference checks shall be consulted on the format of the standard letter.
- 3.4.3 If an applicant is rejected as a result of a reference check, s/he shall be allowed representation.

### **4. Working conditions**

- 4.1 All benefits and conditions of employment shall equally be available to all employees irrespective of gender or race. Specifically, it should be ensured that privileged terms, benefits and working conditions which are available to some workers in a particular classification, are made available to all employees.
- 4.2 All benefit schemes are to be negotiated with Numsa.
- 4.3 Employers must ensure safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances. S/he should provide such information and training to ensure the health and safety at work of employees.
- 4.4 Employers should create a working climate techniques to:-
  - remove some controls from above while ensuring that individuals or groups are clearly accountable for achieving defined targets or standards.
  - Encourage the participation of employees in planning work and innovating new techniques.

- Assign to individuals or groups, projects which help them to increase their expertise.

5. Training and education

- 5.1 All employees irrespective of race or gender shall be informed of training opportunities and encouraged to pursue a career path and employers should avail such opportunities.
- 5.2 Aims in training and educating employees should be to:
  - 5.2.1 shorten learning time so that new recruits reach their peak of efficiency as quickly and economically as possible.
  - 5.2.2 Help employees to develop skills and knowledge so that they can meet some if not all future requirements from within their industries/plants.
- 5.3 Training programmes should be developed to assist employees of all disadvantaged race or gender in overcoming obstacles to their entrance and development in employment.
- 5.4 Training programmes should ensure that:
  - they assist employees in adjusting to structural change and tactical innovation in the workplace
  - these programmes are provided during normal working hours without loss of pay and without penalties for attending training
  - they are provided to permit employees of the disadvantaged race or sex to compete equally for promotion in the labour market
  - they increase employees written and spoken communication and general basic education.

6. Career advancement

- 6.1 Career counselling should be offered to all workers.
- 6.2 All promotions shall be open to all applicants irrespective of race or gender.
- 6.3 Both parties to negotiate a formal promotion policy.
- 6.4 Prior knowledge, experience and skills, however and whenever acquired, shall be recognised.

7. Discipline procedures and practices

- 7.1 Disciplinary codes and procedures shall be applied equally. An employee belonging to one race or sex should not be dismissed or disciplined for performance or behaviour which is accepted when exhibited by other employee.

8. Retrenchment and retirement

- 8.1 Special provision should be made for retrenchment based on seniority where there has been a past history of gender or race discrimination in employment practices.
- 8.2 All employees at the company should have the means to influence the major decision that may determine the conditions of their own working lives.

9. Wages and benefits

- the aim of payment in general is to attract, retain and motivate labour therefore equal remuneration is important.
- Rates and types of remuneration based on an employee's race or gender should be removed.
- The basis should be equal remuneration for work of equal value.
- Any remuneration system and structure that has the effect of grouping blacks and women in a specific job classification and salary level should be reviewed and adjusted to ensure that employees are not performing work of equal value in a different job classification and salary level.

- Any reference to race or gender should be eliminated in all remuneration criteria in payment systems, salary schedules, bonus systems, medical schemes and other benefits.

10. Facilities

- All facilities such as recreation canteens, accommodation, rest rooms, and equipment should be available to all employees on an equal basis.
- Employers should provide welfare and social services which meet the needs of women workers, particularly those with family responsibilities and such services to be funded from Industrial Welfare funds.

11. Special Protection

- All plants shall form joint sexual harassment and health and safety committees with equal representation of workers and management to investigate sexual harassment cases and identify health hazards and ensure that employers provide and maintain a working environment for employees that is safe, without risks to health.
- Employers must prepare written statements of the general policies with respect to the health and safety of their employees and their code of conduct to end sexual harassment in employment. Arrangements for carrying out these policies should be outlined.

12. Implementation

12.1 Legal Status

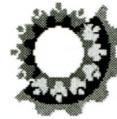
This Agreement is not legally binding except insofar as:

- 12.1.1 Any employer or employer's association ratifies the document.
- 12.1.2 Any of the provisions of this document are not already binding by virtue of any other agreement between Numsa and any other employer's association.

# FORMS FOR THE

## EMPLOYMENT EQUITY ACT

DEPARTMENT OF LABOUR  
(*Confidential*)



### Declaration by employee

Employment Equity Act  
55 of 1998, Regulation 2(2)

PLEASE READ THIS FIRST



#### WHAT IS THE PURPOSE OF THIS FORM?

This form can be used to obtain information from employees, on a voluntary basis only; for the purpose of assisting employers with conducting an analysis on the workforce profile; and to ascertain which of the existing employees are from designated groups in terms of the Employment Equity Act, 55 of 1998.

#### WHO FILLS IN THIS FORM?

Employees.

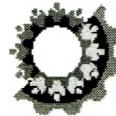
#### INSTRUCTIONS

The contents of the form shall remain confidential, and shall only be used by employers in order to ensure compliance with the Act.

'People with disabilities' are defined in the Act as people who have long-term or recurring physical or mental impairment which substantially limits their prospects of entering into, or advancement in, employment.

1. Name: _____
2. Employee No: _____
3. Please indicate to which categories you belong:
Male <input type="checkbox"/> Female <input type="checkbox"/>
African <input type="checkbox"/> Coloured <input type="checkbox"/> Indian <input type="checkbox"/> White <input type="checkbox"/>
Person with a disability: Yes <input type="checkbox"/> No <input type="checkbox"/>
If yes, specify nature of disability: _____
4. I verify that the above information is true and correct.
Signed: _____ (Employee)
Date: _____

## DEPARTMENT OF LABOUR



## Employment Equity Report

page 1 of 12

Employment Equity Act  
55 of 1998, Section 21

## PLEASE READ THIS FIRST



## WHAT IS THE PURPOSE OF THIS FORM?

This form contains the format for employment equity reporting to the Department of Labour. The form incorporates the reporting requirements for designated employers, both smaller (less than 150 employees) and larger (150 or more employees). The form also contains the progress report to be completed after the first round of reporting.

## WHO COMPLETES THIS FORM?

All designated employers that have to submit a report in terms of the Employment Equity Act, 55 of 1998. Any employer completing the Employment Equity Report voluntarily.

## INSTRUCTIONS

## A designated employer that employs 150 or more employees must:

- Submit the first report by 1 June 2000, and thereafter annually on the first working day of October, starting in 2001.
- Complete all sections of this form, except for section G (progress) in the first report.
- Complete all sections of this form, including section G, in subsequent reports.

## A designated employer that employs less than 150 employees must:

- Submit its first report by 1 December 2000, and thereafter every second year on the first working day of October, starting in 2002.
- Complete sections A, B, F and H in the first report.
- Complete sections A, B, F, G and H in subsequent reports.
- Complete question 8.2 (termination categories) in all reports.
- Optionally complete sections C, D and E in all reports.

## SEND TO:

Employment Equity Registry  
The Department of Labour  
Private Bag X117  
Pretoria 0001  
Telephone: 012 3094000  
Facsimile: 012 3202059 / 3220413  
e-mail: [ee@labour.gov.za](mailto:ee@labour.gov.za)

## Section A: Employer Details

Employer:	
Registration No:	
SARS Registration No:	
UIF Number:	
Industry Sector:	
Contact Person:	
Address:	
Town/City	
Postal Code	
Telephone No:	
Fax No.	
E-Mail Address:	
Date of Submission:	

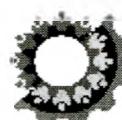
Organ of state:

Yes	No
-----	----

Are you voluntarily complying with this Act as specified in section 14:

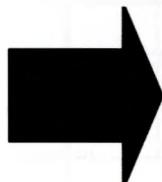
Yes	No
-----	----

## DEPARTMENT OF LABOUR



## Section B: Workforce Profile

**Please read instructions first**



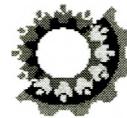
- (a) Include persons with disabilities in question 2 and 4 as well as separately in questions 3 and 5.
- (b) The totals for questions 2 and 4 should tally exactly.
- (c) The totals for questions 3 and 5 should tally exactly.
- (d) The summary of the occupational categories is available in EEA 10 of the Regulations. The complete classification system is available from Statistics South Africa.
- (e) Occupational levels appear in EEA 9 of the Regulations.
- (f) When completing question 3 and 5 only include permanent employees in the occupational categories and levels.
- (g) For reporting purposes, non-permanent employees refer to those who are employed to work for less than 24 hours per month, or those engaged to work for less than 3 continuous months.
- (h) In section C (Employee Movements) only permanent employees should be reported.

1. Date of workforce profile: \_\_\_\_\_

2. Please report the total number of **employees** (including employees with disabilities) in each of the following **occupational categories**:

Occupational Categories	Male				Female				TOTAL
	African	Coloured	Indian	White	African	Coloured	Indian	White	
Legislators, senior officials and managers									
Professionals									
Technicians and associate professionals									
Clerks									
Service and sales workers									
Skilled agricultural and fishery workers									
Craft and related trades workers									
Plant and machine operators and assemblers									
Elementary occupations									
<b>TOTAL PERMANENT</b>									
Non – permanent employees									
<b>TOTAL</b>									

## DEPARTMENT OF LABOUR



## Employment Equity Report

Page: 3 of 12

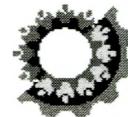
3. Please report the total number of **employees with disabilities** in each of the following occupational categories:

Occupational Categories	Male				Female				TOTAL
	African	Coloured	Indian	White	African	Coloured	Indian	White	
Legislators, senior officials and managers									
Professionals									
Technicians and associate professionals									
Clerks									
Service and sales workers									
Skilled agricultural and fishery workers									
Craft and related trades workers									
Plant and machine operators and assemblers									
Elementary occupations									
<b>TOTAL PERMANENT</b>									
Non – permanent employees									
<b>TOTAL</b>									

4. Please report the total number of **employees** (including employees with disabilities) in each of the following **occupational levels**:

Occupational Levels	Male				Female				TOTAL
	African	Coloured	Indian	White	African	Coloured	Indian	White	
Top management									
Senior management									
Professionally qualified and experienced specialists and mid-management									
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents									
Semi-skilled and discretionary decision making									
Unskilled and defined decision making									
<b>TOTAL PERMANENT</b>									
Non – permanent employees									
<b>TOTAL</b>									

## DEPARTMENT OF LABOUR



5. Please report the total number of **employees with disabilities** in each of the following occupational levels:

Occupational Levels	Male				Female				TOTAL
	African	Coloured	Indian	White	African	Coloured	Indian	White	
Top management									
Senior management									
Professionally qualified and experienced specialists and mid-management									
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents									
Semi-skilled and discretionary decision making									
Unskilled and defined decision making									
<b>TOTAL PERMANENT</b>									
Non – permanent employees									
<b>TOTAL</b>									

## DEPARTMENT OF LABOUR

**Section C: Workforce movement**

Reporting period for workforce movement (past 12 months): From: \_\_\_\_\_ To: \_\_\_\_\_

**6. Recruitment** (report the total number of new recruits during the twelve months preceding this report):

Occupational Levels	Male				Female				TOTAL
	African	Coloured	Indian	White	African	Coloured	Indian	White	
Top management									
Senior management									
Professionally qualified and experienced specialists and mid-management									
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents									
Semi-skilled and discretionary decision making									
Unskilled and defined decision making									
<b>TOTAL PERMANENT</b>									

People with disabilities								
--------------------------	--	--	--	--	--	--	--	--

**7. Promotion:** (report the total number of promotions into each occupational level during the twelve months preceding this report)

Occupational Levels	Male				Female				TOTAL
	African	Coloured	Indian	White	African	Coloured	Indian	White	
Top management									
Senior management									
Professionally qualified and experienced specialists and mid-management									
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents									
Semi-skilled and discretionary decision making									
Unskilled and defined decision making									
<b>TOTAL PERMANENT</b>									

People with disabilities								
--------------------------	--	--	--	--	--	--	--	--



## DEPARTMENT OF LABOUR

## Employment Equity Report

Page: 6 of 12

### **Section C: Workforce movement – continued**

## 8. Termination

**8.1 Termination:** (report the total number of terminations in each occupational level during the twelve months preceding this report)

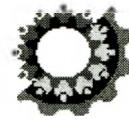
## People with disabilities

**8.2 Termination categories:** (report the total number of terminations in each category during the twelve months preceding this report)

## **Section D: Disciplinary Action**

**9. Disciplinary action:** (report the total number of disciplinary actions during the twelve months preceding this report)

## DEPARTMENT OF LABOUR

**Section E: Skills Development**

**10. Training:** (report the total number of people who received training in each occupational category during the twelve months preceding this report)

Occupational Categories	Male				Female				TOTAL
	African	Coloured	Indian	White	African	Coloured	Indian	White	
Legislators, senior officials and managers									
Professionals									
Technicians and associate professionals									
Clerks									
Service and sales workers									
Skilled agricultural and fishery workers									
Craft and related trades workers									
Plant and machine operators and assemblers									
Elementary occupations									
<b>TOTAL PERMANENT</b>									
Non – permanent employees									
<b>TOTAL</b>									

## DEPARTMENT OF LABOUR



## Employment Equity Report

Page: 8 of 12

**Section F: Qualitative Assessment****11. Awareness of Employment Equity**

11.1 Please indicate which of the following awareness measures were implemented by your organisation:

	Yes	No
Formal written communication		
Policy statement includes reference to employment equity		
Summary of the Act displayed		
Employment Equity training		
Diversity management programmes		
Discrimination awareness programmes		
Other (please specify):		

11.2 Please indicate how many employees received employment equity/non-discrimination training during the past year:

Number of employees trained	
-----------------------------	--

**12. Consultation**

12.1 Please indicate which stakeholders were involved in the consultation process prior to the development of your employment equity plan:

	Yes	No
Workplace forum		
Consultative body or forum		
Registered trade union (s)		
Employees		
Other (Please specify):		

12.2 What was the level of agreement reached in the formulation of the plan:

Total	Sufficient	Some	None
-------	------------	------	------

12.3 How regularly do you meet with the stakeholders mentioned in 12.1:

Weekly	Monthly	Quarterly	Yearly	Other
--------	---------	-----------	--------	-------

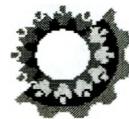
## DEPARTMENT OF LABOUR

**Section F: Qualitative Assessment - continued****13. Analysis**

Please indicate in which categories of employment policy or practices *barriers* to employment equity were identified:

Categories	Yes	No	If yes, specify
Recruitment procedures			
Advertising positions			
Selection criteria			
Appointments			
Job classification and grading			
Remuneration and benefits			
Terms and conditions of employment			
Job assignments			
Work environment and facilities			
Training and development			
Performance and evaluation systems			
Promotions			
Transfers			
Demotions			
Succession and experience planning			
Disciplinary measures			
Dismissals			
Corporate culture			
HIV/Aids education and prevention programme			
Other (please specify):			

## DEPARTMENT OF LABOUR

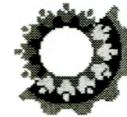


## **Section F: Qualitative Assessment - continued**

#### **14. Employment Equity Plan:**

Please indicate in which categories **affirmative action measures** have been implemented:

## DEPARTMENT OF LABOUR

**Section F: Qualitative Assessment – continued****15. Numerical goals:**

15.1 Please use the table below to indicate the numerical goals you have set for your current employment equity plan:

Occupational Categories	Male				Female				TOTAL
	African	Coloured	Indian	White	African	Coloured	Indian	White	
Legislators, senior officials and managers									
Professionals									
Technicians and associate professionals									
Clerks									
Service and sales workers									
Skilled agricultural and fishery workers									
Craft and related trades workers									
Plant and machine operators and assemblers									
Elementary occupations									
<b>TOTAL PERMANENT</b>									
Non – permanent employees									
<b>TOTAL</b>									

15.2 By which year do you plan to achieve the above numerical goals: \_\_\_\_\_

**16. Resources:**

Please indicate what resources have been allocated to the implementation of employment equity during the past year:

Allocation of Resources	Yes	No
Appointed a designated officer to manage the implementation		
Allocated a budget to support the implementation goals of employment equity		
Time off for employment equity consultative committee (or equivalent) to meet on a regular basis		
Other (Please specify)		

**17. Monitoring and evaluation of implementation:**

How regularly do you monitor progress on the implementation of the employment equity plan:

Weekly	Monthly	Quarterly	Yearly	Other
--------	---------	-----------	--------	-------

**DEPARTMENT OF LABOUR****Section G: Progress Report***(Section G to be completed from the second cycle of reporting onwards)*

18. Reporting period: From \_\_\_\_\_ to \_\_\_\_\_

19. Did you achieve the numerical goals as set out in your employment equity plan for this period:

Yes	No
-----	----

20. Did you achieve the affirmative action objectives as set out in your employment equity plan for this period:

Yes	No
-----	----

20.1 If not, what were the obstacles you experienced:

<b>Obstacles to the employment equity goals and objectives during the past year</b>

20.2 If yes, what factors promoted the accomplishment of your goals and objectives:

<b>Factors contributing to the accomplishment of the employment equity goals and objectives during the past year</b>

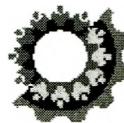
**Section H: Signature of Chief Executive Officer**

Signed on this \_\_\_\_\_ day of \_\_\_\_\_ year \_\_\_\_\_ at place: \_\_\_\_\_

Signature

Full Name

## DEPARTMENT OF LABOUR



## Income Differential Statement

Page: 1 of 2

Employment Equity Act  
55 of 1998, Section 27

## PLEASE READ THIS FIRST

WHAT IS THE PURPOSE  
OF THIS FORM?

This form contains the format for reporting income differentials to the Employment Conditions Commission.

## WHO FILLS IN THIS FORM?

All designated employers, that have to submit a report in terms of the Employment Equity Act, 55 of 1998.

Smaller employers (less than 150 employees) only have to complete Sections A and D of this statement. All other designated employers complete every section of this statement.

## INSTRUCTIONS

Income levels per occupational group must be reported in two wage categories. In completing the Income Levels, the first income level (1) represents the average equivalent yearly remuneration and benefits of the five highest paid employees in that occupational category.

The second income level (2) represents the average equivalent yearly remuneration and benefits of the five lowest paid employees in that occupational category. For reporting purposes, calculate what the equivalent yearly remuneration and benefits would be of workers who are not employed full-time.

## Per occupational group:

The first income level (1) = sum of the 5 highest salaries in that occupational group divided by 5.

The second income level (2) = sum of the 5 lowest salaries in that occupational group divided by 5.

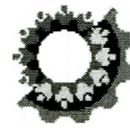
## Section A: Employer details

Employer:	
Registration No:	
SARS Registration	
UIF Number:	
Industry Sector:	
Contact Person:	
Address:	
Town/City:	
Postal Code:	
Telephone No:	
Fax No:	
E-Mail Address:	
Date of submission:	

## Section B: Income differentials per occupational category

Occupational Categories	Income Levels	
Legislators, senior officials and managers	1.	R
	2.	R
Professionals	1.	R
	2.	R
Technicians and associate professionals	1.	R
	2.	R
Clerks	1.	R
	2.	R
Service and sales workers	1.	R
	2.	R
Skilled agricultural and fishery workers	1.	R
	2.	R
Craft and related trades workers	1.	R
	2.	R
Plant and machine operators and assemblers	1.	R
	2.	R
Elementary occupations	1.	R
	2.	R

## DEPARTMENT OF LABOUR



## Income Differential Statement

Page: 2 of 2

## Per occupational level:

The first income level (1) = sum of the 5 highest salaries in that occupational level divided by 5.

The second income level (2) = sum of the 5 lowest salaries in that occupational level divided by 5.

**Income and Occupational Groups are defined in Regulation 6.**

**SEND TO?**

Employment Conditions Commission  
c/o Employment Equity Registry  
(Income Differentials)  
The Department of Labour  
Private Bag X117  
Pretoria  
0001  
e-mail: [ce@labour.gov.za](mailto:ce@labour.gov.za)

**Section C: Income differentials by occupational level**

Occupational level	Income levels	
Top management	1.	R
	2.	R
Senior management	1.	R
	2.	R
Professionally qualified and experienced specialists and mid - management	1.	R
	2.	R
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents	1.	R
	2.	R
Semi-skilled and discretionary decision making	1.	R
	2.	R
Unskilled and defined decision making	1.	R
	2.	R

**Section D: Total income differentials**

	Income levels	
All occupations and levels	1.	R
	2.	R

## ANNEXURE 1: Demographic Data

Employment Equity Act 55 of 1998	<b>1. ECONOMICALLY ACTIVE POPULATION BY PROVINCE</b>										
PLEASE READ THIS FIRST	Eastern Cape	Free State	Gauteng	Kwazulu Natal	Mpumalanga	Northern Cape	Northern Province	North West	Western Cape	Total	
	Employed	786818	701175	2564243	1570573	605925	215523	570129	725287	1374174	9113847
	Unemployed	742427	299948	1007766	1008944	297290	86060	486554	443546	299114	4671647
	Total	1529245	1001123	3572009	2579517	903215	301583	1056683	1168833	1673288	13785493
WHAT IS THE PURPOSE OF THIS ANNEXURE?	Employed (%)	8.63%	7.69%	28.14%	17.23%	6.65%	2.36%	6.26%	7.96%	15.08%	
	Unemployed (%)	15.89%	6.42%	21.57%	21.60%	6.36%	1.84%	10.42%	9.49%	6.40%	
	Total (%)	11.09%	7.26%	25.91%	18.71%	6.55%	2.19%	7.67%	8.48%	12.14%	
INSTRUCTIONS	<b>2. ECONOMICALLY ACTIVE POPULATION BY RACE AND GENDER</b>										
	African	Coloured	Asian	White	Other	Male	Female				
	Employed	5682476	1129515	363486	1856452	81917	5481903	3631944			
	Unemployed	4205992	299231	50379	89066	26980	2039917	2631730			
	Total	9888468	1428746	413865	1945518	108897	7521820	6263673			
	Employed (%)	62.35%	12.39%	3.99%	20.37%	0.90%	60.15%	39.85%			
	Unemployed (%)	90.03%	6.41%	1.08%	1.91%	0.58%	43.67%	56.33%			
	Total (%)	71.73%	10.36%	3.00%	14.11%	0.79%	54.56%	45.44%			

*Annexure 1 to the Regulations for the Employment Equity Act*

**EEA 8**

**3. OCCUPATION BY PROVINCE**

	Eastern Cape	Free State	Gauteng	Kwazulu Natal	Mpumalanga	Northern Cape	Northern Province	North West	Western Cape	Total
Legislators, senior officials and managers	29805	18068	128722	49079	22133	5551	12647	21720	75302	<b>363028</b>
Professionals	96195	49539	250676	144273	42114	14382	73320	57539	124540	<b>852578</b>
Technicians and associate professionals	47329	26188	192410	89794	22108	9152	20135	29277	97776	<b>534169</b>
Clerks	52655	40005	256633	109067	33235	13974	25260	42478	133725	<b>707032</b>
Service workers, shop and market sales workers	66686	54491	258104	126425	52669	16844	50008	64105	121471	<b>810804</b>
Skilled agricultural and fishery workers	34422	39906	52972	51696	40916	17365	45455	33428	39466	<b>355626</b>
Craft and related trades workers	88833	92949	410630	186319	96941	23136	79517	143011	156551	<b>1277888</b>
Plant and machine operators and assemblers	42547	65161	175937	118776	56150	8946	26835	57015	88668	<b>640033</b>
Elementary occupations	217469	251245	498279	377072	179233	82686	164692	200910	403862	<b>2375449</b>
Unspecified/Other	110876	63622	339879	318073	60426	23488	72259	75805	132812	<b>1197239</b>
<b>Total</b>	<b>786818</b>	<b>701175</b>	<b>2564243</b>	<b>1570573</b>	<b>605925</b>	<b>215523</b>	<b>570129</b>	<b>725287</b>	<b>1374174</b>	<b>9113847</b>

*Annexure I to the Regulations for the Employment Equity Act*

**EEA 8**

**4. OCCUPATION BY RACE AND GENDER**

	African	Coloured	Asian	White	Other	Total	Male	Female	Total
Legislators, senior officials and managers	26.66%	8.32%	7.50%	56.37%	1.15%	<b>363028</b>	72.55%	27.45%	<b>363028</b>
Professionals	48.98%	8.62%	4.83%	36.40%	1.17%	<b>852578</b>	44.69%	55.31%	<b>852578</b>
Technicians and associate professionals	32.60%	10.26%	6.71%	49.32%	1.12%	<b>534169</b>	52.06%	47.94%	<b>534169</b>
Clerks	34.91%	14.81%	7.58%	41.49%	1.21%	<b>707032</b>	31.20%	68.80%	<b>707032</b>
Service workers, shop and market sales workers	62.47%	11.39%	4.34%	20.92%	0.88%	<b>810803</b>	65.35%	34.65%	<b>810803</b>
Skilled agricultural and fishery workers	75.15%	9.98%	0.05%	14.24%	0.57%	<b>355626</b>	80.11%	20.34%	<b>355626</b>
Craft and related trades workers	68.83%	11.97%	3.29%	15.10%	0.81%	<b>1277888</b>	87.14%	12.86%	<b>1277888</b>
Plant and machine operators and assemblers	73.25%	13.99%	4.97%	6.98%	0.81%	<b>640033</b>	84.50%	15.50%	<b>640033</b>
Elementary occupations	80.61%	15.65%	0.79%	2.26%	0.68%	<b>2375449</b>	43.02%	56.98%	<b>2375449</b>
Unspecified/Other	59.41%	10.37%	6.35%	22.83%	1.04%	<b>1197239</b>	70.93%	29.07%	<b>1197239</b>
<b>Total</b>	<b>62.36%</b>	<b>12.40%</b>	<b>3.97%</b>	<b>20.37%</b>	<b>0.90%</b>	<b>9113847</b>	<b>60.16%</b>	<b>39.86%</b>	<b>9113847</b>

## ANNEXURE 2: Occupational Levels

Employment Equity Act 55 of 1998	1. Equivalent occupational levels				
<b>PLEASE READ THIS FIRST</b>					
					
<b>WHAT IS THE PURPOSE OF THIS ANNEXURE?</b>					
Job evaluation or grading systems are used by many organisations to measure jobs according to their content and establish comparative worth between jobs.					
This annexure provides a table of equivalent occupational levels which may be used by employers when completing forms EEA 2 and EEA 4.					
<b>INSTRUCTIONS</b>					
The table indicates the occupational levels within organisations as determined through the use of different job evaluation or grading systems. The table provides equivalent levels from each of these job evaluation systems.					
Organisations that make use of neither one of the job evaluation systems in this table, nor a customised system linked to one of these, should use the Semantic Scale for guidance in determining occupational levels within that organisation.					

Semantic Scale	Paterson		Peromnes	Hay	Castellion
Top management	F	F	1++ 1+		14
Senior management	E	E UPPER	1	1	
		E LOWER	2 3	2	13
Professionally qualified, experienced specialists and mid-management	D	D UPPER	4 5	3	12 11
		D LOWER	6	4	13
Skilled technical and academically qualified workers, junior management, supervisors, foremen, superintendents	C	C UPPER	7 8 9	5 6 6A	
			10	7	8
			11 12	8	
		C LOWER	13 14	9 10	7 6
			15	11	5
			16		4
Semi-skilled and discretionary decision making	B	B UPPER	17	12	3
			18	13	2
			19		1
Unskilled and defined decision making	A	A			

## ANNEXURE 3: Occupational Categories

Employment Equity Act 55 of 1998
<b>PLEASE READ THIS FIRST</b>

<b>WHAT IS THE PURPOSE OF THIS ANNEXURE?</b>
<p>This annexure provides a summary of definitions for occupational categories which may be used by employers when completing forms EEA 2 and EEA 4.</p>
<b>INSTRUCTIONS</b>
<p>Each occupational category contains a description and illustrative list of occupations that may be included in that category. The complete guideline to occupational categories may be obtained from Statistics SA.</p>

### 1. Legislators, Senior Officials and managers

This group includes occupations whose main tasks consist of determining and formulating policy and strategic planning, or planning, directing and co-ordinating the policies and activities of the organisation in the private and public sectors, determining and formulating laws and for directing and controlling the functions of the organisation. Includes: chief executive officer; president; vice-president; chief operating officers; general managers and divisional heads, managers who provide the direction of a critical technical function; postmaster; superintendent; dean and school principal etc.

### 2. Professionals

This group includes occupations whose main tasks require a high level of professional knowledge and experience in the fields of physical and life sciences, or social sciences and humanities. The main tasks consist of increasing the existing stock of knowledge, applying scientific and artistic concepts and theories to the solution of problems, and teaching about the foregoing in a systematic manner. Includes: engineers (civil, mechanical, chemical, electrical, petroleum, nuclear, aerospace, etc.); architects; lawyers; biologists; geologists; psychologists; accountants; physicists, system analysts; assayers; valuators; town and traffic planners etc.

### 3. Technicians and Associate Professionals

This group includes occupations whose main tasks require technical knowledge and experience in one or more fields of the physical and life sciences, or the social sciences and humanities. The main tasks consist of carrying out technical work connected with the application of concepts and operational methods in the above-mentioned fields and in teaching at certain educational levels. Includes: computer programmers; nurses; physio-and-occupational therapists; draftsmen/women; musicians; actors; photographers; illustrating artists; product designers; radio and television announcers; translators and interpreters; writers and editors; specialised inspectors and testers of electronic, electrical, mechanical, etc. products; vocational instructors; technicians (medical, engineering, architectural, dental, physical science, life science, library, etc.); pilot; broker; designer; quality inspector etc.

#### **4. Clerks**

This group includes occupations whose main tasks require the knowledge and experience necessary to organise, store, compute and retrieve information. The main tasks consist of performing secretarial duties, operating word processors and other office machines, recording and computing numerical data, and performing a number of customer orientated clerical duties, mostly in connection with mail services, money-handling operations and appointments. Includes all clerical work, regardless of difficulty, in which the activities are predominantly non-manual. Includes: bookkeepers; tellers; cashiers; collectors (bills and accounts); messengers and office helpers; office machine operators; mail clerks; typists; telephone operators; electronic data processing equipment operators; clerks (production, shipping and receiving, stock, scheduling, ticket, freight, library, reception, travel, hotel, personnel, statistical, general office); secretaries etc.

#### **5. Service and Sales Workers**

This group includes occupations whose main tasks require the knowledge and experience necessary to provide personal and protective services and to sell goods in shops or markets. The main tasks consist of providing services related to travel, housekeeping, catering, personal care, protection of individuals and property, and maintaining law and order, or selling goods in shops or markets.

Includes: attendants (hospital and other institutions, including nurses' aides and orderlies); barbers; bartenders; guides; food and beverage serving occupations; housekeepers; childcare occupations; conductors; fire-fighters; police offices; advertising agents, real estate agents; sales workers and sales clerks; shop attendants; stock brokers; insurance brokers; travel agents; sales people of technical and business services; etc.

#### **6. Skilled Agricultural and Fishery Workers**

This group includes occupations whose main tasks require the knowledge and experience necessary to produce farm, forestry and fishery products. The main tasks consist of growing crops, breeding or hunting animals, catching or cultivating fish, conserving and working forests, and selling agricultural and fishery products to purchasers. Includes: farmers; growers; planter; viticulturists; winemakers; skilled horticultural workers; greenkeepers; skilled fishermen/women etc.

#### **7. Craft and Related Trades**

This group includes occupations whose main tasks require the knowledge and experience of skilled trades and handicrafts which, among other things, involve an understanding of materials and tools to be used, as well as all stages of the production process, including the characteristics and the intended use of the final product. They are frequently journeymen/women who have received an extensive period of training. The main tasks consist of extracting raw materials, constructing buildings and other structures and making various products, as well as handicraft goods. Includes: miners; quarriers; stoneworkers; bricklayers; stonemasons; carpenters; shopfitters; plasterers; plumbers; electricians; painters; mechanics; glass-makers; locksmiths; sheet metal workers; etc.

## **8. Plant and Machine Operators and Assemblers**

This group includes occupations whose main tasks require the knowledge and experience necessary to operate and monitor large-scale and often highly automated industrial machinery and equipment. The main tasks consist of operating and monitoring of mining, processing, and production machinery and equipment, as well as driving vehicles and driving and operating mobile plant, or assembling products from components. Includes: truck and tractor drivers; bus drivers; paving, surfacing and related occupations; roofers; photographic processors; sound and video recording equipment operators; those in apprenticeship training; textile workers; production machine workers etc.

## **9. Elementary Occupations**

This group covers occupations which require relatively low/elementary levels of knowledge and experience necessary to perform mostly simple and routine tasks, involving the use of hand held tools and in some cases considerable physical effort, and, with few exceptions, limited personal initiative and judgement. The main tasks consist of selling goods in streets, door-keeping and property watching, as well as cleaning, washing, pressing, and working as labourers in the fields of mining, agriculture and fishing, construction and manufacturing. Includes: news and other vendors; garage attendants; car washers and greasers; gardeners; farm labourers; unskilled railway track workers; labourers performing lifting, digging, mixing, loading, and pulling operations; garbage collectors; stevedores; sweepers; charworkers etc.