

**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,

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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 the South African Secret Service¹.

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.

(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. Psychometric testing.--Psychometric 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 discrimination² is alleged in terms of this Act, the employer against whom the allegation is made must establish that it is fair.

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 163 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 goals⁴ to achieve the equitable representation of suitably qualified 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. Report5.--(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.

(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--

- a. report as contemplated in this section for the duration of its current employment equity plan; and
- b. 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--

- a. assign one or more senior managers to take responsibility for monitoring and implementing an employment equity plan;
- b. provide the managers with the authority and means to perform their functions; and
- c. 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 Act⁶.

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

- a. the most recent report submitted by that employer to the Director-General;
- b. any compliance order, arbitration award or order of the Labour Court concerning the provisions of this Act in relation to that employer; and
- c. 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.

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 receive