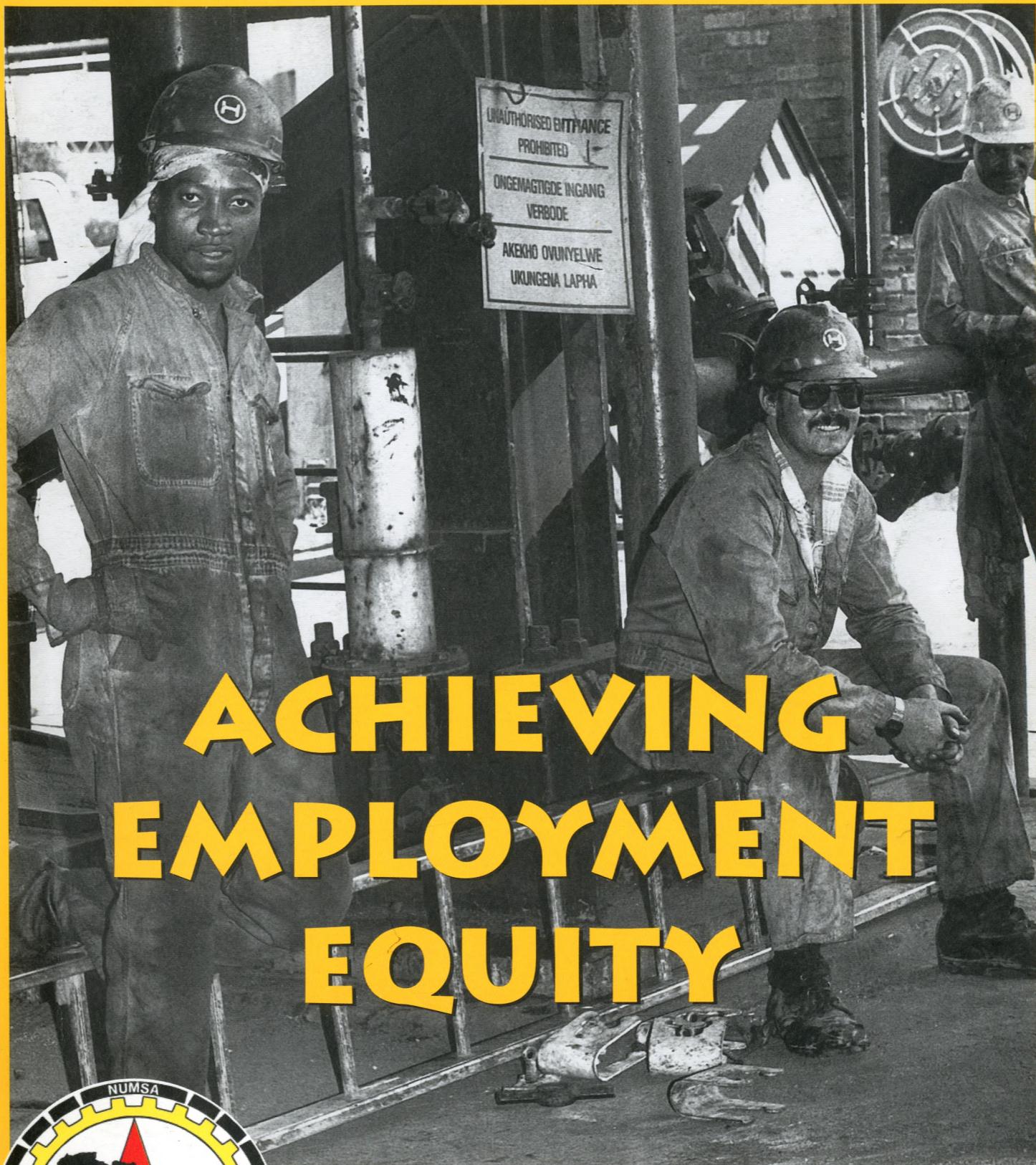


SHOPSTEWARDS WORKBOOK



ACHIEVING EMPLOYMENT EQUITY



**Numsa course on the
Employment Equity Act**

Correction to page 7.

The box on page 7 should read as follows:

Aims of the Employment Equity Act

- *What does the Act say –*

As a group let us find out what the EEA states as its aim, by turning to:

- Section 2: Purpose of this Act (see page 55 of Book Two)
- Preamble to the Act (see page 49 of Book Two)

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:

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

In this **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 the **Appendix** we include various material to help you answer the different activities in the Workshop.

- In the Appendix 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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CHAPTER 1

Introduction

A) Icebreaker

If you have not yet been approached, management will in the next few months be calling you as shopstewards to talk about employment equity.

The reason why employers will want to talk to you is that in October 1998, national parliament passed a new law known as the Employment Equity Act (EEA). This law is being implemented in phases.

When passing the new law, government agreed that sections of the EEA would be implemented at different times.

- *Some sections of the EEA were implemented in May 1999.*
- *One chapter of the Act became real law in August 1999.*
- *The rest of the law became effective on 1 December 1999.*

According to the new piece of legislation;

- *Companies with 150 or more employees will have to submit reports to the Director-General of the Department of Labour, before 01 June 2000.*
- *Those with less than 150 employees and who are required by the new law to submit reports to the Director-General, will have to do so before 01 December 2000.*

Because of these deadlines, many companies are initiating meetings with shopstewards, union officials and other employees to talk about employment equity.

Activity 1

- How many comrades have been approached by management with the aim of discussing the implementation of the Employment Equity Act?

- Can a few comrades share with us:
 - what did management say when you were approached?
 - when were you approached?
 - who exactly within management approached you?
 - who else was approached within the company?
 - what response did you give to the company?

B) Workshop aims

The aims of the workshop are:

- *to arm shopstewards and make sure that they are able to deal with employers on issues related to the Employment Equity Act*
- *to make shopstewards familiar with the contents of the Act*
- *to train shopstewards on how to fight unfair discrimination*
- *to help shopstewards strategise on how to achieve employment equity and affirmative action in our workplaces*
- *to assist in building factory organisation by driving a campaign to:*
 - *end unfair discrimination and*
 - *push for employment equity.*

C) Objectives of the Employment Equity Act (EEA)

Activity 2

❑ What do you know about the Employment Equity Act?

- What do you think are the aims of the Act?

Activity 3

Aims of the Employment Equity Act

- ***What does the Act say –***

As a group let us find out what the EEA states as its aim, by turning to:

- Section 2 (page 12): Purpose of this Act (see page ?? of this Workbook)
- Preamble to the Act (page 2) (see page ?? of this Workbook)

D) Fair & Unfair Discrimination

The EEA as well as the constitution allow for what they call “fair discrimination”. According to Section 6(2):

It is not unfair discrimination to-

- (a) take affirmative action measures consistent with the purpose of the Act:*
- (b) distinguish, exclude or prefer any person on the basis of an inherent requirement of the job.*

Activity 4

Inherent requirements of the job

Which of the following, in your opinion, are genuine inherent requirements of the job listed below?

1. Need females to assemble computer equipment. Must have excellent hand-eye coordination and neat working style. No experience necessary, we will train.

2. Union organiser required. Requirements - drivers licence, good writing & communication skills and a standard 10 certificate.

3. Large broom and mop manufacturer needs aggressive salesman to cover township shops. Prefer previous experience.

4. SAA needs young, attractive females to fly domestic routes. Must pass height and weight requirements. Applicants must not weigh more than 55kg. Height must be approximately 1,8 metres. The waist not more than 32 centimetres.

5. A male Umzulu actor is required to replace Mbongeni Ngema who has fallen ill. The successful applicant will play King Cetshwayo, in a play - Zulu, currently playing at the Market Theatre.

6. A small auto parts company needs six men to work in the warehouse. Job involves lifting and carrying over 50kg parts.

7. Experienced male prison guards needed for maximum security male prison. Must be able to work effectively in a potentially violent and dangerous environment.

8. An Umtata Catholic school needs a catholic art teacher to teach painting, sculpture and ceramics. Master's degree in art education is desirable.

9. A Durban restaurant needs an Indian chef with previous experience in curry dishes.

E) Overview of the Act

Preamble

Chapter 1

**Definitions;
Purpose; Interpretation &
Who the Act applies to**

Chapter 2

**Prohibition of
Unfair Discrimination
(All companies)**

Chapter 3

**Affirmative Action
(Designated companies)**

Chapter 4

**Commission
for
Employment
Equity**

Chapter 5

**Monitoring
&
Enforcement**

Chapter 6

General Provisions

Schedules

1. Fines
2. Laws repealed
2. Transitional Arrangements
3. Designated employer turnover

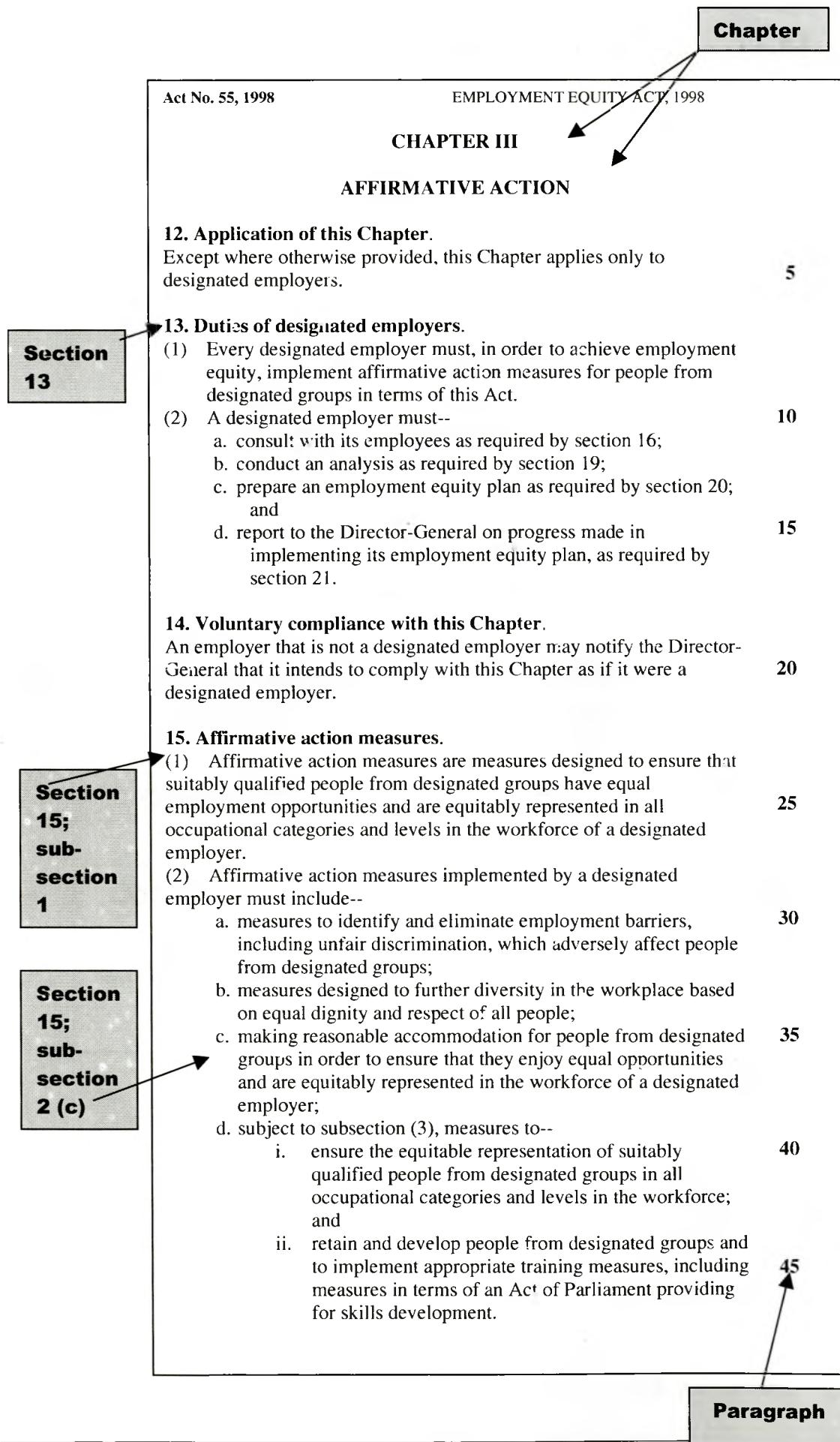
(F) How to read the Act

Because you will be working on the Act as shopstewards, it is important that you learn the skill of reading the actual legislation. The next few pages will demonstrate how to read the Act:

You will learn about:

- Chapters
- Sections
- Sub-sections
- Paragraphs

Activity 5 allows you to exercise how to find things in the Act



Activity 5

Let your fingers run through the Act
(Give the answer and quote the relevant section of the Act)

1. One of the aims of the EEA is to eliminate unfair discrimination in any employment policy or practice. What does the EEA understand as an employment policy or practice?

2. Who does the EEA apply to?

3. Who are designated employers?

4. Which groups are designated in terms of the Act?

5. Are people of Indian origin regarded as blacks by the Act?

6. Are independent contractors regarded as employees in terms of the Act?

7. One of the grounds that are prohibited as a basis for discrimination is pregnancy. In which stages of pregnancy is discrimination prohibited?

8. What is the difference between medical & psychometric testing?

9. According to the Act, affirmative action measures are designed to assist "suitably qualified people" from designated groups. What is a "suitably qualified person"?

10. Designated employers are supposed to make reasonable accommodation for people from designated groups. What are these employers supposed to do exactly?

11. How many people are members of the Commission for Employment Equity?

12. What are the functions of the Commission?

13. What fine will be imposed on an employer who fails to report to the Director-General by 01 June?

14. What laws does the EEA repeal?

CHAPTER 2

Prohibition of Unfair Discrimination

A) Unfair discrimination

According to the EEA, no person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice on one or more of the following grounds:

- Race
- Gender
- Sex
- Pregnancy
- Marital status
- Family responsibility
- Ethnic or social origin
- Colour
- Sexual orientation
- Age
- Disability
- Religion
- HIV status
- Conscience
- Belief
- Political opinion
- Culture
- Language
- Birth

This list is not exhaustive. If one believes that any act at a workplace unfairly discriminates against a person, even if it is not in the list outlined above, then that person can declare a dispute in line with the procedures in the Act.

Activity 6

Grounds of discrimination

How can someone be discriminated at work on the following grounds? Give examples?

Ground	Example
1. Race	
2. Gender	
3. Sex	
4. Pregnancy	
5. Marital Status	
6. Family responsibility	
7. Ethnic or social origin	
8. Colour	
9. Sexual orientation	
10. Age	

	Example
11. Disability	
12. Religion	
13. HIV status	
14. Conscience	
15. Belief	
16. Political opinion	
17. Culture	
18. Language	
19. Birth	

Activity 7

Your experience of unfair discrimination

- What unfair discrimination have you experienced at your workplace?
 - Why do you regard the discrimination as unfair?
 - What were the grounds of discrimination?

Act of unfair discrimination	Why do you consider the act was unfair?	Grounds of discrimination

B) Direct and Indirect Discrimination

Activity 8

The EEA speaks about prohibiting unfair discrimination, whether direct or indirect.

- What is meant by direct and indirect discrimination?

Direct discrimination:

Indirect discrimination:

Activity 9

Action	Fair	Unfair	Direct	Indirect
1) In line with its policy against tribalism, a union has decided not to appoint Amaxhosa at its Head Office. They feel that a perception has developed that only people from this group are suitable for Head Office work.				
2) An engineering firm is looking for mechanical engineers that graduated from Universities of Wits, Cape Town and Natal.				
3) A recruitment agency has disqualified an applicant who has one lower limb. The applicant has applied to be a driver.				
4) Preparedness to work unfixed hours is a requirement of the organiser's job.				
5) All permanent employees who have a mortgage bond with a bank, qualify for a housing subsidy.				

Action	Fair	Unfair	Direct	Indirect
6) Internal vacancy exists for a salesperson. Only those with a car can apply, as the job requires travelling.				
7) To put spouses on medical aid scheme, every employee must produce a marriage certificate.				
8) A company is putting up new automated lines in its Manufacturing plants. They are requesting applicants to have a standard 10 Mathematics and physics.				

C) Eliminating unfair discrimination

The Act requires that every employer promotes equal opportunity by eliminating unfair discrimination. Using the definition in the Act, the writers of the legislation feel that there can be unfair discrimination in:

- how people are recruited in companies
- how demotion, transfers and promotions take place in our companies
- how people are evaluated
- how disciplinary measures are exercised.

The writers of the Act also feel that the way:

- pay,
- grading,
- benefits and
- training

are organised in companies, can discriminate unfairly against certain groups of employees. They feel that even the working environment and facilities can be discriminatory.

The Act calls for the elimination of these possible acts of unfair discrimination in the employment practices and policies.

Activity 10

Taking the definition of an employment/practice in Section 1 of the Act:

- Describe the form that unfair discrimination can take at every step of the employment process
- Intervention and demands that the union can make on the employer to eliminate discrimination

Employment policy / practice	Possible forms of unfair discrimination	Possible union intervention
1) Recruitment procedures (advertising, selection criteria & appointment process)		
2) Transfers, promotion & demotion		
3) Grading, job classification & job assignments		

Employment policy / practice	Possible forms of unfair discrimination	Possible union intervention
4) Remuneration		
5) Benefits		
6) Training		
7) Working environment & facilities		

Employment policy / practice	Possible forms of unfair discrimination	Possible union intervention
8) Performance evaluation systems		
9) Disciplinary measures		

D) Dealing with unfair discrimination disputes

Activity 11

In your groups read the following case studies and then answer the related questions:

- 1) A worker Neo Moretele, on hearing that a dispute may be referred to the CCMA within six months after an alleged act of unfair discrimination, comes to you for advice. He comes to meet you on 16 January 2000.

Neo alleges that on 28 July 1999, he was harassed by his foreman. He claims that the foreman swore at him and called him a "kaffir". Neo wants you to take up his case.

Seeing merits in Neo's case:

- *Where will you refer Neo's case?*
- *What procedures will the case have to follow?*

- 2) Jane Blackie is nine weeks out of her job. She was asked not to return to work by her employer when she said that she was taking time off to give birth. As a single parent, Jane wants her job back.

- *How would you take up the case?*
- *If the case goes to the Labour Court, what would be the appropriate order that the court may hand down?*

3) Norah Vathi is a Numsa member. Last week she was sexually harassed by the shopsteward. This was not the first time. Norah felt that this time she wanted to take up the issue in terms of the EEA.

- *What options does Norah have?*

4) Mohammed Patel works night shift at Grenkor Engineering. As a practice, the company provides supper for workers working night shift.

Mohammed feels that he is being discriminated against on religious grounds. The company does not provide halaal food.

- *what options does Mohammed have if he wants to take up his case?*
- *What procedures must he follow?*
- *if the case lands up in the Labour Court, what order can be given by the court?*

CHAPTER 3

Affirmative Action

A) The Debate on Affirmative Action

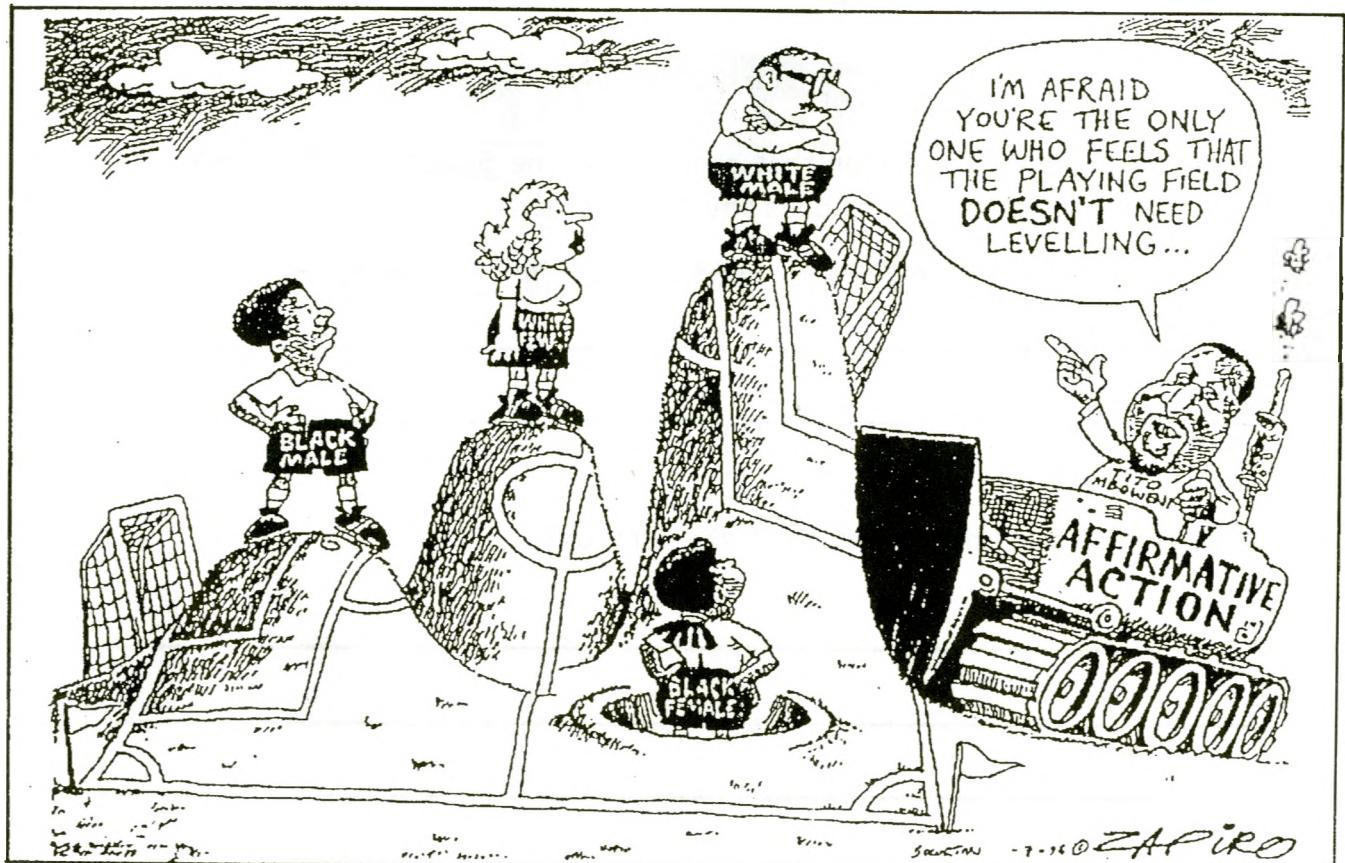
Since the early 1990s, a debate has been going on around affirmative action. In this debate there have been those who are for affirmative action and those who are against.

Activity 12

On the next page is a cartoon that appeared in the Sowetan in July 1996. Looking at the cartoon, what does the cartoon say?

What is your own interpretation of the cartoon?

What the cartoonists say



Zapiro, Sowetan

B) Existing Affirmative Action Agreements

As part of the debate on affirmative action, a number of companies have concluded affirmative action agreements with their employees.

Activity 13

- How many of you have company agreements on affirmative action?
- When was the agreement signed?
- What was the role of the union in the formation of the agreement?
- When was the agreement concluded?
- How does the policy work?
 - *Structures*
 - *Monitoring*

C) The Approach of the EEA to Affirmative Action

After a lot of debate, the government has outlined how it sees the implementation of affirmative action taking place at the workplace. The views of the government on affirmative action are contained in Chapter 3 of the Employment Equity Act (EEA).

Beneficiaries of the programme are black, women and people with disabilities. These are known as designated groups. Black means African, Coloured and Indians.

The aim of the programme is to ensure:

- *People from designated groups have equal employment opportunities*
- *People from designated groups are represented in all occupational categories and levels within companies.*

D) Who is covered by the Chapter?

All designated employers must comply. These are:

- Employers who employ 50 or more employees
- Employers who employ fewer than 50 employees, but have a total annual turnover that is equal or above the amount listed below:

Sector or subsectors in accordance with the Standard Industrial Classification	Total annual turnover
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, Social and Personal Services	R5.00 m

Non-designated companies can choose to be designated. This is what is called voluntary compliance with the chapter.

Non-designated companies can also become designated through the order of the Labour Court. This is in a case where a company is found to have unfairly discriminated against an employee.

E) Duties of a designated employer

According to the Act, designated employers have certain duties. They are required to perform these duties.

Activity 14

Watch carefully the video, Getting Employment Equity Working for You. In the video a designated employer is told by an angel what his duties are.

Listen carefully and in the space provided below, note what the duties of a designated employer are.

- What is the employer on the video told to do?

F) Preparing employment equity plans

According to the EEA, employers are supposed to produce employment equity plans. These are plans that outline how companies are to:

- embark on affirmative action programmes
- achieve equity and diversity in workplaces.

In the User's Guide on preparing employment equity plans (*see Resource Section of this workbook on pages ??*), three phases are identified. These phases relate how:

- these plans will be prepared and formulated (Phase 1)
- the equity plans will be implemented (Phase 2)
- monitoring of the plans will take place (Phase 2).

In Phase 1 the designated employer is supposed to:

Step 1:	Assign the responsibility of driving the employment equity programme to one or more senior manager
Step 2:	Communicate and train all employees on the EEA
Step 3:	Consult with representative unions and all employees
Step 4:	Conduct an analysis of the workforce & policies in working policies and practices that are barriers to employment equity.

Activity 15

As a shopsteward committee, you have been consulted by a designated employer on implementing the Employment Equity Act (EEA). The company is at the stage where it is about to conduct an analysis. In line with Section 17(a) of the Act, the company is consulting you about how to conduct the analysis.

- *What is your suggestion on how the analysis should be conducted?*

- *What would you suggest for inclusion in the analysis?*

- *What information do you think is required to conduct the analysis?*

Information	Source

Activity 16

Attached is a workforce profile of a company - R.H Works. The company is in Johannesburg. It has 100 people and manufactures bolts.

As required by the Act the company is consulting you to develop an employment equity plan

a) *What numerical goals would you suggest for the company?*

b) *What affirmative action measures would you suggest that the company should adopt?*

c) *What timeframes would you agree to for the plan?*

d) *What are your suggestions with regard to monitoring and evaluating the plan.*

e) *What would you suggest as the internal procedures to resolve disputes about interpretation or implementation of the plan?*

DEPARTMENT OF LABOUR



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

Section A: Employer Details

Employer:	R H Works
Registration No:	197 5T745
SARS Registration No:	ZAR 38574
UIF Number:	23R75
Industry Sector:	Manufacturing
Contact Person:	R Holland
Address:	34 Main Street, Booysens
Town/City	Johannesburg
Postal Code	2001
Telephone No:	
Fax No:	
E-Mail Address:	
Date of Submission:	

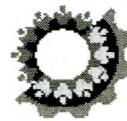
Organ of state:

Yes No

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

Yes No

DEPARTMENT OF LABOUR



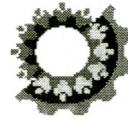
3. Please report the total number of **employees with disabilities** in each of the following occupational categories:

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									
TOTAL PERMANENT									
Non – permanent employees									
TOTAL									

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	0	0	0	1	0	0	0	0	1
Senior management	0	0	0	3	0	0	0	1	4
Professionally qualified and experienced specialists and mid-management	1	2	1	4	0	0	0	2	10
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents	3	2	3	12	0	1	1	3	25
Semi-skilled and discretionary decision making	27	11	2	0	9	1	0	0	50
Unskilled and defined decision making	8	0	0	0	2	0	0	0	10
TOTAL PERMANENT	39	15	6	20	11	2	1	6	100
Non – permanent employees									
TOTAL									

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	0	0	0	0	0	0	0	0	0
Senior management	0	0	0	0	0	0	0	0	0
Professionally qualified and experienced specialists and mid-management	0	0	0	2	0	0	0	0	2
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents	0	0	1	0	0	0	0	0	1
Semi-skilled and discretionary decision making	0	1	0	0	0	0	0	0	1
Unskilled and defined decision making	0	0	0	0	0	0	0	0	0
TOTAL PERMANENT	0	1	1	2	0	0	0	0	4
Non – permanent employees									
TOTAL									

G) Enforcement & Monitoring

Activity 17

After many requests to the employer for him to indicate that he has submitted his first report in 01 June 2 000, you find out the company has done nothing to comply with the requirements of the Act.

- *What can you do as the shopsteward?*

- *What would happen, if it is established that the company has not complied?*

- *What options does the employer have in this situation?*
