



THE EMPLOYMENT EQUITY AMENDMENT BILL, 2018 was tabled in Parliament and published on the 20 July, 2020. The document is open for public comment and yet to be signed into law.

The Bill seeks to amend specific provisions of the Employment Equity Act 55 of 1998 as follows:

Designated Employers and Reporting:

- In order to reduce the regulatory burden, the definition of 'designated employer' will be limited by the deletion of employers with fewer than 50 employees who meet the prescribed turnover threshold.
- To repeal section 14 which allows for an employer that is not a 'designated employer' to notify the Department of Labour that it intends to comply with the affirmative action provisions of the Act as if it were a 'designated' employer. This is intended to reduce the regulatory burden on small employers in implementing affirmative action as all employers will obtain a Certificate of Compliance under Section 53 without having to submit an employment equity report.
- The manner and regulations in which the employment equity report will be submitted by designated employers will be amended by the Minister.
- October deadlines have been replaced with a '*once a year, on such date and in such manner as may be prescribed.*'
- An employer who is not able to submit a report to the Director-General within the period to be prescribed must notify the Director-General in the prescribed manner and period giving reasons for its inability to do so.
- Non-designated employers will still need to deregister the Department of Labour.

For smaller organisations this may seem to be a huge relief. However, Section II of the Act requires all employees, even if only 1 employee, to ensure that there is no unfair discrimination practiced in the workplace. Organisations that have discrimination cases levelled against them will not get compliance.

Insertion of Section 15A in the Act.

- The Minister has powers to identify economic sectors for the purposes of the administration of the Act; and determine numerical targets (headcounts) for these sectors.
- The sectoral targets set may differentiate between occupational levels, sub-sectors, regions and other relevant factors for the purposes of ensuring equitable representation of suitably qualified people from designated groups in the workplace.
- 'Sector' is defined as 'an industry or service or part of any industry or service'. The current sectors have been identified in accordance with the standard industrial classification as: *Agriculture; Mining and Quarrying; Manufacturing; Electricity, Gas and Water; Construction; Retail and Motor Trade and Repair Services; Wholesale Trade, Commercial Agents and Allied Services; Catering, Accommodation and other Trade; Transport, Storage and Communications; Finance and Business Services; Community, Special and Personal Services.*
- The Minister is required to consult with the Employment Equity Commission on the proposed sectors and sectoral targets.
- The Minister will publish a notice and parties will be given 30 days to comment and to voice their concerns with the proposed notices and/or legislative changes. The Minister will be required to issue regulations that list the criteria to be applied in setting those sectoral targets.

The Bill links 15A to section 20 of the current Act, which provides for the preparation and implementation of a designated employer's employment equity plan. The Act introduces section 20(2A) to ensure that the numerical goals set by the designated employer in its employment equity plan complies with any sectoral targets established in terms of section 15A. Employers will no longer be setting their own targets in line with the EAP.

Consultation Process

- Section 16 of the Act is amended to clarify the consultation process between the designated employer and its employees on matters of consultation contained in section 17 of the current Act. This amendment is intended to provide certainty and minimise confusion in relation to which parties of the designated employer must consult with in matters for consultation.
- Where there is a representative trade union, the designated employer must ONLY consult with that trade union.

Compliance Orders

Section 42 is amended to clarify that a 'designated employers' compliance with its obligations to implement affirmative action may be measured against:

- the demographic profile of either the national or the regional economically active population and, in addition,
- may be measured against the employers' compliance with the sectoral targets set by the Minister in section 15A.

Section 53 - State Contracts Inserted

- The definition of 'State' is included to ensure certainty when regulating the provision of state contracts to mean '*a national or provincial department, a municipality or municipal entity, a constitutional institution, Parliament, a provincial legislature and any entity in Schedule 2 and 3 of the Public Finance Management Act 1, 1999.*'
- The section provides that state contracts may only be issued to employers that have been certified as compliant with their obligations under the Act. An employer is to attach a certificate when concluding a contract with the State as conclusive evidence that the employer complies with the relevant Chapters of the Act.
- The Minister of Labour may only issue a certificate of compliance to an employer, if the employer:
 - has achieved any applicable sectoral targets or has raised a reasonable ground for non-compliance;
 - has submitted the most recent employment equity report; and
 - has not been found within the previous twelve months to have breached the prohibition on unfair discrimination or to have paid wages below the level of the national minimum wage.

Labour Inspectors

Labour Inspectors, or any other person acting on behalf of a labour inspector, have additional powers to request and obtain a written undertaking from a 'designated employer' to comply with the preparation of an employment equity plan, and affords the Inspector the right to serve a compliance order in accordance with the regulations prescribed by the Minister.

Employment Conditions Commission

The National Minimum Wage Commission will take over the functions of the Employment Conditions Commission in respect of reporting and monitoring of disproportionate income differentials. The intention is also to align the Employment Equity Act with the National Minimum Wage, 2018.

Organisations will continue to report and submit statements on income differentials in the prescribed manner.

Psychometric testing

Registered Psychologists carrying out testing, no longer need to be Certified with the Health Professions Council of SA. The HPCSA does not have the capacity to certify these assessments / tests and any disputes of such assessments will be evaluated by the Labour Court.

People With Disabilities

Definition extended to include 'intellectual or sensory impairment.'