

EMPLOYMENT EQUITY ACT NO. 55 OF 1998

[\[View Regulation\]](#)

[ASSENTED TO 12 OCTOBER, 1998]
[DATE OF COMMENCEMENT: 1 DECEMBER, 1999]

(Unless otherwise indicated)

(English text signed by the President)

This Act has been updated to *Government Gazette* 37871 dated 25 July, 2014.

as amended by

Intelligence Services Act, [No. 65 of 2002](#)
[with effect from 20 February, 2003]

Electronic Communications Security (Pty) Ltd Act, [No. 68 of 2002](#)
[with effect from 28 February, 2003]

General Intelligence Laws Amendment Act, [No. 52 of 2003](#)
[with effect from 28 February, 2003]

Employment Equity Amendment Act, [No. 47 of 2013](#)

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,

ARRANGEMENT OF ACT

(Editorial Note: The wording of [section 8](#) in the Arrangement of Sections below has been changed from the original words published in the *Gazette* to reflect the actual section heading that appears within the Act.)

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CHAPTER I

DEFINITIONS, PURPOSE, INTERPRETATION AND APPLICATION

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 1. Definitions.-In this Act, unless the context otherwise indicates-

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 turn-over that is equal to or above the applicable annual turn-over 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 the National Defence Force, the National Intelligence Agency and the South African Secret Service; and
[[Para. \(d\)](#) substituted by [s. 1 \(a\)](#) of [Act No. 47 of 2013](#).]

Wording of Sections

- (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 who-

- (a) are citizens of the Republic of South Africa by birth or descent; or
- (b) became citizens of the Republic of South Africa by naturalisation-
 - (i) before 27 April 1994; or
 - (ii) after 26 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date but who were precluded by apartheid policies;
 - [Definition of "[designated groups](#)" substituted by [s. 1 \(b\)](#) of [Act No. 47 of 2013](#).]

Wording of Sections

"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 63](#) of the Basic Conditions of Employment Act;

- [Definition of "[labour inspector](#)" substituted by [s. 1 \(c\)](#) of [Act No. 47 of 2013](#).]

Wording of Sections

"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;
- (c) the South African Secret Service;
- (d) the South African National Academy of Intelligence;

[[Para. \(d\)](#) inserted by [s. 40 \(1\)](#) of [Act No. 65 of 2002](#) (Editorial Note: s. 40 (1) substituted by [s. 51](#) of [Act No. 11 of 2013](#)) and replaced by s. 26 of Act No. 68 of 2002 (Editorial notae [s. 26](#) repealed by [s. 23](#) of [Act No. 52 of 2003](#)).]

Wording of Sections

- (e) Comsec.

[[Para. \(e\)](#) added by [s. 25 \(2\)](#) of [Act No. 52 of 2003](#).]

"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 work-place;

"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;
- (b) to transmit it using any electronic mechanism as a result of which the recipient is capable of printing the communication; or
- (c) to send or transmit it in any other prescribed manner;

[Definition of ["serve"](#) or ["submit"](#) substituted by [s. 1 \(d\)](#) of [Act No. 47 of 2013](#).]

Wording of Sections

"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 work-place;

"workplace forum" means a workplace forum established in terms of [Chapter V](#) of the Labour Relations Act.

(Date of commencement of [s. 1](#): 9 August, 1999.)

2. Purpose of this Act.-The purpose of this Act is to achieve equity in the work-place by-

2. Purpose of this Act.-The purpose of this Act is to achieve equity in the work-place 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 levels in the workforce.

[[Para. \(b\)](#) substituted by [s. 2](#) of [Act No. 47 of 2013](#).]

Wording of Sections

(Date of commencement of [s. 2](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 3. Interpretation of this Act.-This Act must be interpreted-

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.

(Date of commencement of [s. 3](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 4. Application of this Act.-(1) Chapter II of this Act applies to all employees and employers.

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, the South African Secret Service or the South African National Academy of Intelligence or to the directors and staff of Consec.

[[Sub-s. \(3\)](#) substituted by [s. 40 \(1\)](#) of [Act No. 65 of 2002](#) (Editorial Note: [s. 40 \(1\)](#) substituted by [s. 51](#) of [Act No. 11 of 2013](#)), by [s. 26](#) of Act No. 68 of 2002 (Editorial note: [s. 26](#) repealed by [s. 23](#) of [Act No. 52 of 2003](#)) and by [s. 25 \(2\)](#) of [Act No. 52 of 2003](#).]

Wording of Sections

(Date of commencement of [s. 4](#): 9 August, 1999.)

CHAPTER II PROHIBITION OF UNFAIR DISCRIMINATION

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 5. Elimination of unfair discrimination.-Every employer must take steps to promote equal opportunity in the work-place by eliminating unfair discrimination in any employment policy or practice.

5. Elimination of unfair discrimination.-Every employer must take steps to promote equal opportunity in the work-place by eliminating unfair discrimination in any employment policy or practice.

(Date of commencement of [s. 5](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 6. Prohibition of unfair discrimination.-(1) No person may unfairly discriminate, directly or indirectly,

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, birth or on any other arbitrary ground.

[Sub-s. (1) substituted by s. 3 (a) of Act No. 47 of 2013.]

Wording of Sections

(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 \(1\)](#).

(4) A difference in terms and conditions of employment between employees of the same employer performing the same or substantially the same work or work of equal value that is directly or indirectly based on any one or more of the grounds listed in [subsection \(1\)](#), is unfair discrimination.

[Sub-s. (4) added by s. 3 (b) of Act No. 47 of 2013.]

(5) The Minister, after consultation with the Commission, may prescribe the criteria and prescribe the methodology for assessing work of equal value contemplated in [subsection \(4\)](#).

[Sub-s. (5) added by s. 3 (b) of Act No. 47 of 2013.]

(Date of commencement of [s. 6](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 7. Medical testing.-(1) **Medical testing of an employee is prohibited, unless-**

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.

(Date of commencement of [s. 7](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The 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-

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;
- [Para. (b) amended by s. 4 of Act No. 47 of 2013.]

Wording of Sections

- (c) is not biased against any employee or group; and
- [Para. (c) amended by s. 4 of Act No. 47 of 2013.]

Wording of Sections

- (d) has been certified by the Health Professions Council of South Africa established by [section 2](#) of the Health Professions Act, 1974 ([Act No. 56 of 1974](#)), or any other body which may be authorised by law to certify those tests or assessments.

[Para. (d) added by s. 4 of Act No. 47 of 2013.]

(Date of commencement of [s. 8](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 9. Applicants.-For purposes of sections 6, 7 and 8, "employee" includes an applicant for employment.

9. Applicants.-For purposes of [sections 6, 7](#) and [8](#), "employee" includes an applicant for employment.

(Date of commencement of [s. 9](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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

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;
[\[Para. \(a\) amended by s. 5 \(a\) of Act No. 47 of 2013.\]](#)

Wording of Sections

(aA) an employee may refer the dispute to the CCMA for arbitration if-

- (i) the employee alleges unfair discrimination on the grounds of sexual harassment; or
- (ii) in any other case, that employee earns less than the amount stated in the determination made by the Minister in terms of [section 6 \(3\)](#) of the Basic Conditions of Employment Act; or
[\[Para. \(aA\) inserted by s. 5 \(a\) of Act No. 47 of 2013.\]](#)

(b) any party to the dispute may refer it to the CCMA for arbitration if all the parties to the dispute consent to arbitration of the dispute.

[\[Para. \(b\) substituted by s. 5 \(b\) of Act No. 47 of 2013.\]](#)

Wording of Sections

(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.

(8) A person affected by an award made by a commissioner of the CCMA pursuant to a dispute contemplated in [subsection \(6\) \(aA\)](#) may appeal to the Labour Court against that award within 14 days of the date of the award, but the Labour Court, on good cause shown, may extend the period within which that person may appeal.

[\[Sub-s. \(8\) added by s. 5 \(c\) of Act No. 47 of 2013.\]](#)

(Date of commencement of [s. 10](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 11. Burden of proof.-(1) If unfair discrimination is alleged on a ground listed in [section 6 \(1\)](#), the employer against whom the allegation is made must prove, on a balance of probabilities, that such discrimination-

11. Burden of proof.-(1) If unfair discrimination is alleged on a ground listed in [section 6 \(1\)](#), the employer against whom the allegation is made must prove, on a balance of probabilities, that such discrimination-

- (a) did not take place as alleged; or
- (b) is rational and not unfair, or is otherwise justifiable.

(2) If unfair discrimination is alleged on an arbitrary ground, the complainant must prove, on a balance of probabilities, that-

- (a) the conduct complained of is not rational;
- (b) the conduct complained of amounts to discrimination; and
- (c) the discrimination is unfair.

[[S. 11](#) substituted by [s. 6](#) of [Act No. 47 of 2013](#).]

Wording of Sections

(Date of commencement of [s. 11](#): 9 August, 1999.)

CHAPTER III
AFFIRMATIVE ACTION

**National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/
12. Application of this Chapter.-Except where otherwise provided, this Chapter applies only to designated employers.**

12. Application of this Chapter.-Except where otherwise provided, this Chapter applies only to designated employers.

**National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/
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.

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](#).

**National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/
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.

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.

**National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/
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 levels in the w

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 levels in the workforce of a designated employer.

[[Sub-s. \(1\)](#) substituted by [s. 7 \(a\)](#) of [Act No. 47 of 2013](#).]

Wording of Sections

(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 work-place 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 levels in the workforce; and

[[Sub-para. \(i\)](#) substituted by [s. 7 \(b\)](#) of [Act No. 47 of 2013](#).]

Wording of Sections

(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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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-

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 work-place and its employees or representatives nominated by them; or

(b) if no representative trade union represents members at the work-place, 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 levels of the employer's workforce;

[[Para. \(a\)](#) substituted by [s. 8](#) of [Act No. 47 of 2013](#).]

Wording of Sections

(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 work-place forum on any of the matters referred to in [section 17](#) of this Act.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 17. Matters for consultation.-A designated employer must consult the parties referred to in section 16 concerning-

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](#).

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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.

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 161](#) of the Labour Relations Act, with the changes required by context, apply to disclosure of information.

Footnotes

- 1 [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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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 peop

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 level in order to determine the degree of underrepresentation of people from designated groups in various occupational levels in that employer's workforce.

[[Sub-s. \(2\)](#) substituted by [s. 9](#) of [Act No. 47 of 2013](#).]

Wording of Sections

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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.

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

[[Para. \(c\)](#) substituted by [s. 10 \(a\)](#) of [Act No. 47 of 2013](#).]

Wording of Sections

- (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.

(7) The Director-General may apply to the Labour Court to impose a fine in accordance with [Schedule 1](#), if a designated employer fails to prepare or implement an employment equity plan in terms of this section.

[[Sub-s. \(7\)](#) added by [s. 10 \(b\)](#) of [Act No. 47 of 2013](#).]

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 21. Report.-(1) A designated employer must submit a report to the Director-General once every year, on the first working day of October or on such other date as may be prescribed.

21. Report².-(1) A designated employer must submit a report to the Director-General once every year, on the first working day of October or on such other date as may be prescribed.

[[Sub-s. \(1\)](#) substituted by [s. 11 \(a\)](#) of [Act No. 47 of 2013](#).]

Wording of Sections

(2)

[[Sub-s. \(2\)](#) deleted by [s. 11 \(b\)](#) of [Act No. 47 of 2013](#).]

Wording of Sections

(3) Despite [subsection \(1\)](#), an employer that becomes a designated employer on or after the first working day of April but before the first working day of October, must only submit its first report on the first working day of October in the following year or on such other date contemplated in [subsection \(1\)](#).

[[Sub-s. \(3\)](#) substituted by [s. 11 \(c\)](#) of [Act No. 47 of 2013](#).]

Wording of Sections

(4) The report referred to in [subsection \(1\)](#) must contain the prescribed information and must be signed by the chief executive officer of the designated employer.

[[Sub-s. \(4\)](#) substituted by [s. 11 \(c\)](#) of [Act No. 47 of 2013](#).]

Wording of Sections

(4A) An employer that is not able to submit a report to the Director-General by the first working day of October in terms of [subsection \(1\)](#) must notify the Director-General in writing before the last working day of August in the same year giving reasons for its inability to do so.

[[Sub-s. \(4A\)](#) inserted by [s. 11 \(d\)](#) of [Act No. 47 of 2013](#).]

(4B) The Director-General may apply to the Labour Court to impose a fine in accordance with [Schedule 1](#), if an employer-

(a) fails to submit a report in terms of this section;

(b) fails to notify and give reasons to the Director-General in terms of [subsection \(4A\)](#); or

(c) has notified the Director-General in terms of [subsection \(4A\)](#) but the reasons are false or invalid.

[[Sub-s. \(4B\)](#) inserted by [s. 11 \(d\)](#) of [Act No. 47 of 2013](#).]

(5)

[[Sub-s. \(5\)](#) deleted by [s. 11 \(e\)](#) of [Act No. 47 of 2013](#).]

Wording of Sections

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

Footnotes

2 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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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.

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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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.

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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 24. Designated employer must assign manager.-(1) Every designated employer must-

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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 25. Duty to inform.-(1) An employer must display at the work-place where it can be read by employees a notice in the prescribed form, informing them about the provisions of this Act.

25. Duty to inform.-(1) An employer must display at the work-place where it can be read by employees a notice in the prescribed form, informing them about the provisions of this Act³.

(2) A designated employer must, in each of its work-places, 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.

Footnotes

- 3 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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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.

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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 27. Income differentials and discrimination.-(1) Every designated employer, when reporting in terms of section 21 (1), must submit a statement, as prescribed, to the Employment Conditions Commission established by section 59 of the Basic Conditions of

27. Income differentials and discrimination.-(1) Every designated employer, when reporting in terms of [section 21 \(1\)](#), must submit a statement, as prescribed, to the Employment Conditions Commission established by

[section 59](#) of the Basic Conditions of Employment Act, on the remuneration and benefits received in each occupational level of that employer's workforce.

[[Sub-s. \(1\)](#) substituted by [s. 12 \(b\)](#) of [Act No. 47 of 2013](#).]

Wording of Sections

(2) Where disproportionate income differentials, or unfair discrimination by virtue of a difference in terms and conditions of employment contemplated in [section 6 \(4\)](#), are reflected in the statement contemplated in [subsection \(1\)](#), a designated employer must take measures to progressively reduce such differentials subject to such guidance as may be given by the Minister as contemplated in [subsection \(4\)](#).

[[Sub-s. \(2\)](#) substituted by [s. 12 \(b\)](#) of [Act No. 47 of 2013](#).]

Wording of Sections

(3) The measures referred to in [subsection \(2\)](#) may include-

- (a) collective bargaining;
- (b) compliance with sectoral determinations made by the Minister in terms of [section 51](#) of the Basic Conditions of Employment Act;
- (c) applying the norms and benchmarks set by the Employment Conditions Commission;
- (d) 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.

[[S. 27](#) amended by [s. 12 \(a\)](#) of [Act No. 47 of 2013](#).]

Wording of Sections

CHAPTER IV COMMISSION FOR EMPLOYMENT EQUITY

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 28. Establishment of Commission for Employment Equity.-The Commission for Employment Equity is hereby established.

28. Establishment of Commission for Employment Equity.-The Commission for Employment Equity is hereby established.

(Date of commencement of [s. 28](#): 14 May, 1999)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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.**

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-

- (a) two people nominated by those voting members of NEDLAC who represent organised labour;
- (b) two people nominated by those voting members of NEDLAC who represent organised business;
- (c) two people nominated by those voting members of NEDLAC who represent the State; and
- (d) 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-

- (a) must have experience and expertise relevant to the functions contemplated in [section 30](#);

- (b) must act impartially when performing any function of the Commission;
- (c) 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)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 30. Functions of Commission for Employment Equity.-(1) The Commission advises the Minister on-

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)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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.

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 of [s. 31](#): 14 May, 1999)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 32. Public hearings.-In performing its functions, the Commission may-

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)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/
33. Report by Commission for Employment Equity.-The Commission must submit an annual report to the Minister.

33. Report by Commission for Employment Equity.-The Commission must submit an annual report to the Minister.

(Date of commencement of [s. 33](#): 14 May, 1999)

CHAPTER V
MONITORING, ENFORCEMENT AND LEGAL PROCEEDINGS

PART A
Monitoring

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/
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-

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 work-place forum;
- (e) a labour inspector;
- (f) the Director-General; or
- (g) the Commission.

(Date of commencement of [s. 34](#): 9 August, 1999.)

Enforcement

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/
35. 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.

35. 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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/
36. Undertaking to comply.-A labour inspector may request and obtain a written undertaking from a designated employer to comply with paragraph (a), (b), (f), (h), (i) or (j) within a specified period, if the inspector has reasonable grounds to believe

36. Undertaking to comply.-A labour inspector may request and obtain a written undertaking from a designated employer to comply with [paragraph \(a\), \(b\), \(f\), \(h\), \(i\) or \(j\)](#) 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)
- (d)
- (e)
- (f) publish its report as required by [section 22](#);
- (g)
- (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](#).

(2) If a designated employer does not comply with a written undertaking within the period stated in the written undertaking, the Labour Court may, on application by the Director-General, make the undertaking, or any part of the undertaking, an order of the Labour Court.

[[S. 36](#) substituted by [s. 13](#) of [Act No. 47 of 2013](#).]

Wording of Sections

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 37. Compliance order.-(1) A labour inspector may issue a compliance order to a designated employer if that employer has failed to comply with section 16, 17, 19, 22, 24, 25 or 26 of this Act.

37. Compliance order.-(1) A labour inspector may issue a compliance order to a designated employer if that employer has failed to comply with [section 16, 17, 19, 22, 24, 25](#) or [26](#) of this Act.

[[Sub-s. \(1\)](#) substituted by [s. 14 \(a\)](#) of [Act No. 47 of 2013](#).]

Wording of Sections

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

- (a) the name of the employer, and the work-places 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 copy of the compliance order must be served on the employer named in it.

[[Sub-s. \(3\)](#) substituted by [s. 14 \(b\)](#) of [Act No. 47 of 2013](#).]

Wording of Sections

(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 work-place named in it.

(5) A designated employer must comply with the compliance order within the time period stated in it.

[[Sub-s. \(5\)](#) substituted by [s. 14 \(c\)](#) of [Act No. 47 of 2013](#).]

Wording of Sections

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

[[Sub-s. \(6\)](#) substituted by [s. 14 \(c\)](#) of [Act No. 47 of 2013](#).]

Wording of Sections

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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-

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](#).

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 39.

39.

[[S. 39](#) repealed by [s. 15](#) of [Act No. 47 of 2013](#).]

[Wording of Sections](#)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 40.

40.

[[S. 40](#) repealed by [s. 15](#) of [Act No. 47 of 2013](#).]

[Wording of Sections](#)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 41. Register of designated employers.-(1) The Minister must keep a register of designated employers that have submitted the reports required by section 21.

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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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 may, in addition to the factors stated in section 15,

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 may, in addition to the factors stated in [section 15](#), take the following into account:

- (a) The extent to which suitably qualified people from and amongst the different designated groups are equitably represented within each occupational level in that employer's workforce in relation to the demographic profile of the national and regional economically active population;
- (b) reasonable steps taken by a designated employer to train suitably qualified people from the designated groups;
- (c) reasonable steps taken by a designated employer to implement its employment equity plan;
- (d) the extent to which the designated employer has made progress in eliminating employment barriers that adversely affect people from designated groups;
- (dA) reasonable steps taken by an employer to appoint and promote suitably qualified people from the designated groups; and
- (e) any other prescribed factor.

(2) The Minister, after consultation with NEDLAC, may issue a regulation in terms of [section 55](#) which must be taken into account by any person who is required to determine whether a designated employer is implementing employment equity in compliance with this Act.

(3) Without limiting subsection (1) (a), the regulation made in terms of [subsection \(2\)](#) may specify the circumstances under which an employer's compliance should be determined with reference to the demographic profile of either the national economically active population or the regional economically active population.

(4) In any assessment of its compliance with this Act or in any court proceedings, a designated employer may raise any reasonable ground to justify its failure to comply.

[[S. 42](#) substituted by [s. 16](#) of [Act No. 47 of 2013](#).]

[Wording of Sections](#)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 43. Review by Director-General.-(1) The Director-General may conduct a review to determine whether an employer is complying with this Act.

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-

- (a) request an employer to submit to the Director-General a copy of its current analysis or employment equity plan;
- (b) 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;
- (c) 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
- (d) request a meeting with any-
 - (i) employee or trade union consulted in terms of [section 16](#);
 - (ii) work-place forum; or
 - (iii) other person who may have information relevant to the review.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 44. Outcome of Director-General's review.-Subsequent to a review in terms of section 43, the Director-General may-

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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 45. Failure to comply with Director-General's request or recommendation.-(1) 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 (

45. Failure to comply with Director-General's request or recommendation.-(1) If an employer fails to comply with a request made by the Director-General in terms of [section 43 \(2\)](#) or a recommendation made by the Director-General in terms of [section 44 \(b\)](#), the Director-General may apply to the Labour Court-

- (a) for an order directing the employer to comply with the request or recommendation; or
- (b) if the employer fails to justify the failure to comply with the request or recommendation, to impose a fine in accordance with [Schedule 1](#) on the employer.

(2) If an employer notifies the Director-General in writing within the period specified in a request or recommendation that it does not accept the request or recommendation, the Director-General must institute proceedings in terms of subsection (1) within-

- (a) 90 days of receiving the employer's notification, in the case of a request; or
- (b) 180 days of receiving the employer's notification, in the case of a recommendation.

(3) If the Director-General does not institute proceedings within the relevant period contemplated in [subsection \(2\)](#), the request or recommendation, as the case may be, lapses.

(4) Any challenge to the validity of the Director-General's request or recommendation may only be made in

the proceedings contemplated in subsection (1).

[[S. 45](#) substituted by [s. 17](#) of [Act No. 47 of 2013](#).]

Wording of Sections

PART B

Legal proceedings

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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.

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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 47. Consolidation of proceedings.-Disputes concerning contraventions of this Act by the same employer may be consolidated.

47. Consolidation of proceedings.-Disputes concerning contraventions of this Act by the same employer may be consolidated.

(Date of commencement of [s. 47](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 48. Powers of commissioner in arbitration proceedings.-(1) 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.

48. Powers of commissioner in arbitration proceedings.-(1) 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.

[[Sub-s. \(1\)](#), previously [s. 48](#), renumbered by [s. 18](#) of [Act No. 47 of 2013](#).]

Wording of Sections

(2) An award made by a commissioner of the CCMA hearing a matter in terms of [section 10 \(6\) \(aA\)](#) or [\(b\)](#) may include any order referred to in [section 50 \(2\) \(a\)](#) to [\(c\)](#), read with the changes required by the context, but an award of damages referred to in [section 50 \(2\) \(b\)](#) may not exceed the amount stated in the determination made by the Minister in terms of [section 6 \(3\)](#) of the Basic Conditions of Employment Act.

[[Sub-s. \(2\)](#) added by [s. 18](#) of [Act No. 47 of 2013](#).]

(Date of commencement of [s. 48](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The 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.

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.

(Date of commencement of [s. 49](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 50. Powers of Labour Court.-(1) Except where this Act provides otherwise, the Labour Court may make any appropriate order including-

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 an administrative action in terms of this Act on any grounds that are permissible in law; [Para. (h) substituted by [s. 19 \(a\)](#) of [Act No. 47 of 2013](#).]

Wording of Sections

- (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 been 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.

(5) A fine payable in terms of this Act must be paid into the National Revenue Fund referred to in [section 213](#) of [the Constitution](#).

[Sub-s. (5) added by [s. 19 \(b\)](#) of [Act No. 47 of 2013](#).]

(Date of commencement of [s. 50](#): 9 August, 1999.)

PART C
Protection of employee rights

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 51. Protection of employee rights.-(1) No person may discriminate against an employee who exercises any right conferred by this Act.

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.

(Date of commencement of [s. 51](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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.**

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.

(Date of commencement of [s. 52](#): 9 August, 1999.)

CHAPTER VI GENERAL PROVISIONS

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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-**

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 agreement⁴.

(5) The Minister may in the code of good practice set out factors that must be taken into account by any person assessing whether an employer complies with [Chapter II](#) or [Chapter III](#).

[[Sub-s. \(5\)](#) added by [s. 20](#) of [Act No. 47 of 2013](#).]

(Date of commencement of [s. 53](#) to be proclaimed.)

Footnotes

- 4 Regulations under [section 13](#) of the State Tender Board Act, [No. 86 of 1986](#), may provide that supplies and services 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 \(1\) \(b\) \(i\)](#) or a declaration in terms of [section 53 \(1\) \(b\) \(ii\)](#) of the Employment Equity Act.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 54. Codes of good practice.-(1) The Minister may, on the advice of the Commission-

54. Codes of good practice.-(1) The Minister may, on the advice of the Commission-

- (a) issue any code of good practice⁵; and
- (b) 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*.

(Date of commencement of [s. 54](#): 9 August, 1999.)

Footnotes

- 5 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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 55. Regulations.-(1) The Minister may, by notice in the Gazette and on the advice of the Commission, make any regulation regarding-

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

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

(2) The Minister may 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 fewer than 150 employees.

[[Sub-s. \(2\)](#) substituted by [s. 21](#) of [Act No. 47 of 2013](#).]

Wording of Sections

(Date of commencement of [s. 55](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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), 54, 55, 59 (4) and 61 (4).

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 \(7\), 54, 55, 59 \(4\) and 61 \(4\)](#).

[[Sub-s. \(1\)](#) substituted by [s. 22](#) of [Act No. 47 of 2013](#).]

Wording of Sections

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

(3) A person convicted of an offence in terms of this section may be sentenced to a fine not exceeding R30 000,00.

[[Sub-s. \(3\)](#) substituted by [s. 23](#) of [Act No. 47 of 2013](#).]

Wording of Sections

(4) The Minister may, 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.

[[Sub-s. \(4\)](#) substituted by [s. 23](#) of [Act No. 47 of 2013](#).]

Wording of Sections

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

(Date of commencement of [s. 56](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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

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.

(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.

(Date of commencement of [s. 57](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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 d

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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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.

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 R30 000,00.

[[Sub-s. \(3\)](#) substituted by [s. 23](#) of [Act No. 47 of 2013](#).]

Wording of Sections

(4) The Minister may, 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.

[[Sub-s. \(4\)](#) substituted by [s. 23](#) of [Act No. 47 of 2013](#).]

Wording of Sections

(Date of commencement of [s. 59](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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

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.

(Date of commencement of [s. 60](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 61. Obstruction, undue influence and fraud.-(1) No person may-

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 R30 000,00.

[[Sub-s. \(3\)](#) substituted by [s. 24](#) of [Act No. 47 of 2013](#).]

Wording of Sections

(4) The Minister may, 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.

[[Sub-s. \(4\)](#) substituted by [s. 24](#) of [Act No. 47 of 2013](#).]

Wording of Sections

(Date of commencement of [s. 61](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 62. This Act binds the State.-This Act binds the State.

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

(Date of commencement of [s. 62](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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

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.

(Date of commencement of [s. 63](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 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.

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.

(Date of commencement of [s. 64](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 64A. Amendment of annual turnover thresholds in Schedule 4.-The Minister may, after consultation with the Commission, by notice in the Gazette, amend the total annual turnover thresholds in Schedule 4 in order to counter the effect of inflation.

64A. Amendment of annual turnover thresholds in [Schedule 4](#).-The Minister may, after consultation with the Commission, by notice in the *Gazette*, amend the total annual turnover thresholds in [Schedule 4](#) in order to counter the effect of inflation.

[[S. 64A](#) inserted by [s. 26](#) of [Act No. 47 of 2013](#).]

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ 65. Short title and commencement.-(1) This Act is called the Employment Equity Act, 1998.

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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ Schedule 1 MAXIMUM PERMISSIBLE FINES THAT MAY BE IMPOSED FOR CONTRAVENING THIS ACT

Schedule 1

MAXIMUM PERMISSIBLE FINES THAT MAY BE IMPOSED FOR CONTRAVENING THIS ACT

[Sch. [1](#) substituted by [s. 27](#) of [Act No. 47 of 2013](#).]

Wording of Sections

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 (read with 17), 19, 22, 24, 25, 26 and 43 (2)</i>	<i>Contravention of any Provision of sections 20, 21, 23 and 44 (b)</i>
No previous contravention	R1 500 000	The greater of R1 500 000 or 2% of the employer's turn-over
A previous contravention in respect of the same provision	R1 800 000	The greater of R1 800 000 or 4% of the employer's turn-over
A previous contravention		

within the previous 12 months or two previous contraventions in respect of the same provision within three years	R2 100 000	The greater of R2 100 000 or 6% of the employer's turn-over
Three previous contraventions in respect of the same provision within three years	R2 400 000	The greater of R2 400 000 or 8% of the employer's turn-over
Four previous contraventions in respect of the same provision within three years	R2 700 000	The greater of R2 700 000 or 10% of the employer's turn-over

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ Schedule 2 LAWS REPEALED

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

(Date of commencement of [Schedule 2](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ Schedule 3 TRANSITIONAL ARRANGEMENTS

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.

(Date of commencement of [Schedule 3](#): 9 August, 1999.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ The Act/ Schedule 4 TURNOVER THRESHOLD APPLICABLE TO DESIGNATED EMPLOYERS

Schedule 4
TURNOVER THRESHOLD APPLICABLE TO DESIGNATED EMPLOYERS
[Sch. 4 substituted by [s. 28](#) of [Act No. 47 of 2013](#).]

[Wording of Sections](#)

<i>Sector or subsectors in accordance with the Standard Industrial Classification</i>	<i>Total annual turnover</i>
Agriculture	R6,00m
Mining and Quarrying	R22,50m
Manufacturing	R30,00m
Electricity, Gas and Water	R30,00m
Construction	R15,00m
Retail and Motor Trade and Repair Services	R45,00m
Wholesale Trade, Commercial Agents and Allied Services	R75,00m
Catering, Accommodation and other Trade	R15,00m
Transport, Storage and Communications	R30,00m
Finance and Business Services	R30,00m
Community, Special and Personal Services	R15,00m

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)

**GNR.595 of 1 August 2014: Employment Equity Regulations, 2014
(Government Gazette No. 37873)**

Notice R.1057	as amended by Government Gazette 42627	Date 8 August 2019
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DEPARTMENT OF LABOUR

REPEAL OF EMPLOYMENT EQUITY REGULATIONS

I Mildred Nelisiwe Oliphant, Minister of Labour, in terms of [section 55 \(1\)](#) of the Employment Equity Act, 1998 (Act [No. 55 of 1998](#) as amended), and on the advice of the Commission for Employment Equity, hereby repeal the Regulations made in terms of the Employment Equity Act, Act [No. 55 of 1998](#), published under Government Notice No. 32393 of 14 July 2009. This Notice will be effective from the date of publication.

(Signed)
M N OLIPHANT, MP
MINISTER OF LABOUR
26/06/2014

EMPLOYMENT EQUITY ACT, 1998 (ACT [NO. 55 OF 1998](#) AS AMENDED)

EMPLOYMENT EQUITY REGULATIONS, 2014

I, Mildred Nelisiwe Oliphant, Minister of Labour, hereby under [section 55 \(1\)](#) of the Employment Equity Act, 1998 (Act [No. 55 of 1998](#) as amended), make the regulations in [the Schedule](#).

SCHEDULE

ARRANGEMENT OF REGULATIONS

Definitions

- [1.](#) Definitions
- Work of Equal Value*
- [2.](#) Equal Pay for Work of Equal Value Criteria
 - [3.](#) Eliminating unfair discrimination
 - [4.](#) Meaning of work of equal value
 - [5.](#) Methodology
 - [6.](#) Assessing whether work is of equal value
 - [7.](#) Factors justifying differentiation in terms and conditions of employment

Duties of a designated employer

- [8.](#) Collecting information and conducting an analysis
- [9.](#) Duty to prepare and implement an Employment Equity Plan
- [10.](#) Duty to report
- [11.](#) Duty to inform
- [12.](#) Income differentials and discrimination

Enforcement Mechanisms

- [13.](#) Requesting an undertaking
- [14.](#) Compliance order
- [15.](#) Review by the Director-General (DG Review)

General Administrative Matters

- [16.](#) Repeal of laws
- [17.](#) Short title

FORMS AND ANNEXURES

- [EEA1:](#) Employee declaration in terms of [Section 19 \(1\)](#) of the Act
- [EEA2:](#) Report to the Director-General in terms of [Section 21](#) of the Act
- [EEA3:](#) Summary of the Act in terms of [Section 25 \(1\)](#) of the Act
- [EEA4:](#) Statement of income differentials in terms of [Section 27](#) of the Act
- [EEA5:](#) Request for an undertaking in terms of [Section 36](#) of the Act
- [EEA6:](#) Compliance order in terms of [Section 37 \(1\)](#) of the Act
- [EEA7:](#) DG Review Assessment Form in terms of [Section 43](#) of the Act
- [EEA8:](#) Demographic Data in terms of [Section 42](#) of the Act
- [EEA9:](#) Occupational Levels in terms of [Section 21](#) of the Act
- [EEA10:](#) Summary of the employment equity progress report in terms of [Section 22](#) of the Act
- [EEA11:](#) Request for employer's employment equity report in terms of [Section 21 \(5\)](#) of the Act
- [EEA12:](#) Template for reporting on analysis conducted in terms of [Section 19](#) of the Act
- [EEA13:](#) Template for Employment Equity Plan in terms of [Section 20](#) of the Act
- [EEA14:](#) Director-General Notification in terms of [Section 21 \(4A\)](#) of the Act

Definitions

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ 1. Definitions.-In these Regulations any word or expression to which a meaning has been assigned in the Act, has the meaning so assigned and, unless the context otherwise indicates.

1. Definitions.-In these Regulations any word or expression to which a meaning has been assigned in the Act, has the meaning so assigned and, unless the context otherwise indicates.

"**Basic Conditions of Employment Act**" means the Basic Conditions of Employment Act, 1997 (Act [No. 75 of 1997](#)), as amended;

"**Labour Relations Act**" means the Labour Relations Act, 1995 (Act [No. 66 of 1995](#)), as amended;

"**listed ground**" means a ground listed in terms of [section 6 \(1\)](#) of the Act;

"**Regional demographics**" means the Provincial Economically Active Population;

"**temporary employees**" mean employees who are employed for less than three months;

"**the Act**" means the Employment Equity Act, 1998 (Act [No. 55 of 1998](#)), as amended; and

"**work of equal value**" includes works that is the same, substantially the same or of the same value as other work, as contemplated in [regulation 4](#) of these Regulations.

Work of Equal Value

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ 2. Equal Pay for Work of Equal Value Criteria.-These Regulations are published to prescribe the criteria and methodology for assessing work of equal value contemplated in section 6 (4) of the Act.

2. Equal Pay for Work of Equal Value Criteria.-These Regulations are published to prescribe the criteria and methodology for assessing work of equal value contemplated in [section 6 \(4\)](#) of the Act.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ 3. Eliminating unfair discrimination.-(1) An employer must, in order to eliminate unfair discrimination, take steps to eliminate differences in terms and conditions of employment, including remuneration of employees who perform work of equal value if t

3. Eliminating unfair discrimination.-(1) An employer must, in order to eliminate unfair discrimination, take steps to eliminate differences in terms and conditions of employment, including remuneration of employees who perform work of equal value if those differences are directly or indirectly based on a listed ground or any arbitrary ground that is prohibited by [section 6 \(1\)](#) of the Act.

(2) Without limiting [sub-regulation \(1\)](#), an employer must ensure that employees are not paid different remuneration for work of equal value based on race, gender or disability.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ 4. Meaning of work of equal value.-For the purpose of these Regulations, the work performed by an employee-

4. Meaning of work of equal value.-For the purpose of these Regulations, the work performed by an employee-

(1) is the same as the work of another employee of the same employer, if their work is identical or interchangeable;

(2) is substantially the same as the work of another employee employed by that employer, if the work performed by the employees is sufficiently similar that they can reasonably be considered to be performing the same job, even if their work is not identical or interchangeable;

(3) is of the same value as the work of another employee of the same employer in a different job, if their respective occupations are accorded the same value in accordance with [regulations 5](#) to [7](#).

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ 5. Methodology.-When, applying [section 6 \(4\)](#) of the Act-

5. Methodology.-When, applying [section 6 \(4\)](#) of the Act-

(1) it must first be established-

(a) whether the work concerned is of equal value in accordance with [regulation 6](#); and

(b) whether there is a difference in terms and conditions of employment, including remuneration.

(2) it must then be established whether any difference in terms of [sub-regulation \(1\) \(b\)](#) constitutes unfair discrimination, applying the provisions of [section 11](#) of the Act.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ 6. Assessing whether work is of equal value.-(1) In considering whether work is of equal value, the relevant jobs must be objectively assessed taking into account the following criteria-

6. Assessing whether work is of equal value.-(1) In considering whether work is of equal value, the relevant jobs must be objectively assessed taking into account the following criteria-

(a) the responsibility demanded of the work, including responsibility for people, finances and material;

(b) the skills, qualifications, including prior learning and experience required to perform the work, whether formal or informal;

(c) physical, mental and emotional effort required to perform the work; and

(d) to the extent that it is relevant, the conditions under which work is performed, including physical environment, psychological conditions, time when and geographic location where the work is performed.

(2) In addition to the criteria specified in [sub-regulation \(1\)](#) any other factor indicating the value of the work may be taken into account in evaluating work, provided the employer shows that the factor is relevant to assessing the value of the work.

(3) The assessment undertaken in terms of [sub-regulations \(1\)](#) and [\(2\)](#) must be conducted in a manner that is free from bias on grounds of race, gender or disability, any other listed ground or any arbitrary ground that is prohibited in terms of [section 6 \(1\)](#) of the Act.

(4) Despite [sub-regulations \(1\)](#) and [\(2\)](#), an employer may justify the value assigned to an employee's work by reference to the classification of a relevant job in terms of a sectoral determination made by the Minister of Labour in terms of [section 55](#) of the Basic Conditions of Employment Act, 1997 (Act [No. 75 of 1997](#)) which applies to the employer.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ 7. Factors justifying differentiation in terms and conditions of employment.-(1) If employees perform work that is of equal value, a difference in terms and conditions of employment, including remuneration, is not unfair discrimination if the differenc

7. Factors justifying differentiation in terms and conditions of employment.-(1) If employees perform work that is of equal value, a difference in terms and conditions of employment, including remuneration, is not unfair discrimination if the difference is fair and rational and is based on any one or a combination of the following grounds-

- (a) the individuals' respective seniority or length of service;
- (b) the individuals' respective qualifications, ability, competence or potential above the minimum acceptable levels required for the performance of the job;
- (c) the individuals' respective performance, quantity or quality of work, provided that employees are equally subject to the employer's performance evaluation system, that the performance evaluation system is consistently applied;
- (d) where an employee is demoted as a result of organisational restructuring or for any other legitimate reason without a reduction in pay and fixing the employee's salary at this level until the remuneration of employees in the same job category reaches this level;
- (e) where an individual is employed temporarily in a position for purposes of gaining experience or training and as a result receives different remuneration or enjoys different terms and conditions of employment;
- (f) the existence of a shortage of relevant skill, or the market value in a particular job classification; and
- (g) any other relevant factor that is not unfairly discriminatory in terms of [section 6 \(1\)](#) of the Act.

(2) A differentiation in terms and conditions of employment based on one or more grounds listed in [sub-regulation \(1\)](#) will be fair and rational if it is established, in accordance with [section 11](#) of the Act, that-

- (a) its application is not biased against an employee or group of employees based on race, gender or disability or any other ground listed in [section 6 \(1\)](#) of the Act; and
- (b) it is applied in a proportionate manner.

Duties of a designated employer

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ 8. Collecting information and conducting an analysis.-(1) When a designated employer collects information contemplated in section 19 of the Act, the employer must request each employee in the workforce to complete a declaration using the EEA1 form.

8. Collecting information and conducting an analysis.-(1) When a designated employer collects information contemplated in [section 19](#) of the Act, the employer must request each employee in the workforce to complete a declaration using the [EEA1](#) form.

(2) An employee may add information to the [EEA1](#) form.

(3) Where an employee refuses to complete the [EEA1](#) form or provides inaccurate information, the employer may establish the designation of an employee by using reliable historical and existing data. People with disabilities have the right not to declare their disability, unless it is in line with the inherent requirements of the job.

(4) A designated employer must conduct an analysis as required by [section 19](#) of the Act by reviewing its workforce profile and employment policies, practices, procedures and the working environment in order to identify employment barriers which adversely affect people from designated groups from being equitably represented across all occupational levels. The outcome of the analysis should be reported using the [EEA12](#) in these

Regulations.

(5) A designated employer must refer to the relevant Codes of Good Practice issued in terms of [section 54](#) of the Act as a guide when collecting information and conducting the analysis required by [section 19](#) of the Act.

(6) When a designated employer conducts the analysis as required by [section 19](#) of the Act, the employer may refer to-

- (a) [EEA8](#), a guide on the applicable national and regional economically active population (EAP); and
- (b) [EEA9](#), which contains a description of occupational levels.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ 9. Duty to prepare and implement an Employment Equity Plan.-(1) A designated employer must refer to the relevant Codes of Good Practice issued in terms of section 54 of the Act when preparing an Employment Equity Plan contemplated in section 20 of the

9. Duty to prepare and implement an Employment Equity Plan.-(1) A designated employer must refer to the relevant Codes of Good Practice issued in terms of [section 54](#) of the Act when preparing an Employment Equity Plan contemplated in [section 20](#) of the Act.

(2) The Employment Equity Plan must contain, at a minimum, all the elements contained in the [EEA13](#) template of these Regulations.

(3) A designated employer must retain their Employment Equity Plan for a period of five years after the expiry of the plan.

(4) A designated employer must refer to the [EEA9](#) in the regulations for guidance on how to differentiate between the various occupational levels.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ 10. Duty to report.-(1) A designated employer must submit a report to the Director-General in terms of section 21 of the Act annually on the first working day of October or by 15 January of the following year only in the case of electronic reporting us

10. Duty to report.-(1) A designated employer must submit a report to the Director-General in terms of [section 21](#) of the Act annually on the first working day of October or by 15 January of the following year **only** in the case of electronic reporting using the [EEA2](#) form.

(2) Employment equity reports must be addressed to the Employment Equity Registry, Department of Labour, Private Bag X117, Pretoria, 0001 or submitted electronically using the online reporting system available on the departmental website, www.labour.gov.za.

(3) An employer who becomes designated on or after the first working day of April, but before the first working day of October, must only submit its first report on the first working day of October of the following year.

(4) A designated employer that is a holding company with more than one registered entity may choose to submit a consolidated report.

(5) A designated employer who chooses to submit a consolidated report contemplated in [sub-regulation 10 \(4\)](#) must have a consolidated Employment Equity Plan which is supported by individual Employment Equity Plans for each of the registered entities included in the consolidated report.

(6) The method of reporting contemplated in [sub-regulation 10 \(4\)](#) should remain consistent for the duration of the plan.

(7) An employer must inform the Department in writing immediately of any changes to their trade name, designation status, contact details or any other major changes, including mergers, acquisitions and insolvencies.

(8) A designated employer who is unable to report must notify the Director-General in writing before the last working day of August in the same year giving reasons for its inability to do so using the [EEA14](#) form.

(9) A designated employer must retain a copy of the report for a period of five years after it has been submitted to the Director-General.

(10) In terms of [section 22](#), every designated employer must publish a summary of a report required by [section 21](#) reflecting progress in their annual financial report by using the [EEA10](#) annexure for guidance.

(11) An employment equity report ([EEA2](#)), except for the Income Differential Statement reflected in the [EEA4](#) form, submitted to the Department of Labour is a public document and a copy may be requested by the public by completing and submitting the [EEA11](#) form to the Department of Labour, Employment Equity Registry.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and

Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ 11. Duty to inform.-The notice contemplated in section 25 (1) of the Act is contained as the Summary of the Act in annexure EEA3 of these Regulations and must be displayed at the workplace.

11. Duty to inform.-The notice contemplated in [section 25 \(1\)](#) of the Act is contained as the Summary of the Act in annexure [EEA3](#) of these Regulations and must be displayed at the workplace.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ 12. Income differentials and discrimination.-(1) A designated employer must submit an Income Differential Statement in terms of section 27 of the Act using the EEA4 form to the Employment Conditions Commission, which must be addressed to the Employment

12. Income differentials and discrimination.-(1) A designated employer must submit an Income Differential Statement in terms of [section 27](#) of the Act using the [EEA4](#) form to the Employment Conditions Commission, which must be addressed to the Employment Equity Registry, Department of Labour, Private Bag X117, Pretoria, 0001, unless the employer is completing the prescribed forms on the Department of Labour's EE Online Reporting System.

(2) An employer who becomes designated on or after the first working day of April, but before the first working day of October, must only submit their Income Differential Statement on the first working day of October of the following year.

(3) A designated employer must retain a copy of the statement of income differentials contemplated in [sub-regulation 12 \(1\)](#) for a period of five years after it has been submitted.

Enforcement Mechanisms

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ 13. Requesting an undertaking.-A labour inspector may request and obtain a written undertaking using the EEA5 form.

13. Requesting an undertaking.-A labour inspector may request and obtain a written undertaking using the [EEA5](#) form.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ 14. Compliance order.-A labour inspector may issue a compliance order to a designated employer using the EEA6 form.

14. Compliance order.-A labour inspector may issue a compliance order to a designated employer using the [EEA6](#) form.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ 15. Review by the Director-General (DG Review).-The Director-General may require designated employers who have been identified for the DG Review process to fully and accurately complete the DG Review Assessment form (EEA7) and furnish the required docum

15. Review by the Director-General (DG Review).-The Director-General may require designated employers who have been identified for the DG Review process to fully and accurately complete the DG Review Assessment form ([EEA7](#)) and furnish the required documents.


General Administrative Matters


National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ 16. Repeal of laws.-The Employment Equity Regulations, 2009 as published in Government Notice No. 32393 of 14 July 2009 is hereby repealed.

16. Repeal of laws.-The Employment Equity Regulations, 2009 as published in Government Notice No. 32393 of 14 July 2009 is hereby repealed.

17. Short title.-These Regulations are called the Employment Equity Regulations, 2014.

EEA1:
Employee declaration in terms of [Section 19 \(1\)](#) of the Act

	labour Department: Labour REPUBLIC OF SOUTH AFRICA	PAGE 1 OF 1	EEA1
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DECLARATION BY EMPLOYEE <i>(Confidential)</i>																	
PLEASE READ THIS FIRST																	
																	
<p>PURPOSE OF THIS FORM</p> <p>This form is used to obtain information from employees for the purpose of assisting employers in conducting an analysis on the workforce profile. Employers should use this form to ascertain which employees are from designated groups in terms of the Employment Equity Act, 55 of 1998, as amended.</p> <p>WHO COMPLETES THIS FORM?</p> <p>Employees should fill in this form.</p> <p>INSTRUCTIONS</p> <p>All employers must ensure that the contents of this form remain confidential, and that it is only used to comply with the Employment Equity Act, 55 of 1998, as amended.</p> <p>PLEASE NOTE:</p> <p>'Designated groups', mean black people, women and people with disabilities who-</p> <p>(a) Are citizens of the Republic of South Africa by birth or descent; or</p> <p>(b) Became citizens of the Republic of South Africa by naturalization-</p> <p>(i) before 27 April 1994; or</p> <p>(ii) after 26 April 1994</p>	<p>1. Name of employee:</p> <p>2. Employee workplace No: (This is the number that an employer/company/organization uses to identify an employee in the workplace.)</p> <p>3. Please indicate to which categories you belong with an 'X' below:</p> <table border="1" style="width:100%; border-collapse: collapse; margin-bottom: 10px;"> <tr> <td style="width:50%;">Male</td> <td style="width:50%;">Female</td> </tr> <tr> <td style="height: 30px;"></td> <td style="height: 30px;"></td> </tr> </table> <table border="1" style="width:100%; border-collapse: collapse; margin-bottom: 10px;"> <tr> <td style="width:25%;">African</td> <td style="width:25%;">Coloured</td> <td style="width:25%;">Indian</td> <td style="width:25%;">White</td> </tr> <tr> <td style="height: 30px;"></td> <td style="height: 30px;"></td> <td style="height: 30px;"></td> <td style="height: 30px;"></td> </tr> </table> <table border="1" style="width:100%; border-collapse: collapse; margin-bottom: 10px;"> <tr> <td style="width:80%;">Foreign Nationals</td> <td style="width:20%; height: 30px;"></td> </tr> </table> <p>If you are not a citizen by birth, please indicate the date you acquired your citizenship:</p> <table border="1" style="width:100%; border-collapse: collapse; margin-bottom: 10px;"> <tr> <td style="width:80%;">Person with a disability*</td> <td style="width:20%; height: 30px;"></td> </tr> </table> <p>If yes, specify nature of disability:</p> <p>4. I verify that the above information is true and correct.</p>	Male	Female			African	Coloured	Indian	White					Foreign Nationals		Person with a disability*	
Male	Female																
African	Coloured	Indian	White														
Foreign Nationals																	
Person with a disability*																	

and would have been entitled to acquire citizenship by naturalisation prior to that date but who were precluded by Apartheid policies.

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

*Please note that people with disabilities have the right not to disclose their disability, unless it is in line with the inherent requirements of the job.

Signed:

Employee

Date:

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ EEA2: Report to the Director-General in terms of Section 21 of the Act

EEA2:

Report to the Director-General in terms of [Section 21](#) of the Act

	labour	PAGE 1 OF 9	EEA2
	Department: Labour REPUBLIC OF SOUTH AFRICA		

<p>PLEASE READ THIS FIRST</p> <p style="text-align: center;">↓</p> <p>PURPOSE OF THIS FORM</p> <p>This form enables employers to comply with section 21 of the Employment Equity Act 55 of 1998, as amended.</p> <p>This form contains the format for employment equity reporting by designated employers to the Department of Labour.</p> <p>WHO COMPLETES THIS FORM?</p> <p>All designated employers. Employers who wish to voluntarily</p>	<p>SECTION A: EMPLOYER DETAILS & INSTRUCTIONS</p> <table border="1" style="width: 100%;"> <tr><td>Trade name</td><td></td></tr> <tr><td>DTI registration name</td><td></td></tr> <tr><td>DTI registration number</td><td></td></tr> <tr><td>PAYE/SARS number</td><td></td></tr> <tr><td>UIF reference number</td><td></td></tr> <tr><td>EE reference number</td><td></td></tr> <tr><td>Seta classification</td><td></td></tr> <tr><td>Industry/Sector</td><td></td></tr> <tr><td>Telephone number</td><td></td></tr> <tr><td>Postal address</td><td></td></tr> <tr><td>Postal code</td><td></td></tr> <tr><td>City/Town</td><td></td></tr> <tr><td>Province</td><td></td></tr> <tr><td>Physical address</td><td></td></tr> <tr><td>Postal code</td><td></td></tr> <tr><td>City/Town</td><td></td></tr> <tr><td>Province</td><td></td></tr> </table>	Trade name		DTI registration name		DTI registration number		PAYE/SARS number		UIF reference number		EE reference number		Seta classification		Industry/Sector		Telephone number		Postal address		Postal code		City/Town		Province		Physical address		Postal code		City/Town		Province	
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Physical address																																			
Postal code																																			
City/Town																																			
Province																																			

comply with Chapter 3 of the Act are also required to complete this form.

WHEN SHOULD EMPLOYERS REPORT?

Designated employers must submit their report annually on the first working day of October or by 15 January of the following year in the case of electronic reporting.

Employers who become designated on or after the first working day of April but before the first working day of October must only submit their first report on the first working day of October of the following year.

SEND TO:

Employment Equity Registry
The Department of Labour
Private Bag X117
Pretoria 0001

Online reporting:
www.labour.gov.za
Helpline:
0860101018

NO FAXED OR E-MAILED REPORTS WILL BE ACCEPTED

Details of CEO/Accounting Officer at the time of submitting this report

Name and surname	
Telephone number	
Fax number	
Email address	

Details of Employment Equity Senior Manager at the time of submitting this report

Name and Surname	
Telephone number	
Fax number	
Email address	

Business type

<input type="checkbox"/> Private Sector	<input type="checkbox"/> State-Owned Enterprise
<input type="checkbox"/> National Government	<input type="checkbox"/> Provincial Government
<input type="checkbox"/> Local Government	<input type="checkbox"/> Educational Institution
<input type="checkbox"/> Non-profit Organisation	

Information about the organisation at the time of submitting this report

Number of employees in the organisation	<input type="checkbox"/> 0 to 49
	<input type="checkbox"/> 50 to 149
	<input type="checkbox"/> 150 or more
Is your organisation an organ of State?	<input type="checkbox"/> Yes
	<input type="checkbox"/> No
Is your organisation part of a group/holding company?	<input type="checkbox"/> Yes
	<input type="checkbox"/> No
If yes, please provide the name	
Year for which this report is submitted	

Please indicate below the preceding twelve month period the report covers (except for first time reporting where the period may be shorter):

From (date): ___/___/___ **to (date):** ___/___/___
DD/MM/YYYY DD/MM/YYYY

Please indicate below the duration of your current Employment Equity Plan:

From (date): ___/___/___ **to (date):** ___/___/___
DD/MM/YYYY DD/MM/YYYY

PLEASE READ THIS FIRST
<p>a. The report should cover a twelve month period, except for first time reporting where this may not be possible and the months covered should be consistent from year to year for the duration of the plan.</p> <p>b. Employers must complete the EEA2 and the EEA4 forms and submit them together to the Department of Labour. Reports submitted by employers to the Department may only be hand delivered, posted or submitted online by the first working day of October or by 15 January of the following year only in the case of electronic reporting.</p> <p>c. An employer who becomes designated on or after the first working day of April, but before the first working day of October, must only submit its first report on the first working day of October in the following year.</p>

management											
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents											
Semi-skilled and discretionary decision making											
Unskilled and defined decision making											
TOTAL PERMANENT											
Temporary employees											
GRAND TOTAL											

SECTION F: MONITORING & EVALUATION

8. Consultation

8.1. Please indicate below the stakeholders that were involved in the consultation process when developing and implementing your Employment Equity Plan and the preparation of this Employment Equity Report.

Consultation	Yes	No
Consultative body or employment equity forum		
Registered trade union(s)		
Employees		

9. Barriers and affirmative action measures

9.1. Please indicate which categories of employment policy or practice barriers to employment equity were identified. If your answer is 'Yes' to barriers in any of the categories, please indicate whether or not there are affirmative action measures developed and the time-frames to overcome them.

Categories	BARRIERS		AFFIRMATIVE ACTION MEASURES		TIME-FRAME FOR IMPLEMENTATION OF AA MEASURES	
	YES	NO	YES	NO	START DATE	END DATE
Recruitment procedures						
Advertising positions						
Selection criteria						
Appointments						
Job classification and grading						
Remuneration and benefits						
Terms & conditions of employment						
Job assignments						
Work environment and facilities						
Training and development						
Performance and evaluation						
Promotions						

Transfers						
Succession & experience planning						
Disciplinary measures						
Dismissals						
Retention of designated groups						
Corporate culture						
Reasonable accommodation						
HIV&AIDS prevention and wellness programmes						
Assigned senior manager(s) to manage EE implementation						
Budget allocation in support of employment equity goals						
Time off for employment equity consultative committee to meet						

9 of 9 EEA2

10. Monitoring and evaluation of implementation

10.1. How regularly do you monitor progress on the implementation of the Employment Equity Plan? Please choose one.

Monthly	Quarterly	

10.2. Did you achieve the annual objectives as set out in your Employment Equity Plan for this period?

Yes	No	Please explain

SECTION G: SIGNATURE OF THE CHIEF EXECUTIVE OFFICER/ACCOUNTING OFFICER

Chief Executive Officer/Accounting Officer	
I	(full Name) CEO/Accounting Officer of
hereby declare that I have read, approved and authorized this report.	
Signed on this	day of (month) year
At (place):	
Chief Executive Officer/Accounting Officer	

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ EEA3: Summary of the Act in terms of Section 25 (1) of the Act

**EEA3:
Summary of the Act in terms of [Section 25 \(1\)](#) of the Act**



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

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

Definitions: Section 1

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

Purpose of the Act: Section 2

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

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

Application of the Act: Section 4

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

2. Chapter II - prohibition of unfair discrimination

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

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

- (a) Employers may not unfairly discriminate against employees by providing different terms and conditions of employment between employees of the same employer performing the same or substantially the same work or work of equal value that is directly or indirectly based on any one or more grounds listed in subsection 6 (1) or on any other arbitrary ground.

2.2. Medical testing: Section 7

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

2.3. Psychometric testing: Section 8

Psychometric testing and other similar assessments of an employee are prohibited unless the test or assessment being used has been scientifically shown to be valid and reliable, can be applied fairly to all employees, is not biased against any employee; and has been certified by the Health Professions Council of South Africa (HPCSA) established under the Health Professions Act, No. 56 of 1974 or any other body which may be authorized by law to certify such tests or assessments.

2.4. Disputes concerning Chapter 2: Section 10

- (a) An employee, or applicant for employment, may refer a dispute concerning alleged unfair discrimination, medical or psychological testing to the CCMA for conciliation.

This must be done within six months of the alleged discrimination or testing.

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

3. Chapter III - Affirmative Action

3.1. Duties of a designated employer: [Section 13](#)

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

3.2. Affirmative action measures: [Section 15](#)

- (a) Affirmative action measures are measures intended to ensure that suitably qualified employees from designated groups have equal employment opportunities and are equitably represented in all occupational levels of the workforce.
- (b) Such measures must include:
 - (i) Identification and elimination of barriers with an adverse impact on designated groups;
 - (ii) Measures which promote diversity;
 - (iii) Making reasonable accommodation for people from designated groups;
 - (iv) Retention, development and training of designated groups (including skills development); and
 - (v) Preferential treatment and numerical goals to ensure equitable representation, which exclude quotas.
- (c) Designated employers are not required to take any decision regarding an employment policy or practice that would establish an absolute barrier to prospective or continued employment or advancement of people not from designated groups.

3.3. Consultation: [Section 16](#) and [17](#)

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

3.4. Disclosure of information: [Section 18](#)

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

3.5. Analysis: [Section 19](#)

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

3.6. Employment Equity Plan: [Section 20](#)

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

3.7. Report: [Section 21](#)

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

3.8. Designated employer must assign a manager: [Section 24](#)

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

3.9. Income Differentials: [Section 27](#)

- (a) A statement of remuneration and benefits received in each occupational level of that employer's workforce must be submitted by a designated employer to the Employment Conditions Commission (ECC).
- (b) Where disproportionate income differentials or unfair discrimination in terms and conditions of employment as contemplated by [section 6 \(4\)](#) of the Act are reflected in the statement contemplated in sub-regulation (a), a designated employer must take measures to progressively reduce such differentials subject to guidance as may be given by the Minister as contemplated in the regulations.

4. Chapter V - Monitoring, Enforcement and Legal Proceedings

4.1. Monitoring: [Section 34](#)

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

4.2. Powers of the Labour Inspector: [Section 35](#)

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

4.3. Undertaking to comply: [Section 36](#)

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

4.4. Compliance Order: [Section 37](#)

- (a) A labour inspector may issue a compliance order to a designated employer if that employer has failed to comply with [sections 16, 17, 19, 22, 24, 25](#), or 26 of this Act.

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- (b) If an employer fails to comply with an undertaking, the Director-General may apply to the Labour Court to make such an undertaking an order of the Labour Court.

4.5. Review by Director-General: [Section 43, 44 and 45](#)

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

4.6. Powers of the Labour Court: [Section 50](#)

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

4.7. Protection of Employee Rights: [Section 51](#)

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

5. Chapter VI - General Provisions

5.1. State contracts: [Section 53](#)


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

5.2. Liability of Employers: [Section 60](#)

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

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ EEA4: Statement of income differentials in terms of Section 27 of the Act

**EEA4:
Statement of income differentials in terms of [Section 27](#) of the Act**

 <p>employment & labour</p> <hr/> <p>Department: Employment and Labour REPUBLIC OF SOUTH AFRICA</p>		<p>PAGE 1 OF 1</p> <p>EEA4</p>
PLEASE READ THIS FIRST	SECTION A: EMPLOYER DETAILS & INSTRUCTION	
<p>PURPOSE OF THIS FORM</p> <p>This form enables employers to comply with Section 27 (1) of the Employment Equity Act 55 of 1998, as amended.</p> <p>This form contains the format for an Income Differential Statement to be completed by a designated employer and submitted to the Department of Employment and Labour</p> <p>WHO COMPLETES THIS FORM?</p> <p>All designated employers must submit a report in terms of Section 27 (1) of the Employment Equity Act, 55 of 1998 as amended.</p> <p>WHEN SHOULD EMPLOYERS REPORT?</p> <p>Designated employers must submit their report annually at a Department of Employment and Labour office on the first working day of October for immediate capturing or by 15 January of the following year for online reporting.</p> <p>Employers who become</p>	Trade name	
	DTI registration name	
	DTI registration number	
	PAYE/SARS number	
	UIF reference number	
	EE reference number	
	Seta classification	
	Industry/Sector	
	Bargaining Council	
	Telephone number	
	Postal address	
	Postal code	
	City/Town	
	Province	
	Physical address	
Postal code		
City/Town		
Province		
Details of CEO/Accounting Officer at the time of submitting this report		
Name and surname		
Telephone number		
Fax number		
Email address		
Details of Employment Equity Senior Manager at the time of		

designated on or after the first working day of April but before the first working day of October must submit their Income Differential Statement on the first working day of October of the following year.

Online reporting:
www.labour.gov.za Helpline:
0860101018

**NO FAXED OR E-MAILED
 REPORTS WILL BE ACCEPTED**

submitting this report	
Name and Surname	
Telephone number	
Fax number	
Email address	
Business type	
<input type="checkbox"/> Private Sector	<input type="checkbox"/> State-Owned Enterprise
<input type="checkbox"/> National Government	<input type="checkbox"/> Provincial Government
<input type="checkbox"/> Local Government	<input type="checkbox"/> Educational Institution
<input type="checkbox"/> Non-profit Organisation	
Information about the organisation at the time of submitting this report	
Number of employees in the organisation	<input type="checkbox"/> 0 to 49
	<input type="checkbox"/> 50 to 149
	<input type="checkbox"/> 150 or more
Is your organisation an organ of State?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is your organisation part of a group / holding company?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please provide the name.	
Is your organisation a public company?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Year for which this report is submitted	

SECTION B: THE FOLLOWING MUST BE TAKEN INTO CONSIDERATION WHEN COMPLETING THE EEA4 FORMS

1. The objective of the EEA4 Form is to collect information for the assessment of the remuneration gap between the highest paid and lowest paid employees and, at the same time, to assess inequalities in remuneration in relation to race and gender in the various occupational levels. It must be noted that the total number of employees in the EEA2 in each occupational level (Workforce profile table 1.1) must be taken into account when completing this form (EEA4).
2. All employees (including Foreign Nationals) must be included when completing the EEA4 form in the appropriate space provided in the table below. Temporary employees are employees employed to work for less than three months over a period of 12 months.
3. **"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.
4. Remuneration (i.e. fixed and variable remuneration) contained in this form must reflect information of the same employees reflected in the EEA2 Form for the reporting period concerned across all occupational levels. The workforce in terms of race and gender must be exactly the same as the workforce outlined in the EEA2 Form.
5. All employees, including Foreign Nationals and temporary employees (i.e. those employees employed to work for less than three months) must be included when completing the EEA4 Form.
6. Calculation of remuneration must include a period of twelve months and reflect the same reporting period covered by the EEA2 Form. Where an employee had not worked for a full twelve month period, an amount equivalent to the annual remuneration must be calculated and furnished. For example, the annual equivalent for an employee who worked for three months and earned R30 000 is R120 000 (i.e. (R30 000/3) * 12). All remuneration amounts to be reflected in the table below must be rounded up to the nearest Rand (R) and included as **total remuneration (fixed/guaranteed remuneration plus any variable remuneration)** that was paid out for each group in terms of

population group and gender.

7. No blank spaces, commas (,), full stops or decimal points (.) or any other separator should be included when capturing the remuneration information in each of the cells in the table below - for example R7 345 567.6 must be captured as R7345568 with no separators.
8. All remuneration (i.e. total cost to company) must be included in the form as annualized fixed/guaranteed remuneration and annualized variable remuneration). The information below provides inclusions and exclusions to consider when completing the EEA4 Form.

8.1 Fixed/Guaranteed remuneration includes:

- (a) Salary/wage;
- (b) Housing or accommodation subsidy or housing or accommodation received as a benefit in kind;
- (c) Travel allowance or provision of a car, except to the extent that the allowance or the car is provided to enable the employee to work as provided for by the Fourth and Seventh Schedules of the Income Tax Act;
- (d) Any cash payments made to an employee, except those listed as exclusions in terms of this schedule;
- (e) Any other payments in kind received by an employee, except those listed as exclusions in terms of this schedule;
- (f) Employer's contributions to medical aid, pension, provident fund or similar benefit funds;

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7 EEA4

- (g) Employer's contributions to income protection, funeral or death benefit schemes; and
- (h) Guaranteed (non-discretionary) annual bonus/13th cheque.

8.2 Variable remuneration includes:

- (a) Short-term incentives: annual or shorter incentives and (generally) cash performance-based payments, including deferrals (commission schemes are included here);
- (b) Long-term incentives: longer than one year, (usually) share-based awards and cash-based settlement that have a vesting period of more than one year must also be included, which may be retention and/or performance-based;
- (c) Lump sums in respect of ongoing employment e.g. back pay and leave paid upon termination;
- (d) Discretionary payments not related to an employee's hours of work or performance (for example, a retention bonus);
- (e) As provided for by the Income Tax Act, the taxable benefit portion of bursaries and scholarships provided to the employee and/or relatives of the employee; and
- (f) Dividends included as remuneration by the Fourth Schedule of the Income Tax Act.

8.3 Excluded:

- (a) Any allowance, cash payment or payment in kind provided to enable the employee to work (for example, an equipment, tool or similar allowances or the provision of transport or the payment of a transport allowance to enable the employee to travel to and from work);
- (b) Gratuities (for example, tips received from customers) and gifts from the employer;
- (c) Non-employment related lump sums such as severance pay; and
- (d) Dividends not included as remuneration by the Fourth Schedule of the Income Tax Act.

9. Information and Calculations

Information is required on the number of employees, including persons with disabilities, and the total remuneration in each **occupational level** in terms of the population group and gender in **Section C of the EEA4 form**.

In addition, remuneration information is required for the lowest paid individual at the lowest occupational level and the remuneration of the highest paid individual is required for each of the other occupational levels in your organisation in terms of population group and gender in **Section D of the EEA4 form**.

- 9.1 Please provide the remuneration of the employee with the **highest total remuneration** (i.e. fixed/guaranteed and variable remuneration) for each occupational level in terms of population group and gender. Where applicable, information must be provided for both males and females for Africans, Coloureds, Indians, Whites and Foreign Nationals.
- 9.2 Please provide the remuneration of the employee with the lowest total remuneration (i.e. fixed/guaranteed and variable remuneration) for the lowest occupational level in your organisation in terms of population group and gender. Where applicable, information must be provided for both males and females for Africans, Coloureds, Indians, Whites and Foreign Nationals.
- 9.3 Please provide the **average/ mean remuneration**, the **median remuneration** and the **remuneration gap** as required in **Section E of the EEA4 Form**.

SECTION C: WORKFORCE PROFILE AND TOTAL REMUNERATION

Please use the table below to indicate the number of employees, including persons with disabilities, and the total remuneration in terms of population group and gender for each occupational level. In addition, please provide the total remuneration per occupational level in your organisation.

Occupational levels		Male				Female				Foreign Nationals		Total
		A	C	I	W	A	C	I	W	M	F	
Top Management	Number of employees											
	Total remuneration											
Senior Management	Number of employees											
	Total remuneration											
Professionally qualified and experienced specialists and mid-management	Number of employees											
	Total remuneration											
Skilled technical, academically qualified and, junior management	Number of employees											
	Total remuneration											
Semi-skilled and discretionary decision making	Number of employees											
	Total remuneration											
Unskilled and defined decision making	Number of employees											
	Total remuneration											
TOTAL PERMANENT	Number of employees											
	Total remuneration											
Temporary employees	Number of employees											
	Total remuneration											
TOTAL	Number of employees											
	Total remuneration											

SECTION D: FIXED/GUARANTEED AND VARIABLE REMUNERATION

Please provide the remuneration of the employee with the **highest total remuneration (i.e. fixed/guaranteed and variable remuneration)** in terms of population group and gender for all the occupational levels, **except for the lowest occupational level in your organisation**. Please provide the remuneration of the employee with the **lowest total remuneration** in your organisation in terms of population group and gender. Where a choice has to be made between two employees with the same total remuneration, i.e. one employee having a higher fixed/guaranteed remuneration and the other employee having a higher variable remuneration, the employee with the higher variable remuneration,

except at the lowest occupational level, wherein an employee with the lowest variable remuneration should be chosen when completing the form below.

Occupational levels		Male				Female				Foreign Nationals	
		A	C	I	W	A	C	I	W	W	F
Top Management	Fixed/Guaranteed										
	Variable										
	Total Remuneration										
Senior Management	Fixed/Guaranteed										
	Variable										
	Total Remuneration										
Professionally qualified, experienced specialists and mid-management	Fixed/Guaranteed										
	Variable										
	Total Remuneration										
Skilled technical, academically qualified and, junior management,	Fixed/Guaranteed										
	Variable										
	Total Remuneration										
Semi-skilled and discretionary decision making	Fixed/Guaranteed										
	Variable										
	Total Remuneration										
Unskilled and defined decision making	Fixed/Guaranteed										
	Variable										
	Total Remuneration										

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SECTION E: AVERAGE AND MEDIAN REMUNERATION AND THE REMUNERATION GAP

Please note the **average/mean remuneration** involves adding up a number of amounts in remuneration and dividing the total by the total number of employees included in the total. The '**median**' is the "middle" value in a list of payments (i.e. remuneration) ranked from lowest to highest.

What is the average annual remuneration of the top 10% of your <u>top earners</u>?	Average Annual Remuneration	R
What is the average annual remuneration for the bottom 10% of your <u>bottom earners</u>?	Average Annual Remuneration	R
What is the median <u>earners</u> remuneration in your organisation?	Median Earners Remuneration	R
Please indicate whether your organisation has a policy in place to address and close the vertical gap between the highest and lowest paid employees in your workforce? (Mark with X)	YES	
	NO	
How many times (e.g. 10x, 15x, 20x) is the vertical gap between the highest and lowest paid worker in your organisation in terms of the policy?		
Is the remuneration-gap between the highest and lowest paid employees in your organisation aligned to your policy? (Mark with X)	YES	
	NO	
Are AA measures to address the remuneration gap included in your EE Plan? (Mark with X)	YES	
	NO	

Please indicate a key reason for the Income Differentials that apply to your organisation. (Mark with X)

(a) Seniority/ length of service	
(b) Qualifications	
(c) Performance	
(d) Demotion	
(e) Experiential training	
(f)Shortage of skill	
(g) Transfer of business	

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7 EEA4

SECTION F: Signature of the Chief Executive Officer/Accounting Officer

Chief Executive Officer /Accounting Officer

I _____ (full Name) CEO/Accounting Officer
of _____ hereby declare that I have read, approved and authorized this information.
Signed on this _____ day of _____ (month) year
At (place): _____

Chief Executive Officer/Accounting Officer

[Form EEA4 replaced by GNR.1057 of 8 August 2019.]

(Editorial Note: Wording as per original *Government Gazette*.)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ EEA5: Request for an undertaking in terms of Section 36 of the Act

EEA5:

Request for an undertaking in terms of [Section 36](#) of the Act

	<p>labour</p> <hr/>		
	<p>Department: Labour REPUBLIC OF SOUTH AFRICA</p>	<p>PAGE 1 OF 2</p>	<p>EEA5</p>

DEPARTMENT OF LABOUR

WRITTEN UNDERTAKING

<p>PLEASE READ THIS FIRST</p> <p style="text-align: center;">↓</p> <p>PURPOSE OF THIS FORM To obtain a written undertaking from the employer in terms of section 36 to comply with the requirements of the Employment Equity Act, 55 of 1998, as amended.</p> <p>WHO COMPLETES THIS FORM? An employer, assisted by a labour inspector.</p> <p>WHO RECEIVES THIS FORM?</p>	<p>Employer Details</p> <p>Trade name</p> <p>DTI registration name</p> <p>PAYE/SARS No.</p> <p>EE Ref. No.</p> <p>Industry/Sector</p> <p>Tel No.</p> <p>Fax No.</p> <p>Postal address</p> <p>Physical address</p> <p>Name & Surname of the CEO/Accounting Officer</p>
---	--

This form goes to the inspector.

PLEASE NOTE:

A labour inspector may request and obtain a written undertaking from a designated employer to comply with the provisions of section 36 (1) within a specified period.

Failure to comply with this undertaking may result in the Director-General applying to the Labour Court, to make this undertaking, or any part thereof, an order of the Labour Court in terms of [section 36 \(2\)](#).

Email address

Please tick the applicable box below as an undertaking to comply with the following provisions of the Act and its regulations.

- i. Consult with employees ([section 16](#) read with [section 17](#)) ?

Please specify

- ii. Conduct an analysis ([section 19](#)) ?

Please specify

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2 EEA5

- iii. Publish report ([section 22](#)) ?
iv. Assign responsibility to one or more senior managers ([section 24](#)) ?
v. Inform employees ([section 25](#)) ?
vi. Keep records ([section 26](#)) ?

1. You are required to comply with this written undertaking within days of receipt hereof. **Failure to comply with this undertaking may result in the Director-General applying to the Labour Court, to make this undertaking, or any part thereof, an order of the Labour Court in terms [section 36 \(2\)](#).**

OBTAINED ON Day of (Month) Year

At (Place)

SIGNED: EMPLOYER/ON BEHALF OF EMPLOYER

SIGNED: LABOUR INSPECTOR

CONTACT DETAILS OF INSPECTOR:

PHYSICAL ADDRESS:

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ EEA6: Compliance order in terms of Section 37 (1) of the Act

EEA6:

Compliance order in terms of [Section 37 \(1\)](#) of the Act



labour

Department:
Labour

REPUBLIC OF SOUTH AFRICA

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EEA6

PLEASE READ THIS FIRST



PURPOSE OF THIS FORM

This form is used to issue a compliance order to an employer who has failed to comply with [sections 16, 17, 19, 22, 24, 25](#) or [26](#) of the Employment Equity Act, [55 of 1998](#), as amended.

Failure to comply with this compliance order may result in the Director-General applying to the Labour Court, to make this compliance order an order of the Labour Court.

WHO COMPLETES THIS FORM?

A labour inspector fills this form.

WHO RECEIVES THIS FORM?

This form goes to the employer.

PLEASE NOTE:

The employer must display a copy of this order prominently at a place accessible to the affected employees at each workplace named in it in terms of [section 25 \(2\) \(b\)](#).

**DEPARTMENT OF LABOUR
COMPLIANCE ORDER**

Ref/Case No:


Employer Details

- Trade name
- DTI registration name
- PAYE/SARS No.
- EE Ref. No.
- Industry/Sector
- Tel No.
- Fax No.
- Postal address
- Physical address
- Name & Surname of the CEO/Accounting Officer
- Email address

1. You are required to comply with the following provisions of the Act and its regulations. Failure to comply with this compliance order may result in the Director-General applying to the Labour Court, to make this compliance order an order of the Labour Court.

(Tick the applicable box(es) below)

- i. Consult with employees ([section 16](#) read with [section 17](#)) ?
- ii. Conduct an analysis ([section 19](#)) ?
- iii. Publish the report ([section 22](#)) ?
- iv. Assign responsibility to one or more senior managers ([section 24](#)) ?
- v. Inform employees ([section 25](#)) ?
- vi. Keep records ([section 26](#)) ?

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	Department: Labour REPUBLIC OF SOUTH AFRICA		

2. You are required to comply with this compliance order within _____ days of receipt hereof. **The employer must display a copy of this order prominently at a place accessible to the affected employees at each workplace named in it in terms of [section 25 \(2\) \(b\)](#).**

OBTAINED ON _____ Day of (Month) _____ Year

At (Place)

SIGNED: EMPLOYER

SIGNED: LABOUR INSPECTOR/ON BEHALF OF EMPLOYER

CONTACT DETAILS OF INSPECTOR:

	labour	PAGE 1 OF 4	EEA7
	Department: Labour REPUBLIC OF SOUTH AFRICA		

DIRECTOR-GENERAL REVIEW ASSESSMENT FORM**INSTRUCTIONS**

The following are instructions for the completion of this Assessment Form:

In this Assessment Form the term "Company or Organisation" is used to refer to the Designated Employer who is being required to submit documentation in terms of [section 43](#) of the Employment Equity Act as amended.


- 1) The designated employer must complete **all sections** of the Assessment Form.
- 2) The designated employer must respond in the spaces provided in the Assessment Form and where "YES" is indicated provide supporting information or evidence as a schedule or annexure with the relevant heading.
- 3) The annexure, supporting information and evidence that is submitted must be numbered as per each section of the Assessment Form.
- 4) All information must be submitted in hard copies.
- 5) Should information requested not be completed and submitted in the required format, it may result in the Director-General applying to the Labour Court to use remedies available in terms of [section 45](#) of the Act.
- 6) The completed Assessment Form must be signed by the Chief Executive Officer/Accounting Officer.
- 7) Should the designated employer have an enquiry regarding the completion of the Assessment Form, please contact:

THE DEPARTMENT OF LABOUR	
Contact Person:	
Address:	
Tel.:	
Fax:	
E-mail:	

NB. The Assessment Form must be delivered to the above address.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ EEA7: DG Review Assessment Form in terms of Section 43 of the Act

**EEA7:
DG Review Assessment Form in terms of [Section 43](#) of the Act**

	labour	PAGE 2 OF 4	EEA7
	Department: Labour REPUBLIC OF SOUTH AFRICA		

DIRECTOR-GENERAL REVIEW ASSESSMENT FORM**SECTION A: EMPLOYER DETAILS**

PLEASE READ THIS FIRST	SECTION A: EMPLOYER DETAILS	
<p>PURPOSE OF THIS FORM This form enables designated employers to comply with section 43 of the Employment Equity Act 55 of 1998 as amended.</p> <p>This form contains the format for the Director-General Review of designated employers. All employers are required to use this form.</p> <p>WHO COMPLETES THIS FORM? All designated employers who are subjected to the Director-General Review and required to submit information in terms of section 43 of the Employment Equity Act, 55 of 1998 as amended.</p>	Trade name	
	DTI registration name	
	DTI registration number	
	PAYE/SARS number	
	UIF reference number	
	EE reference number	
	Industry/Sector	
	Seta classification	
	Telephone number	
	Postal address	
	Postal code	
	City/Town	
	Province	
	Physical address	
	Postal code	
	City/Town	
	Province	
	Details of CEO/Accounting Officer at the time of submitting this form	
	Name and Surname	
	Telephone number	
	Fax number	
	Email address	
	Details of Assigned Senior Manager for EE at the time of submitting this form	
	Name and Surname	
	Telephone number	
	Fax number	
	Email address	
	Business type	
? Private Sector	? State-Owned Enterprise	
? National Government	? Provincial Government	
? Local Government	? Educational Institution	
? Non-profit Organisation		
Information about the organisation at the time of submitting this Assessment form		
Number of employees in the organisation		
Date of submitting this form	DD/MM/YYYY	

2. SECTION B: ASSIGNED EE MANAGER

2.1. Did you assign senior manager(s) in terms of [section 24](#)?

Yes No

2.1.1. If yes, please provide proof detailing the assignment of responsibilities as outlined. (E.g. letter of assignment detailing responsibilities and mandate)

(Editorial Note: Numbering as per original *Government Gazette*.)

3. SECTION C: CONSULTATION

3.1. Does your organisation have representative forum(s) set up for consultation on employment equity in terms of [section 16](#)?

Yes No

3.1.1. If yes, please provide proof by means of the composition of the forum; set of minutes covering the previous twelve months reporting period accompanied by agendas and signed attendance registers.

4. SECTION D: EMPLOYMENT EQUITY ANALYSIS

4.1. Did your company conduct an analysis of the **workforce, policies, procedures, practices and the work environment** in terms of [section 19](#)?


Yes No

4.1.1. If yes, please provide documentary proof in the form of Report(s) detailing the outcome of your analysis in line with the [EEA12](#) template. Please note that presentation slides or copies of employment policies will **NOT** be accepted.

5. SECTION E: EMPLOYMENT EQUITY PLAN

5.1. Does your organisation have a current Employment Equity (EE) Plan in terms of [section 20](#), which includes Affirmative Action measures as outlined in the EEA13 template?

Yes No

	labour		
	Department: Labour REPUBLIC OF SOUTH AFRICA	PAGE 4 OF 4	EEA7

5.1.1. If yes, please attach a copy of your current EE Plan. In case of a consolidated plan, please include the individual plans of each operation included in the consolidated plan.

6. SECTION F: ANALYSIS OF INCOME DIFFERENTIAL STATEMENT

6.1. Please provide current Income Differential information by using the attached template.

7. SECTION G: SIGNATURE OF CHIEF EXECUTIVE OFFICER/ACCOUNTING OFFICER

Chief Executive Officer/Accounting Officer	
I	(full Name) CEO/Accounting Officer of
hereby declare that I have read, approved and authorized this information.	
Signed on this	day of (month) year
At (place):	
Chief Executive Officer/Accounting Officer	

**EEA8:
Demographic Data in terms of [Section 42](#) of the Act**

	labour	Department: Labour	REPUBLIC OF SOUTH AFRICA	PAGE 1 OF 1	EEA8

DEMOGRAPHIC PROFILE OF THE NATIONAL AND REGIONAL ECONOMICALLY ACTIVE POPULATION

WHERE TO FIND INFORMATION ABOUT THE ECONOMICALLY ACTIVE POPULATION (EAP)?

Statistics South Africa provides demographic data using Quarterly Labour Force Surveys (QLFS) from time to time. The Quarterly Labour Force Surveys provide statistics on the national and provincial Economically Active Population (EAP) in terms of race and gender. Employers can access this information directly from Statistics South Africa. This information must be used by employers when consulting with employees, conducting an analysis and when preparing and implementing Employment Equity Plans.

This information is reviewed annually, and also made available in the Commission for Employment Equity (CEE) Annual Reports, which may be accessed from the Department of Labour website www.labour.gov.za.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ EEA9: Occupational Levels in terms of Section 21 of the Act

**EEA9:
Occupational Levels in terms of [Section 21](#) of the Act**

	labour	Department: Labour	REPUBLIC OF SOUTH AFRICA	PAGE 1 OF 2	EEA9

OCCUPATIONAL LEVELS

WHAT IS THE PURPOSE OF THIS ANNEXURE?

Job evaluation or grading systems are used by many organisations to measure jobs according to their content and establish the comparative worth between jobs.

This annexure provides a table of equivalent occupational levels that may be used by employers when completing the [EEA2](#) and [EEA4](#) forms.

INSTRUCTIONS

The table below indicates the occupational levels within organisations as developed through the use of different job evaluation or grading systems. The table provides equivalent levels from each of these job evaluation systems.

Organisations that do not have job evaluation and grading systems should use the table below for guidance to determine the occupational levels in their organisations.

OCCU-PATIONAL LEVELS	Paterson Classic (levels)	Paterson Modern (bands)	Re-Measure ©(points)	Hay Units ©(points)	Hay Decision Tree (© points)	Peromnes ©(points)	Task© (levels)	JEasy© (levels)	DESCRIPTION
Top	F+1-F+5	G Band ¹	300-349	3581-7160		1++			Controls the functional integration of the business. Determines the overall strategy and


Management/ Executives	F1-F5	F Lower-F Upper	250-299	1801- 3580	225-275	1 to 1+	23-26	6a-6e	objectives of the business. Directs the company into the future. The nature of the work and focus is long-term. Sign-off on policy or strategy.
Senior Management	E1-E5	E Lower-E Upper	200-249	735-1800	175-224	4-2	18-22	5a-5e	Knowledge of entire business area/BU/company or group. Provide inputs for/formulation of the overall Organisational strategy. Translates the overall strategy into business plans for BU/Functional Unit, thereby operationalising organisational strategy. Implements and manages business plan, goals and objectives and ensures the achievement of overall key Organisational/BU/Functional outputs. Manages the development of innovation and change.
Professionally Qualified & experienced specialists/mid- management	D1-D5	D Lower-D Upper	150-199	371-734	125-174	7-4	14-18	4a-4e	Professional knowledge of sub-discipline or discipline. Provide input in the formulation of Organisational/Functional Unit business plans. Formulate and implement departmental/team plans that will support the BU business plans. Optimisation of resources (finances, people, material, information and technology) to achieve given objectives in most productive and cost effective way.
Skilled Technical & Academically Qualified/Junior Management/ Supervisors/ Foremen/ Superintendents	C1-C5	C Lower-C Upper	100-149	192-370	75-124	11-7	9-13	3a-3e	Applies broad knowledge of products, techniques and processes. Evaluates procedures and applies previous experience. A good solution can usually be found. Determines own priorities. What has to be done is stipulated; but may require initiative in terms of how it should be done.
Semi-Skilled & discretionary decision-making	B1-B5	B Lower-B Upper	50-99	85-191	25-74	15-11	4-8	2a-2e	Accountable for direct product, process or service quality. Incremental improvement of existing processes and procedures according to clear guidelines. Choosing of correct action on the basis of set standards, training procedures and past experience.
Unskilled & defined decision-making	A1-A3	A	20-49	54-84	0-24	19-16	1-3	1a-1c	Steps to accomplish work or processes are clearly defined and understood. Tasks are sometimes repetitive and uncomplicated and the work cycle is short.

Footnotes

- 1 The F+1 - F+5 levels are commonly referred to as the G Band in industry and extend beyond the Paterson Classic F5 band.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ EEA10: Summary of the employment equity progress report in terms of Section 22 of the Act

**EEA10:
Summary of the employment equity progress report in terms of [Section 22](#) of the Act**

	<p>labour</p> <hr style="border: 0.5px solid black;"/> <p>Department: Labour REPUBLIC OF SOUTH AFRICA</p>	<p>PAGE 1 OF 2</p>	<p>EEA10</p>
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SUMMARY OF THE EMPLOYMENT EQUITY PROGRESS REPORT TO BE INCLUDED IN THE ANNUAL REPORT

Every designated employer is required in terms of [section 22](#) of the Act to publish a summary of their employment equity report in that employer's annual report. Every employer who is required to comply with [section 22](#) must follow the format below.

Occupational levels

Please report the total number of **employees (including employees with disabilities)** in each of the following **occupational levels**. Note: A=Africans, C=Coloureds, I=Indians and W=Whites


Occupational Levels	Male				Female				Foreign Nationals		Total
	A	C	I	W	A	C	I	W	Male	Female	
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											
TOTAL PERMANENT											
Temporary employees											
GRAND TOTAL											

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2 EEA10


Please report the total number of **employees for people with disabilities ONLY** in each of the following **occupational levels**. Note: A=Africans, C=Coloureds, I=Indians and W=Whites

Occupational Levels	Male				Female				Foreign Nationals		Total
	A	C	I	W	A	C	I	W	Male	Female	
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											
TOTAL PERMANENT											
Temporary employees											
GRAND TOTAL											

EEA11:
Request for employer's employment equity report in terms of [Section 21 \(5\)](#) of the Act

	labour		
	Department: Labour REPUBLIC OF SOUTH AFRICA	PAGE 1 OF 1	EEA11


APPLICATION FOR EMPLOYMENT EQUITY REPORT


<p>PLEASE READ THIS FIRST</p> <p style="text-align: center;"></p> <p>PURPOSE OF THIS FORM The form is used to request the Employment Equity Report (Form EEA2) of an employer from the Department of Labour. It is issued in terms of section 21 (5) of the Employment Equity Act, 55 of 1998 as amended.</p> <p>WHO COMPLETES THIS FORM? The applicant who is making the request.</p> <p>INSTRUCTIONS Please complete a separate form for each employer's report requested and address it to the Employment Equity Registry.</p> <p>SEND TO: Employment Equity Registry (Application for EE Report) Department of Labour Private Bag X117 Pretoria 0001 www.labour.gov.za Helpline: 0860101018</p>	<p>Section A: Applicant details:</p> <table border="1" style="width: 100%;"><tr><td>Name and Surname:</td><td></td></tr><tr><td>ID Number:</td><td></td></tr><tr><td>Organisation/Institution</td><td></td></tr><tr><td>Address:</td><td></td></tr><tr><td>Town/City:</td><td></td></tr><tr><td>Postal Code</td><td></td></tr><tr><td>Telephone No.:</td><td></td></tr><tr><td>Fax No:</td><td></td></tr><tr><td>E-mail Address:</td><td></td></tr><tr><td>Date of application:</td><td></td></tr></table> <p>Section B: Reason for this request:</p> <div style="border: 1px solid black; height: 60px; width: 100%;"></div> <p>Section C: Report requested:</p> <table border="1" style="width: 100%;"><tr><td>Name of Employer:</td><td></td></tr><tr><td>*EE Reference No.:</td><td></td></tr><tr><td>Indicate the year(s) of the report(s) requested:</td><td></td></tr><tr><td></td><td></td></tr></table>	Name and Surname:		ID Number:		Organisation/Institution		Address:		Town/City:		Postal Code		Telephone No.:		Fax No:		E-mail Address:		Date of application:		Name of Employer:		*EE Reference No.:		Indicate the year(s) of the report(s) requested:			
Name and Surname:																													
ID Number:																													
Organisation/Institution																													
Address:																													
Town/City:																													
Postal Code																													
Telephone No.:																													
Fax No:																													
E-mail Address:																													
Date of application:																													
Name of Employer:																													
*EE Reference No.:																													
Indicate the year(s) of the report(s) requested:																													

***(Please consult the EE Public Register available on the departmental website to obtain the EE Reference No.)**

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ EEA12: Template for reporting on analysis conducted in terms of Section 19 of the Act

EEA12:
Template for reporting on analysis conducted in terms of [Section 19](#) of the Act

	labour		
	Department: Labour REPUBLIC OF SOUTH AFRICA	PAGE 1 OF 9	EEA12

PLEASE READ THIS FIRST 	DEPARTMENT OF LABOUR
PURPOSE OF THIS FORM Designated employers are expected to complete this template in order to comply with section 19 , which must include an analysis of their workforce profile, policies, procedures, practices and environment. Section 19 (1) of the EEA requires a designated employer to 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. Section 19 (2) indicates that the analysis must include a profile to determine the under-representation of people from the designated groups in the various occupational levels in the workforce.	TEMPLATE FOR REPORTING AN ANALYSIS (Section 19) Employer Details Trade name DTI Registration name PAYE/SARS No. EE Ref No. Industry/Sector Province Tel No. Fax No. Postal address Physical address Province Name & Surname of the CEO/Accounting Officer Email address

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ANALYSIS: [SECTION 19](#)

A designated employer is required to conduct an analysis of their workplaces.

According to [section 19 \(1\)](#) of the Employment Equity Act, a designated employer must 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;

In order for a designated employer to comply with this provision, the following template should be utilized to furnish the required information.

3 of 9 EEA12

1. QUALITATIVE ANALYSIS

1.1. BARRIERS AND AFFIRMATIVE ACTION MEASURES (*policies, procedures and/or practice*)

In order to conduct an analysis of policies, procedures and/or practice, barriers are identified and proposed affirmative action measures established to respond to such barriers. Please note that the information below serves as a baseline to inform the 'Barriers and Affirmative Action measures (non-numerical goals) in the Employment Equity Plan (EE Plan).

(Editorial Note: Wording as per original *Government Gazette*.)

CATEGORIES	BARRIERS AND AFFIRMATIVE ACTION MEASURES				
	Tick (?) one or more cells for each category below to indicate where barriers exist in terms of policies, procedures and/or practice			BARRIERS (PLEASE PROVIDE NARRATION) (briefly describe each of the barriers identified in terms of policies, procedures and/or practice for each category)	PROPOSED AFFIRMATIVE ACTION MEASURES (PLEASE PROVIDE NARRATION) (briefly describe the affirmative action measures to be implemented in response to barriers identified for each category)
	POLICY	PROCEDURE	PRACTICE		
Recruitment					

Advertising positions					
Selection criteria					
Appointments					
Job classification and grading					
Remuneration and benefits					
Terms & conditions of employment					
Work environment and facilities					
Training and development					
Performance and evaluation					

CATEGORIES	BARRIERS AND AFFIRMATIVE ACTION MEASURES				
	Tick (?) one or more cells for each category below to indicate where barriers exist in terms of policies, procedures and/or practice			BARRIERS (PLEASE PROVIDE NARRATION) (briefly describe each of the barriers identified in terms of policies, procedures and/or practice for each category)	PROPOSED AFFIRMATIVE ACTION MEASURES (PLEASE PROVIDE NARRATION) (briefly describe the affirmative action measures to be implemented in response to barriers identified for each category)
	POLICY	PROCEDURE	PRACTICE		
Succession & experience planning					
Disciplinary measures					
Retention of designated groups					
Corporate culture					
Reasonable accommodation					
HIV&AIDS prevention and wellness programmes					
Assigned senior manager(s) to manage EE implementation					
Budget allocation in support of employment equity goals					
Time off for employment equity consultative committee to					

Semi-skilled and discretionary decision making												
Unskilled and defined decision making												
TOTAL PERMANENT												
Temporary employees												
GRAND TOTAL												

2.2. ANALYSIS OF WORKFORCE PROFILE BY OCCUPATIONAL LEVEL

The analysis is done separately for each occupational level and for each race and gender intersection in terms of African male, Coloured male, Indian male, White male, African female, Coloured female, Indian female, White male, Foreign National male and Foreign National female.

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the phrase "Indian female, White male" is intended to be "Indian female, White female".)

A similar analysis is done pertaining to the representation of people with disabilities (PWDs) without the Economically Active Population (EAP). The degree of under representation of the designated groups is determined by taking into account the Economically Active Population as outlined in the [EEA8](#) of these Regulations.

TOP MANAGEMENT

	MALE				FEMALE				FOREIGN NATIONAL		TOTAL
	A	C	I	W	A	C	I	W	MALE	FEMALE	
EAP											
ACTUAL											
%											
COMMENTS: Underneath each table, furnish the findings, including proposed strategies on how under-representation will be addressed.											

SENIOR MANAGEMENT

	MALE				FEMALE				FOREIGN NATIONAL		TOTAL
	A	C	I	W	A	C	I	W	MALE	FEMALE	
EAP											
ACTUAL											
%											
COMMENTS: Underneath each table, furnish the findings, including proposed strategies on how under-representation will be addressed.											

PROFESSIONALLY QUALIFIED

	MALE				FEMALE				FOREIGN NATIONAL		TOTAL
	A	C	I	W	A	C	I	W	MALE	FEMALE	
EAP											
ACTUAL											
%											
COMMENTS: Underneath each table, furnish the findings, including proposed strategies on how under-representation will be addressed.											

SKILLED TECHNICAL

	MALE				FEMALE				FOREIGN NATIONAL		TOTAL
	A	C	I	W	A	C	I	W	MALE	FEMALE	

EAP											
ACTUAL											
%											
COMMENTS: Underneath each table, furnish the findings, including proposed strategies on how under-representation will be addressed.											

SEMI-SKILLED

	MALE				FEMALE				FOREIGN NATIONAL		TOTAL
	A	C	I	W	A	C	I	W	MALE	FEMALE	
EAP											
ACTUAL											
%											
COMMENTS: Underneath each table, furnish the findings, including proposed strategies on how under-representation will be addressed.											


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9 EEA12


UNSKILLED

	MALE				FEMALE				FOREIGN NATIONAL		TOTAL
	A	C	I	W	A	C	I	W	MALE	FEMALE	
EAP											
ACTUAL											
%											
COMMENTS: Underneath each table, furnish the findings, including proposed strategies on how under-representation will be addressed.											

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ EEA13: Template for Employment Equity Plan in terms of Section 20 of the Act

**EEA13:
Template for Employment Equity Plan in terms of [Section 20](#) of the Act**

	labour <hr/> Department: Labour REPUBLIC OF SOUTH AFRICA	PAGE 1 OF 16	EEA13

PLEASE READ THIS FIRST 	DEPARTMENT OF LABOUR
PURPOSE OF THIS FORM Section 20 requires designated employers to prepare and implement an Employment Equity Plan which will achieve reasonable progress towards employment equity in the employer's workforce. An Employment Equity Plan must state- (a) The objectives to be achieved for each year of the plan;	TEMPLATE FOR EMPLOYMENT EQUITY PLAN (Section 20) Employer Details Trade name DTI Registration name PAYE/SARS No. EE Ref No. Industry/Sector Province

<p>(b) The affirmative action measures to be implemented as required by section 15 (2);</p> <p>(c) Where under representation of people form designated groups has been identified by the analysis, the numerical goals to achieve the equitable representation of suitably qualified people from designated groups within each occupational level in the workforce, the timetable within which this is to be achieved, and the strategies intended to achieve those goals;</p> <p>(d) The timetable for each year of the plan for the achievement of goals and objectives other than numerical goals;</p> <p>(e) The duration of the plan, this may not be shorter than one year or longer than five years;</p> <p>(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;</p> <p>(g) The internal procedures to resolve any dispute about the interpretation or implementation of the plan;</p> <p>(h) The persons in the workforce, including senior managers, responsible for monitoring and implementing the plan; and</p> <p>(i) Any other prescribed matter.</p>	<p>Tel No.</p> <p>Fax No.</p> <p>Postal address</p> <p>Physical address</p> <p>Province</p> <p>Name & Surname of the CEO/Accounting Officer</p> <p>Email address</p>
---	---

1. INTRODUCTION

[Section 20](#) requires that a designated employer prepares and implements an Employment Equity Plan which will achieve reasonable progress towards employment equity. An Employment Equity Plan must state the following-

- a. The objectives to be achieved for each year of the plan should meet the SMART principle as follows-
 - . Specific
 - . Measurable
 - . Attainable
 - . Relevant; and
 - . Time bound
- b. Barriers and Affirmative Action Measures must be aligned with those indicated in the audit analysis ([section 19\(1\)](#)) and meet the following requirements-
 - . Include time-frames in order to track progress in the implementation of these AA Measures;
 - . These time-frames should be within the duration of the EE Plan (no "on-going" permitted); and
 - . Include responsible persons to monitor the implementation of these AA Measures

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											
TOTAL PERMANENT											
Temporary employees											
GRAND TOTAL											

Numerical targets for people with disabilities ONLY

Occupational Levels	Male				Female				Foreign Nationals		Total
	A	C	I	W	A	C	I	W	Male	Female	
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											
TOTAL PERMANENT											
Temporary employees											
GRAND TOTAL											

5. PROCEDURES TO MONITOR AND EVALUATE THE IMPLEMENTATION OF THE PLAN

All the structures for monitoring and evaluating the progress of the plan should be specified with clear roles and responsibilities for the stakeholders involved including time frames when the monitoring takes place.

STAKEHOLDER	ROLE/RESPONSIBILITY	FREQUENCY
	.	

	.	.
	.	.

6. DISPUTE RESOLUTION MECHANISMS

A clear process to be followed to resolve disputes arising from the interpretation and implementation of the EE Plan, including the responsible persons and time-frames for each step to resolve the dispute.

7. SENIOR MANAGERS ASSIGNED TO MONITOR AND IMPLEMENT THE PLAN

8. ANY PRESCRIBED MATTER CAN BE INCLUDED

SIGNATURE OF THE CHIEF EXECUTIVE OFFICER/ACCOUNTING OFFICER


Chief Executive Officer/Accounting Officer	
I	(full Name) CEO/Accounting Officer of
hereby declare that I have read, approved and authorized this EE Plan.	
Signed on this	day of year
At (place):	
Chief Executive Officer/Accounting Officer	

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Regulations/ GNR.595 of 1 August 2014: Employment Equity Regulations, 2014 (Government Gazette No. 37873)/ EEA14: Director-General Notification in terms of Section 21 (4A) of the Act

**EEA14:
Director-General Notification in terms of [Section 21 \(4A\)](#) of the Act**

	labour	PAGE 1 OF 2	EEA14
	Department: Labour REPUBLIC OF SOUTH AFRICA		

DIRECTOR-GENERAL NOTIFICATION FORM

<p>PLEASE READ THIS FIRST</p> <p style="text-align: center;"></p> <p>PURPOSE OF THIS FORM</p> <p>This form is issued in terms of section 21 (4A) of the Employment Equity Amendment Act, 2013 (Act No. 47 of 2013) for designated employers to notify the Director-General if they are unable to submit EE Report(s).</p>	<p>Section A: Applicant details:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Name of Company:</td> <td></td> </tr> <tr> <td>PAYE No.</td> <td></td> </tr> <tr> <td>EE Ref. Number</td> <td></td> </tr> <tr> <td>Full names of CEO/Accounting Officer</td> <td></td> </tr> <tr> <td>Physical Address:</td> <td></td> </tr> <tr> <td>Town/City:</td> <td></td> </tr> <tr> <td>Postal Code</td> <td></td> </tr> <tr> <td>Telephone No of the</td> <td></td> </tr> </table>	Name of Company:		PAYE No.		EE Ref. Number		Full names of CEO/Accounting Officer		Physical Address:		Town/City:		Postal Code		Telephone No of the	
Name of Company:																	
PAYE No.																	
EE Ref. Number																	
Full names of CEO/Accounting Officer																	
Physical Address:																	
Town/City:																	
Postal Code																	
Telephone No of the																	

The notice must reach the Director-General before the last working day of August in the same year of reporting.

WHO COMPLETES THIS FORM?

Designated employers who are unable to submit their report(s).

The form must be signed by the CEO/Accounting Officer.

INSTRUCTIONS

Complete this form and mail it to the address below.

SEND TO:

The Director-General
C/O Employment Equity Registry
Department of Labour
Private Bag X117
Pretoria
0001

www.labour.gov.za
Helpline: 0860101018


NO FAX OR EMAILS WILL BE ACCEPTED.

CEO/Accounting Officer	
E-mail Address CEO	
Full names of EE Manager	
Telephone No. EE Manager	
E-mail Address EE Manager	
Date submitted to DoL	
Reporting Year	

Section B: Reasons for this application (Select one below)

- ? Section 197 (Transfer of business)
- ? Mergers/Acquisitions
- ? Labour Court Order
- ? Liquidation/Judicial Winding
- ? Insolvency
- ? Other

Please provide motivation in the box below for each of the reason(s) selected.

	<p>labour</p> <hr/> <p>Department: Labour REPUBLIC OF SOUTH AFRICA</p>	<p>PAGE 2 OF 2</p>	<p>EEA14</p>
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Chief Executive Officer/Accounting Officer

I _____ (full Name) CEO/Accounting Officer of _____

Signed on this _____ day of _____ (month) year

At (place): _____

Chief Executive Officer/Accounting Officer

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GNR.1298 of 1 December 2000: Code of Good Practice: Key aspects of HIV/Aids and employment

GNR.1298 of 1 December 2000: Code of Good Practice: Key aspects of HIV/Aids and employment

LABOUR RELATIONS ACT, 1995 (ACT [NO. 66 OF 1995](#))

EMPLOYMENT EQUITY ACT, 1998 (ACT [NO. 55 OF 1998](#))

Notice is hereby given that the Code of Good Practice: Key aspects of HIV/AIDS and employment set out in the schedule is issued by the Minister of Labour, on the advice of the Commission for Employment Equity, in terms of [section 54 \(1\) \(a\)](#) of the Employment Equity Act, 1998 (Act [No. 55 of 1998](#)), and by NEDLAC in terms of [section 203 \(1\) \(a\)](#) of the Labour Relations Act, 1995, (Act [No. 66 of 1995](#)).

MMS MDLADLANA
Minister of Labour

[Please refer to the Labour Relations Act for the full text.]

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GNR.1345 of 2002: Code of Good Practice: Key Aspects on the Employment of People with Disabilities

GNR.1345 of 2002: Code of Good Practice: Key Aspects on the Employment of People with Disabilities

EMPLOYMENT EQUITY ACT [NO. 55 OF 1998](#)

as amended by

Notice	Government Gazette	Date
R.1064	23718	19 August 2002

DEPARTMENT OF LABOUR

Notice is hereby given that the Code of Good Practice: Key Aspects on the Employment of People with Disabilities set out in the schedule is issued by the Minister of Labour, on the advice of the Commission for Employment Equity, in terms of [section 54 \(1\) \(a\)](#) of the Employment Equity Act, 1998 (Act [No. 55 of 1998](#)).

MMS MDLADLANA
MINISTER OF LABOUR

CODE OF GOOD PRACTICE ON THE EMPLOYMENT OF PEOPLE WITH DISABILITIES

ARRANGEMENT OF REGULATIONS

- [1.](#) Foreword
- [2.](#) Aims
- [3.](#) Status of Code
- [4.](#) Legal framework
- [5.](#) Definition of people with disabilities
- [6.](#) Reasonable accommodation for people with disabilities
- [7.](#) Recruitment and selection
- [8.](#) Medical and psychological testing and other similar assessments
- [9.](#) Placement
- [10.](#) Training and career advancement
- [11.](#) Retaining people with disabilities
- [12.](#) Termination of employment
- [13.](#) Workers' compensation
- [14.](#) Confidentiality and disclosure of disability
- [15.](#) Employee benefits
- [16.](#) Employment equity planning in respect of people with disabilities
- [17.](#) Education and awareness

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GNR.1345 of 2002: Code of Good Practice: Key Aspects on the Employment of People with Disabilities/ 1. Foreword

1. Foreword

[Forward amended by GN 1064 of 2002.]

The Employment Equity Act, No. 55, 1998 constitutes one of the key legislative and policy interventions within the ethos of South Africa's new constitution to give effect to the provisions relating to removal of policies which result in inequalities in the country. Specific emphasis is placed to ensure equity, the right to equal protection and benefit of the law, *inter alia*, by people with disabilities.

Although many barriers such as widespread ignorance, fear and stereotypes have caused people with disabilities to be unfairly discriminated against in society and in employment, South Africa can take pride in its efforts to formulate policies to protect the rights of people with disabilities.

Unfair discrimination against people with disabilities is perpetuated in many ways, including the following:

- . Unfounded assumptions about the abilities and performance of job applicants and employees with disabilities;
- . Advertising and interviewing arrangements which either exclude people with disabilities or limit their opportunities to prove themselves;
- . Using selection tests which discriminate unfairly;
- . Inaccessible workplaces; and
- . Inappropriate training for people with disabilities.

The Code of Good Practice on the Employment of People with Disabilities is thus part of a broader equality agenda for people with disabilities to have their rights recognised in the labour market where they experience high levels of unemployment and often remaining in low status jobs or earn lower than average remuneration.

This is particularly important since disability is a natural part of the human experience and in no way diminishes the rights of individuals to belong and contribute to the labour market. When opportunities and reasonable accommodation is provided, people with disabilities can contribute valuable skills and abilities to every workplace, and contribute to the economy of our society.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GNR.1345 of 2002: Code of Good Practice: Key Aspects on the Employment of People with Disabilities/ 2. Aims

2. Aims

2.1 The Employment Equity Act, [No. 55 of 1998](#) protects people with disabilities against unfair discrimination in the workplace and directs employers to implement affirmative action measures to redress discrimination.

2.2 The Code is a guide for employers and employees on promoting equal opportunities and fair treatment for people with disabilities as required by the Employment Equity Act (the Act).

2.3 The Code is intended to help employers and employees understand their rights and obligations, promote certainty and reduce disputes to ensure that people with disabilities can enjoy and exercise their rights at work.

2.4 The Code is intended to help create awareness of the contributions people with disabilities can make and to encourage employers to fully use the skills of such persons.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GNR.1345 of 2002: Code of Good Practice: Key Aspects on the Employment of People with Disabilities/ 3. Status of Code

3. Status of Code

3.1 The Code is not an authoritative summary of the law, nor does it create additional rights and obligations. Failure to observe the Code does not, by itself, render a person liable in any proceedings. Nevertheless when the courts and tribunals interpret and apply the Employment Equity Act, they must consider it.

3.2 The Code should be read in conjunction with other relevant Codes of Good Practice issued by the Minister of Labour.

3.3 The Code is intentionally general because every person and situation is unique and departures from the guidelines in this code may be justified in appropriate circumstances.

3.4 Employers, employees and their organizations should use the Code to develop, implement and refine disability equity policies and programmes to suit the needs of their own workplaces.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GNR.1345 of 2002: Code of Good Practice: Key Aspects on the Employment of People with Disabilities/ 4. Legal framework

4. Legal framework

The Code is issued in terms of [section 54 \(1\) \(a\)](#) of the Employment Equity Act, No. 55, 1998 and is based on the Constitutional principle that no one may unfairly discriminate against a person on the grounds of disability.

5. Definition of people with disabilities¹

5.1 Definition of persons with disabilities under the Act

The scope of protection for people with disabilities in employment focuses on the effect of a disability on the person in relation to the working environment, and not on the diagnosis or the impairment.

People are considered as persons with disabilities who satisfy all the criteria in the definition:

- (i) having a physical or mental impairment;
- (ii) which is long term or recurring; and
- (iii) which substantially limits their prospects of entry into, or advancement in employment.

5.1.1 Impairment

- (i) An impairment may either be physical or mental or a combination of both.
- (ii) "Physical" impairment means a partial or total loss of a bodily function or part of the body. It includes sensory impairments such as being deaf, hearing impaired, or visually impaired.
- (iii) "Mental" impairment means a clinically recognized condition or illness that affects a person's thought processes, judgment or emotions.

5.1.2 Long-term or recurring

- (i) "Long-term" means the impairment has lasted or is likely to persist for at least twelve months.
- (ii) "Recurring impairment" is one that is likely to happen again and to be substantially limiting (see below). It includes a constant chronic condition, even if its effects on a person fluctuate.
- (iii) "Progressive conditions" are those that are likely to develop or change or recur. People living with progressive conditions or illnesses are considered as people with disabilities once the impairment starts to be substantially limiting. Progressive or recurring conditions which have no overt symptoms or which do not substantially limit a person are not disabilities.

5.1.3 Substantially limiting

- (i) An impairment is substantially limiting if, in its nature, duration or effects, it substantially limits the person's ability to perform the essential functions of the job for which they are being considered.
- (ii) Some impairments are so easily controlled, corrected or lessened, that they have no limiting effects. For example, a person who wears spectacles or contact lenses does not have a disability unless even with spectacles or contact lenses the person's vision is substantially impaired.
- (iii) An assessment to determine whether the effects of an impairment are substantially limiting, must consider if medical treatment or other devices would control or correct the impairment so that its adverse effects are prevented or removed.
- (iv) For reasons of public policy certain conditions or impairments may not be considered disabilities. These include but are not limited to-
 - (a) sexual behaviour disorders that are against public policy;
 - (b) self-imposed body adornments such as tattoos and body piercing;
 - (c) compulsive gambling, tendency to steal or light fires;
 - (d) disorders that affect a person's mental or physical state if they are caused by current use of illegal drugs or alcohol, unless the affected person is participating in a recognized programme of treatment;
 - (e) normal deviations in height, weight and strength; and conventional physical and mental characteristics and common personality traits.
- (v) An assessment may be done by a suitably qualified person if there is uncertainty as to whether an impairment may be substantially limiting.

[Sub-para. (v) amended by GN 1064 of 2002.]

Footnotes

¹ [Section 1](#) of the Act defines people with disabilities as "people who have a long-term or recurring physical or mental impairment, which substantially limits their prospects of entry into, or advancement in, employment".

6. Reasonable accommodation² for people with disabilities

6.1 Employers should reasonably accommodate the needs of people with disabilities. The aim of the accommodation is to reduce the impact of the impairment of the person's capacity to fulfil the essential functions of a job.

6.2 Employers should adopt the most cost-effective means that is consistent with effectively removing the barriers to perform the job, and to enjoy equal access to the benefits and opportunities of employment.

6.3 Reasonable accommodation requirement applies to applicants and employees with disabilities who are suitably qualified for the job and may be required-

- (i) during the recruitment and selection processes;
- (ii) in the working environment;
- (iii) in the way work is usually done, evaluated and rewarded; and
- (iv) in the benefits and privileges of employment.

6.4 The obligation to make reasonable accommodation may arise when an applicant or employee voluntarily discloses a disability related accommodation need or when such a need is reasonably self-evident to the employer.

6.5 Employers must also accommodate employees when work or the work environment changes or impairment varies which affects the employee's ability to perform the essential functions of the job.

6.6 The employer should consult the employee and, where reasonable and practical, technical experts to establish appropriate mechanisms to accommodate the employee.

6.7 The particular accommodation will depend on the individual, the degree and nature of impairment and its effect on the person, as well as on the job and the working environment.

6.8 Reasonable accommodation may be temporary or permanent, depending on the nature and extent of the disability.

6.9 Reasonable accommodation include but not limited to-

- (i) adapting existing facilities to make them accessible;
- (ii) adapting existing equipment or acquiring new equipment including computer hardware and software;
- (iii) re-organizing workstations;
- (iv) changing training and assessment materials and systems;
- (v) restructuring jobs so that non-essential functions are re assigned;
- (vi) adjusting working time and leave; and
- (vii) providing specialized supervision, training and support in the workplace.

6.10 An employer may evaluate work performance against the same standards as other employees but the nature of the disability may require an employer to adapt the way performance is measured.

6.11 The employer need not accommodate a qualified applicant or an employee with a disability if this would impose an unjustifiable hardship on the business of the employer.

6.12 "Unjustifiable hardship" is action that requires significant or considerable difficulty or expense. This involves considering, amongst other things, the effectiveness of the accommodation and the extent to which it would seriously disrupt the operation of the business.

6.13 An accommodation that imposes an unjustifiable hardship for one employer at a specific time may not be so for another or for the same employer at a different time.

Footnotes

- 2 [Section 1](#) of the Act defines reasonable accommodation as "any modification or adjustment to a job or to the working environment that will enable a person from a designated group to have reasonable access to or participate or advance in employment".

7. Recruitment and selection

7.1 Recruitment

7.1.1 When employers recruit they should-

- (i) identify the inherent requirements of the vacant position;
- (ii) describe clearly the necessary skills and capabilities required for the job;
- (iii) set reasonable criteria for selection, preferably in writing, for job applicants for such vacant positions.

7.1.2 The "inherent requirements of the job" are those requirements the employer stipulates as necessary for a person to be appointed to the job, and are necessary in order to enable an employee to perform the essential functions of the job.

7.1.3 Application forms should focus on identifying an applicant's ability to perform the inherent requirements of the job.

7.1.4 Advertisements should be accessible to persons with disabilities and, where reasonable and practical, circulated to organizations that represent the interests of people with disabilities.

7.1.5 Advertisements or notices should include sufficient detail about the inherent requirements of the job so that potential applicants with disabilities can make an informed decision.

7.1.6 Employers may not include criteria that are not necessary to perform the essential functions of the job because selection based on non-essential functions may unfairly exclude people with disabilities.

7.1.7 On request, and if reasonable in the circumstances notices and advertisements should be provided in a format appropriate to persons with disabilities, such as large print, Braille, or audiotape.

7.2 Selection

7.2.1 Subject to reasonable accommodation, employers should apply the same criteria to test the ability of people with disabilities as are applied to other applicants.

7.2.2 The purpose of the selection process is to assess whether or not an applicant is suitably qualified.³ This may require a two-stage process if an applicant has a disability:

- (i) Determining whether an applicant is suitably qualified;
- (ii) Determining whether a "suitably qualified applicant" needs any accommodation to be able to perform the essential functions of the job.

7.2.3 When assessing if an applicant is suitably qualified, an employer may not request information about actual or perceived disability from a previous employer or third party unless with the written consent of the applicant.

7.2.4 Employers should monitor their criteria for selection. If these criteria tend to exclude people with disabilities, they should be reviewed to ensure that they do not unfairly discriminate against persons with disabilities.

7.3 Interviews

7.3.1 Selection interviews should be objective and unbiased. Interviewers should avoid assumptions about people with disabilities.

7.3.2 If an applicant has disclosed a disability or has a self-evident disability, the employer must focus on the applicant's qualifications for the work rather than any actual or presumed disability but may enquire and assess if the applicant would, but for the disability, be suitably qualified.

7.3.3 Interviewers should ask applicants referred to in 7.3.2 above, to indicate how they would perform essential functions and if accommodation is required.

7.3.4 If the employer knows in advance that an applicant has a disability, or if the applicant has a self-evident disability, the employer should if necessary, make reasonable accommodation during the interview.

7.4 Conditional Job Offers

7.4.1 If an applicant with a disability is suitably qualified, an employer may make a job offer conditional on medical or functional testing to determine an applicant's actual or potential ability to perform the essential functions of a specific job.

7.4.2 The testing must comply with the statutory requirements and should determine if the applicant is able to perform the essential functions of the job, with or without reasonable accommodation.

7.4.3 An employer may test applicants with disabilities for a specific job and not require all other applicants to undergo testing.

7.4.4 A conditional job offer may only be made to one person at a time, not to all applicants with disabilities that may have applied for the job.

7.4.5 The employer may withdraw the job offer if the testing shows that-

- (i) accommodation requirements would create unjustifiable hardship; or

(ii) there is an objective justification that relates to the inherent requirements of the job; or

(iii) there is an objective justification that relates to health and safety.

7.5 Terms and Conditions of Employment

7.5.1 An employer may not-

(a) employ people with disabilities or,

(b) retain employees who become disabled, on less favourable terms and conditions than employees doing the same work, for reasons connected with the disability.

7.5.2 No person may harass an employee on the ground of disability. Such harassment may include teasing, ridicule and offensive remarks. Any alleged harassment should be handled by the employer in terms of the guidelines contained in the Code of Good Practice on the Handling of Sexual Harassment Cases published in terms of the Labour Relations Act, 1995.

Footnotes

3 The Act provides for "suitably qualified person" in sub [sections 20 \(3\), 20 \(4\), and 20 \(5\)](#):

Sub [section 20 \(3\)](#) 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.

Subsection 20 (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.

Subsection 20 (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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GNR.1345 of 2002: Code of Good Practice: Key Aspects on the Employment of People with Disabilities/ 8. Medical and psychological testing and other similar assessments

8. Medical⁴ and psychological testing and other similar assessments⁵

8.1 Medical Testing

8.1.1 Tests must comply with [sections 7 and 8](#) of the Employment Equity Act, [No. 55 of 1998](#). They must be relevant and appropriate to the kind of work for which the applicant or employee is being tested.

8.1.2 Employers should establish that tests do not unfairly exclude and are not biased in how or when they are applied, assessed or interpreted.

8.1.3 Tests to establish the health of an applicant or employee should be distinguished from tests that assess the ability to perform essential job functions or duties.

8.1.4 Testing to determine the health status of an employee should therefore only be carried out after an employer has established that the person is in fact competent to perform the essential job functions or duties and after a job offer has been made. The same applies to medical testing for admission to membership of an employee benefit scheme.

8.1.5 An employer who requires a person to undergo any medical, psychological testing and other similar assessments must bear the costs of the test.

8.2 Testing after Illness or Injury

8.2.1 If an employee has been ill or injured⁶ and it appears that the employee is not able to perform the job, the employer may require the employee to agree to a functional determination of disability.

8.2.2 Such medical or other appropriate tests shall be used to-

(a) determine if the employee can safely perform the job; or

(b) to identify reasonable accommodation required for the employee.

8.3 Health Screening and Safety

8.3.1 Employers are required to provide and maintain a safe and healthy working environment.

8.3.2 An employer should not employ a person if the employer can demonstrate that a person with a disability would represent an actual risk to him or her or other people, which could not be eliminated or reduced by applicable reasonable accommodation.

8.3.3 An employer may withdraw a conditional job offer, or need not retain an employee with a disability in the same position, if an objective assessment shows that the work would expose the employee or others to substantial health risk. This would only apply where there is no reasonable accommodation to mitigate the risk.

8.4 Pre-benefit Medical Examinations

8.4.1 Employees may be required to submit to medical examination or tests before becoming members of employee benefit schemes that are offered within the employment relationship.

8.4.2 The purpose of these examinations is to assess a person's suitability for membership of a benefit scheme and is not relevant to a person's capability to perform the inherent requirements of the job.

8.4.3 Therefore an employer may not refuse to recruit, train, promote or otherwise prejudice any person only because that person has been refused membership of a benefit scheme⁷.

Footnotes

- 4 [Section 7](#) of the Act provides that: 7 (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. [Section 7 \(2\)](#) Testing of an employee to determine that employee's HIV status is prohibited unless such testing is determined to be justifiable by the Labour Court in terms of [section 50 \(4\)](#) of this Act.
- 5 [Section 8](#) of the Act provides: 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 toward employees; and
 - (c) is not biased against any employee or group.
- 6 See also [sections 10](#) and [11](#) of the "Code of Good Practice: Dismissal" published under [section 203](#) of the Labour Relations Act [66 of 1995](#) for provisions relating to "Incapacity: Ill health and injury" and dismissal.
- 7 See also [section 15](#) on benefits.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GNR.1345 of 2002: Code of Good Practice: Key Aspects on the Employment of People with Disabilities/ 9. Placement

9. Placement

9.1 Placement involves the orientation and initial training of a new employee.

9.2 Orientation and initial training should be accessible, responsive to and able to reasonably accommodate the needs of employees who have disabilities.

9.3 Subject to reasonable accommodation, new employees with disabilities and other employees who do not have disabilities must be treated equally.

9.4 An employer must make an effort to include disability sensitisation in the orientation/induction and other relevant training programmes of their organisations.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GNR.1345 of 2002: Code of Good Practice: Key Aspects on the Employment of People with Disabilities/ 10. Training and career advancement

10. Training and career advancement

10.1 Employees with disabilities should be consulted in order to ensure input specific to their career advancement.

10.2 Facilities and materials for training, work organisation and recreation should be accessible to employees with disabilities.

10.3 Systems and practices to evaluate work performance should clearly identify and fairly measure and reward performance of the essential functions of the job. Work that falls outside the essential functions of the job should not be evaluated.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GNR.1345 of 2002: Code of Good Practice: Key Aspects on the Employment of People with Disabilities/ 11. Retaining people with disabilities

11. Retaining people with disabilities

11.1 Employees who become disabled during employment should, where reasonable be re-integrated into work. Employers should seek to minimize the impact of the disability on employees.

11.2 If an employee becomes disabled, the employer should consult the employee to assess if the disability can be reasonably accommodated.

11.3 If an employee becomes disabled, the employer should maintain contact with the employee and where reasonable encourage early return-to-work. This may require vocational rehabilitation, transitional work

programmes and where appropriate, temporary or permanent flexible working time.

11.4 If an employee is frequently absent from work for reasons of illness or injury, the employer should consult the employee to assess if the reason for absence is a disability that requires reasonable accommodation.

11.5 If reasonable, employers should explore the possibility of offering alternative work, reduced work or flexible work placement, so that employees are not compelled or encouraged to terminate their employment.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GNR.1345 of 2002: Code of Good Practice: Key Aspects on the Employment of People with Disabilities/ 12. Termination of employment

12. Termination of employment

12.1 If the employer is unable to retain the employee in employment in terms of paragraph 11 above, then the employer may terminate the employment relationship.

12.2 When employees who have disabilities are dismissed for operational requirements, the employer should ensure that any selection criteria used do not either directly or indirectly unfairly discriminate against people with disabilities.

12.3 Employers who provide disability benefits should ensure that employees are appropriately advised before they apply for the benefits available and before resigning from employment because of a medical condition.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GNR.1345 of 2002: Code of Good Practice: Key Aspects on the Employment of People with Disabilities/ 13. Workers' Compensation

13. Workers' Compensation

13.1 Employers should assist employees whose disability arose from a work related illness or accident, to receive the relevant statutory compensation, including compensation from the Compensation Fund and the Unemployment Insurance Fund.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GNR.1345 of 2002: Code of Good Practice: Key Aspects on the Employment of People with Disabilities/ 14. Confidentiality and disclosure of disability

14. Confidentiality and disclosure of disability

14.1 Confidentiality

14.1.1 Subject to [sections 78](#) and [18](#) of the Employment Equity Act⁹, employers, including health and medical services personnel, may only gather private information relating to employees if it is necessary to achieve a legitimate purpose, with the written consent of the person.

14.1.2 Employers must protect the confidentiality of the information that has been disclosed and must take care to keep records of private information relating to the disability of applicants and employees confidential and must be kept separate from general personnel records.

14.1.3 When an employer no longer requires this information, it must be destroyed.

14.1.4 Subject to paragraph 14.2.7, employers may not disclose any information relating to a person's disability without the written consent of the employee concerned unless legally required.

14.2 Disclosure

14.2.1 People with disabilities are entitled to keep their disability status confidential. But if the employer is not aware of the disability or the need to be accommodated, the employer is not obliged to provide it. This does not absolve an employer from their responsibility not to discriminate unfairly, directly or indirectly against job applicants.

14.2.2 A person with a disability may disclose their disability at any time, even if there is no immediate need for reasonable accommodation.

14.2.3 If the disability is not self-evident the employer may require the employee to disclose sufficient information to confirm the disability or the accommodation needs.

14.2.4 If on reasonable grounds the employer does not believe that the employee is disabled, or that the employee requires accommodation, the employer is entitled to request the employee to be tested to determine the employee's ability or disability, at the expense of the employer.

14.2.5 As information about disability may be technical, employers should ensure that a competent person

interprets the information.

14.2.6 If an employer requires further information this must be relevant to a specific job and its essential functions.

14.2.7 An employer may not reveal the fact of an employee's disability, unless this is required for the health or safety of the person with the disability or other persons.

14.2.8 The employer may, after consulting the person with the disability, advise relevant staff that the employee requires accommodation.

[Para. 14.2 amended by GN 1064 of 2002.]

Footnotes

- 8 [Section 7](#) of the Act provides that "(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. 7 (2) Testing of an employee to determine that employee's HIV status is prohibited unless such testing is determined to be justifiable by the Labour Court in terms of [Section 50 \(4\)](#) of this Act."
- 9 [Section 18](#) of the Act provides that "(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 all those parties to consult effectively, and 18 (2) Unless this Act provides otherwise, the provisions of [section 16](#) of the Labour Relations Act, with the changes required by context, apply to disclosure of information."

[Footnote 9 corrected by GN 1064 of 2002.]

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GNR.1345 of 2002: Code of Good Practice: Key Aspects on the Employment of People with Disabilities/ 15. Employee benefits

15. Employee benefits¹⁰

15.1 An employer who provides or arranges for occupational insurance or other benefit plans directly or through a separate benefit scheme or fund, must ensure that they do not unfairly discriminate, either directly or indirectly against people with disabilities.

15.2 Employees with disabilities may not be refused membership of a benefit scheme only because they have a disability.

15.2.1 To increase job security for employees who have disabilities and to reduce the costs of benefit schemes, designated employers should investigate and, if reasonable, offer benefit schemes that reasonably accommodate persons with disabilities. These include-

- (i) vocational rehabilitation, training and temporary income replacement benefits for employees who, because of illness or injury, cannot work for an extended period, and
- (ii) financial compensation for employees who because of a disability are able to continue to work but at lower levels of pay than they enjoyed before becoming disabled.

Footnotes

- 10 Benefits in this Code refer to benefits such as fringe benefits, medical benefits, group disability assurance benefits, retirement schemes and life assurance schemes.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GNR.1345 of 2002: Code of Good Practice: Key Aspects on the Employment of People with Disabilities/ 16. Employment equity planning in respect of people with disabilities

16. Employment equity planning in respect of people with disabilities¹¹

16.1 The Code of Good Practice for the Preparation, Implementation and Monitoring of Employment Equity Plans provides guidelines to employers and employees. This Code spells out additional measures to ensure that people with disabilities who are suitably qualified for a job can enjoy equal opportunities and are equitably represented in the workforce.

16.2 When designated employers are consulting in terms of [section 16](#) of the Employment Equity Act, 1998 they should use the opportunity to heighten the awareness of their employees of the value and importance of recruiting and retaining the employees who have disabilities.

16.3 When an employer facilitates the establishment of a consultative forum in terms of [section 16 \(1\) \(a\)](#) and [\(b\)](#) of the Act¹², the employer should take specific steps to promote the representation of employees with different disabilities in the forum.

16.4 If people with disabilities are under-represented in all occupational levels and categories in the workplace, the employer could seek guidance from organisations that represent people with disabilities or relevant experts, for example in vocational rehabilitation and occupational therapy.

16.5 When designated employers are compiling their workplace profile in terms of [Section 19](#) of the Act,

employees with disabilities, including people with non-visible disabilities, may choose to either:

- (i) not disclose their disability status; or
[Sub-para. (i) amended by GN 1064 of 2002.]
- (ii) disclose their disability openly to their employer; or
[Sub-para. (ii) amended by GN 1064 of 2002.]
- (iii) disclose their disability in a confidential way which assures confidentiality of their identity and their impairment and any disability related accommodation that may be requested and/or required.
[Sub-para. (iii) amended by GN 1064 of 2002.]

16.6 The workplace profile should include any employees who are not in active employment; for example employees who are receiving total or partial income replacement benefits while recovering from illness or disability.

16.7 When designated employers are setting targets, they should aim to recruit and promote and retain people with disabilities at all occupational categories and levels, as people with disabilities are often employed in low status work and tend to be promoted less often than employees without disabilities.

16.8 If employees with disabilities are concentrated in particular occupational categories and levels, the employer should consider if its criteria for selection or performance standards could be adapted to facilitate employees with disabilities being employed in different categories and levels.

16.9 Employers should regularly evaluate the relationship between employees and the working environment, and where necessary provide appropriate programmes to prevent injury, illness and disability and promote health and safety at work.

Footnotes

- 11 See also Code of Good Practice on the Preparation, Implementation and Monitoring of Employment Equity Plans.
- 12 [Section 16 \(1\)](#) states that "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."

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GNR.1345 of 2002: Code of Good Practice: Key Aspects on the Employment of People with Disabilities/ 17. Education and awareness

17. Education and awareness

17.1 The Department of Labour should ensure that copies of this code are available and accessible, particularly to persons with disabilities.

17.2 Employers and employer organizations should include the Code in their orientation, education and training programmes of employees.

17.3 Trade unions should include the Code in their education and training programmes of shop stewards and employees.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1357 of 4 August 2005: Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace

GN 1357 of 4 August 2005: Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace

DEPARTMENT OF LABOUR

Notice is hereby given that the Amendments to the Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace set out in the schedule is issued by the Minister of Labour, on the advice of the Commission for Employment Equity, in terms of [section 54 \(1\) \(b\)](#) of the Employment Equity Act, 1998 (Act [No. 55 of 1998](#)).

(Signed)
MMS MDLADLANA, MP
MINISTER OF LABOUR
22/06/05





AMENDED CODE OF GOOD PRACTICE ON THE HANDLING OF SEXUAL HARASSMENT CASES IN THE WORKPLACE

ARRANGEMENT OF SECTIONS

- [1.](#) Introduction
- [2.](#) Application of the code
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- [4.](#) Test for Sexual Harassment
- [5.](#) Factors to establish sexual harassment
- [6.](#) Guiding principles
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National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1357 of 4 August 2005: Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace/ 1. Introduction

1. Introduction

- 1.1 The objective of this code is to eliminate sexual harassment in the workplace.
- 1.2 This code provides appropriate procedures to deal with sexual harassment and prevent its recurrence.
- 1.3 This code encourages and promotes the development and implementation of policies and procedures that will lead to the creation of workplaces that are free of sexual harassment, where employers and employees respect one another's integrity and dignity, their privacy, and their right to equity in the workplace.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1357 of 4 August 2005: Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace/ 2. Application of the code

2. Application of the code

- 2.1 Although this code applies to the working environment ([1](#)) as a guide to employers, employees and applicants for employment, the perpetrators and victims of sexual harassment may include:
 - 2.1.1 owners
 - 2.1.2 employers
 - 2.1.3 managers
 - 2.1.4 supervisors
 - 2.1.5 employees
 - 2.1.6 job applicants
 - 2.1.7 clients
 - 2.1.8 suppliers
 - 2.1.9 contractors
 - 2.1.10 others having dealings with a business
- 2.2 Nothing in 2.1 above confers the authority or obligation on employers to take disciplinary action in respect of non-employees.
- 2.3 A non-employee who is a victim of sexual harassment may lodge a grievance with the employer of the harasser, where the harassment has taken place in the workplace or in the course of the harasser's

employment. (2)

2.4 Where the term "employee" is used in this code, it will be deemed to include applicants for employment.

Footnotes

- (1) Where sexual harassment occurs outside of the working environment, regard should be had to the Promotion of Equality and Prevention of Unfair Discrimination Act, [4 of 2000](#).
- (2) Where sexual harassment occurs outside of the working environment, regard should be had to the Promotion of Equality and Prevention of Unfair Discrimination Act, [4 of 2000](#).

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1357 of 4 August 2005: Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace/ 3. Sexual Harassment as a form of unfair discrimination

3. Sexual Harassment as a form of unfair discrimination

Sexual harassment in the working environment is a form of unfair discrimination and is prohibited on the grounds of sex and/or gender and/or sexual orientation. (3)

Footnotes

- (3) [Section 6](#) of the Employment Equity Act [55 of 1998](#) provides that 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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1357 of 4 August 2005: Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace/ 4. Test for Sexual Harassment

4. Test for Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature that violates the rights of an employee and constitutes a barrier to equity in the workplace, taking into account all of the following factors:

- 4.1 whether the harassment is on the prohibited grounds of sex and/or gender and/or sexual orientation;
- 4.2 whether the sexual conduct was unwelcome;
- 4.3 the nature and extent of the sexual conduct; and
- 4.4 the impact of the sexual conduct on the employee.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1357 of 4 August 2005: Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace/ 5. Factors to establish sexual harassment

5. Factors to establish sexual harassment

- 5.1 Harassment on a prohibited ground
 - 5.1.1 The grounds of discrimination to establish sexual harassment are sex, gender and sexual orientation.
 - 5.1.2 Same-sex harassment can amount to discrimination on the basis of sex, gender and sexual orientation.
- 5.2 Unwelcome conduct
 - 5.2.1 There are different ways in which an employee may indicate that sexual conduct is unwelcome, including non-verbal conduct such as walking away or not responding to the perpetrator.
 - 5.2.2 Previous consensual participation in sexual conduct does not necessarily mean that the conduct continues to be welcome.
 - 5.2.3 Where a complainant has difficulty indicating to the perpetrator that the conduct is unwelcome, such complainant may seek the assistance and intervention of another person such as a co-worker, superior, counsellor, human resource official, family member or friend.
- 5.3 Nature and extent of the conduct
 - 5.3.1 The unwelcome conduct must be of a sexual nature, and includes physical, verbal or non-verbal conduct.
 - 5.3.1.1 Physical conduct of a sexual nature includes all unwelcome physical contact, ranging from touching to sexual assault and rape, as well as strip search by or in the presence of the opposite sex.

- 5.3.1.2 Verbal conduct includes unwelcome innuendos, suggestions, hints, sexual advances, comments with sexual overtones, sex-related jokes or insults, graphic comments about a person's body made in their presence or to them, inappropriate enquiries about a person's sex life, whistling of a sexual nature and the sending by electronic means or otherwise of sexually explicit text.
- 5.3.1.3 Non-verbal conduct includes unwelcome gestures, indecent exposure and the display or sending by electronic means or otherwise of sexually explicit pictures or objects.
- 5.3.2 Sexual harassment may include, but is not limited to, victimization, *quid pro quo* harassment and sexual favouritism.
 - 5.3.2.1 Victimization occurs where an employee is victimized or intimidated for failing to submit to sexual advances.
 - 5.2.3.2 *Quid pro quo* harassment occurs where a person such as an owner, employer, supervisor, member of management or co-employee, influences or attempts to influence an employee's employment circumstances (for example engagement, promotion, training, discipline, dismissal, salary increments or other benefits) by coercing or attempting to coerce an employee to surrender to sexual advances. This could include sexual favouritism, which occurs where a person in authority in the workplace rewards only those who respond to his or her sexual advances.
- 5.3.3 A single incident of unwelcome sexual conduct may constitute sexual harassment.
- 5.4 Impact of the conduct

The conduct should constitute an impairment of the employee's dignity, taking into account:

 - 5.4.1 the circumstances of the employee; and
 - 5.4.2 the respective positions of the employee and the perpetrator in the workplace.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1357 of 4 August 2005: Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace/ 6. Guiding principles

6. Guiding principles

Employers should create and maintain a working environment in which the dignity of employees is respected. A climate in the workplace should also be created and maintained in which complainants of sexual harassment will not feel that their grievances are ignored or trivialized, or fear reprisals. Implementing the following guidelines can assist in achieving these ends:

- 6.1 Employers/management and employees are required to refrain from committing acts of sexual harassment.
- 6.2 All employers/management and employees have a role to play in contributing towards creating and maintaining a working environment in which sexual harassment is unacceptable. They should ensure that their standards of conduct do not cause offence and they should discourage unacceptable behaviour on the part of others.
- 6.3 Employers/management should attempt to ensure that persons such as customers, suppliers, job applicants and others who have dealings with the business are not subjected to sexual harassment by the employer or its employees.
- 6.4 Employers/management should take appropriate action in accordance with this code where instances of sexual harassment occur in the working environment.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1357 of 4 August 2005: Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace/ 7. Sexual Harassment Policies

7. Sexual Harassment Policies

- 7.1 Employers should, subject to any existing collective agreements and applicable statutory provisions in respect of sexual harassment, adopt a sexual harassment policy, which should take cognisance of and be guided by the provisions of this code.
- 7.2 The contents of sexual harassment policies should be communicated effectively to all employees.
- 7.3 The adoption of a sexual harassment policy and the communication of the contents of the policy to employees, should, amongst other factors, be taken into consideration in determining whether the employer has discharged its obligations in accordance with the provisions of section 60 (2) of the Employment Equity Act (EEA).
- 7.4 Sexual harassment policies should substantially comply with the provisions of this code and include at least the following statements:

- 7.4.1 Sexual harassment is a form of unfair discrimination on the basis of sex and/or gender and/or sexual orientation which infringes the rights of the complainant and constitutes a barrier to equity in the workplace.
 - 7.4.2 Sexual harassment in the workplace will not be permitted or condoned.
 - 7.4.3 Complainants in sexual harassment matters have the right to follow the procedures in the policy and appropriate action must be taken by the employer.
 - 7.4.4 It will be a disciplinary offence to victimize or retaliate against an employee who in good faith lodges a grievance of sexual harassment.
- 7.5 The procedures to be followed by a complainant of sexual harassment and by an employer when sexual harassment has occurred, should be outlined in the policy.

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8. Procedures

Employers should develop clear procedures to deal with sexual harassment. These procedures should enable the resolution of problems in a sensitive, efficient and effective way.

8.1 Reporting sexual harassment

- 8.1.1 Section 60 (1) of the EEA provides that conduct in contravention of the EEA must *immediately* be brought to the attention of the employer.
- 8.1.2 In instances of sexual harassment, the word "*immediately*" shall mean as soon as is reasonably possible in the circumstances and without undue delay, taking into account the nature of sexual harassment, including that it is a sensitive issue, that the complainant may fear reprisals and the relative positions of the complainant and the alleged perpetrator in the workplace.
- 8.1.2 Sexual harassment may be brought to the attention of the employer by the complainant or any other person aware of the sexual harassment, for example a friend, colleague or human resources official acting on the request of the complainant, where the complainant has indicated that she/he wishes the employer to be made aware of the conduct. However, where the sexual harassment is of a particularly serious nature, the complainant should be encouraged to inform the employer.

[Editorial Note: Numbering as per original *Government Gazette*.]

8.2 Obligations of the employer

When sexual harassment has been brought to the attention of the employer, the employer should:

- 8.2.1 consult all relevant parties;
- 8.2.2 take the necessary steps to address the complaint in accordance with this code and the employer's policy; and
- 8.2.3 take the necessary steps to eliminate the sexual harassment.

8.3 The steps to be taken by the employer on receipt of a complaint by a complainant, should include but not be limited to the following:

- 8.3.1 advising the complainant of the informal and formal procedures available to deal with the sexual harassment, as set out in items 8.5, 8.6 and 8.7 of this code;
- 8.3.2 where reasonably practicable, offering the complainant advice, assistance and counselling as set out in item 8.4 of this code, including during any disciplinary enquiry that may be instituted; and
- 8.3.3 following the procedures required by items 8.5, 8.6 and 8.7 of this code, in a manner that is procedurally and substantively fair.

8.4 Advice and assistance

- 8.4.1 A complainant of sexual harassment may require advice and assistance, including counselling.
- 8.4.2 As far as is practicable, employers should designate a person outside of line management who complainants may approach for confidential advice and/or counselling. Such person:
 - 8.4.2.1 could be a person employed by the employer to perform such a function, a trade union representative, a co-employee or a professional engaged to perform such activity;
 - 8.4.2.2 should have the appropriate skills and experience, including counselling and labour relations skills; and
 - 8.4.2.3 should be properly trained and given adequate resources.

8.5 Advising the complainant of workplace procedures to deal with sexual harassment

- 8.5.1 When an incident of sexual harassment is brought to the attention of an employer, such employer should:
- 8.5.1.1 advise the complainant that there are formal and informal procedures which could be followed to deal with the problem;
 - 8.5.1.2 explain the formal and informal procedures to the complainant;
 - 8.5.1.3 advise the complainant that she/he may choose which procedure should be followed by the employer, except that in certain limited circumstances, as set out in [clause 8.7.2](#), the employer may choose to follow a formal procedure even if the complainant does not wish to do so;
 - 8.5.1.4 re-assure the complainant that she/he will not face job loss or any adverse consequences if she/he chooses to follow either the formal or informal procedure;
 - 8.5.1.5 advise the complainant that the matter will be dealt with confidentially if the complainant so chooses.

8.6 Informal procedures

- 8.6.1 A complainant of sexual harassment may choose to follow either of the following informal procedures:
- 8.6.1.1 the complainant or another appropriate person explains to the perpetrator that the conduct in question is not welcome, that it offends the complainant, makes him or her feel uncomfortable and that it interferes with his or her work; or
 - 8.6.1.2 an appropriate person approaches the perpetrator, without revealing the identity of the complainant, and explains to the perpetrator that certain forms of conduct constitute sexual harassment, are offensive and unwelcome, make employees feel uncomfortable, and interfere with their work.
- 8.6.2 An employer should consider any further steps, which can be taken to assist in dealing with the complaint.

8.7 Formal procedure

- 8.7.1 A complainant may choose to follow a formal procedure, either with or without first following an informal procedure.
- 8.7.2 In the event that a complainant chooses not to follow a formal procedure, the employer should still assess the risk to other persons in the workplace where formal steps have not been taken against the perpetrator. In assessing such risk the employer must take into account all relevant factors, including the severity of the sexual harassment and whether the perpetrator has a history of sexual harassment. If it appears to the employer after a proper investigation that there is a significant risk of harm to other persons in the workplace, the employer may follow a formal procedure, irrespective of the wishes of the complainant, and advise the complainant accordingly.
- 8.7.3 The employer's sexual harassment policy and/or collective agreement should outline the following in respect of a formal procedure:
- 8.7.3.1 with whom the employee should lodge a grievance;
 - 8.7.3.2 the internal grievance procedures to be followed, including provision for the complainant's desired outcome of the procedures;
 - 8.7.3.3 time frames which will allow the grievance to be dealt with expeditiously;
 - 8.7.3.4 that should the matter not be satisfactorily resolved by the internal procedures outlined above, a complainant of sexual harassment may refer the dispute to the Commission for Conciliation Mediation and Arbitration (CCMA). Similarly an alleged perpetrator of sexual harassment may refer a dispute arising from disciplinary action taken by the employer to the CCMA; and
 - 8.7.3.5 that it will be a disciplinary offence to victimize or retaliate against a complainant who in good faith lodges a grievance of sexual harassment.

8.8 Disciplinary sanctions

The employer's sexual harassment policy should specify the range of disciplinary sanctions that may be imposed on a perpetrator. The sanctions must be proportionate to the seriousness of the sexual harassment in question, and should provide that:

- 8.8.1 warnings may be issued for minor instances of sexual harassment;
- 8.8.2 dismissal may ensue for continued minor instances of sexual harassment after warnings, as well as for serious instances of sexual harassment;
- 8.8.3 in appropriate circumstances upon being found guilty of sexual harassment, a perpetrator may be transferred to another position in the workplace.

9. Confidentiality

- 9.1 Employers and employees must ensure that grievances about sexual harassment are investigated and handled in a manner that ensures that the identities of the persons involved are kept confidential.
- 9.2 In cases of sexual harassment, management, employees and the parties concerned must endeavour to ensure confidentiality in the disciplinary inquiry. Only appropriate members of management as well as the aggrieved person, representatives, alleged perpetrator, witnesses and interpreter if required should be present in the disciplinary inquiry.
- 9.3 Employers are required to disclose to the complainant, the perpetrator and/or their representatives, such information as may be reasonably necessary to enable the parties to prepare for any proceedings in terms of this code.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1357 of 4 August 2005: Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace/ 10. Additional sick leave

10. Additional sick leave

- 10.1 Where an employee's existing sick leave entitlement has been exhausted, the employer should give due consideration to the granting of additional paid sick leave in cases of serious sexual harassment, where the employee, on medical advice, requires trauma counselling.
- 10.2 In appropriate circumstances, employers may give consideration to assisting with the cost of the medical advice and trauma counselling, where such amounts are not covered by any applicable medical aid scheme.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1357 of 4 August 2005: Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace/ 11. Information and education

11. Information and education

- 11.1 Where feasible, the Department of Labour should endeavour to ensure that copies of this code are accessible and available in the official languages.
- 11.2 Employers and, where applicable, employer organizations should include the issue of sexual harassment in their orientation, education and training programs.
- 11.3 Trade unions should include the issue of sexual harassment in their education and training programs for shop stewards and employees.
- 11.4 CCMA commissioners should receive specialized training to deal with sexual harassment cases.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1358 of 4 August 2005: Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices

GN 1358 of 4 August 2005: Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices

DEPARTMENT OF LABOUR

Notice is hereby given that the Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices set out in the schedule is issued by the Minister of Labour on the advice of the Commission for Employment Equity, in terms of [section 54 \(1\) \(a\)](#) of the Employment Equity Act, 1998 (Act [No. 55 of 1998](#)).

(signed)
MMS MDLADLANA, MP
MINISTER OF LABOUR

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National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1358 of 4 August 2005: Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices/ 1. FOREWORD

1. FOREWORD

The Employment Equity Act, [55 of 1998](#) ("the Act") imposes a duty on employers to eliminate unfair discrimination. It also provides a framework for the attraction, development, the advancement and retention of an employer's human resource talent. Research has shown that employers can increase productivity, motivation and resourcefulness in the workplace when they invest in their people and treat them with fairness and equity. This is secured by eliminating the historical barriers that prevent the advancement of the designated groups (Black people including African, Coloured and Indian, Women and People with Disabilities). This ensures that positive or affirmative action measures are in place to expedite their growth and advancement.

In the context of challenges of a compounded diverse global economy and constraints around infrastructure, skills, poverty, unemployment and service delivery, employers are increasingly aware that having racial, gender and disability diversity is key to business growth and development. Sustaining this growth requires ongoing commitment toward eliminating barriers, including skills development, in its general and specific forms. Some of the main challenges for employers include; attracting, managing, developing and retaining talent in the workforce through effective human resource management. In this context, the implementation of effective employment equity strategies will assist employers to maximise human resource development through the eliminating unfair discrimination and barriers and by promoting affirmative action. This Code provides guidelines to assist employers in implementing these initiatives.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1358 of 4 August 2005: Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices/ 2. OBJECTIVE

2. OBJECTIVE

- 2.1. The objective of this Code is to provide guidelines on the elimination of unfair discrimination and the implementation of affirmative action measures in the context of key human resource areas, as provided for in the Act. This Code is not intended to be a comprehensive human resources Code, but rather an identification of areas of human resources that are key to employment equity and can be used to advance equity objectives.
- 2.2. The guidelines in the Code will enable employers to ensure that their human resource policies and

practices are based on non-discrimination and reflect employment equity principles at the commencement of employment, during employment and when terminating employment.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1358 of 4 August 2005: Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices/ 3. SCOPE AND LEGAL PRINCIPLES

3. SCOPE AND LEGAL PRINCIPLES

- 3.1. This Code is issued in terms of [section 54](#) of the Employment Equity Act and must be read in conjunction with the Act and other Codes issued in terms of the Act¹.
- 3.2. The Code should also be read in conjunction with the Constitution of South Africa and all relevant legislation, including the following:
 - 3.2.1. the Labour Relations Act, [66 of 1995](#) as amended;
 - 3.2.2. the Basic Conditions of Employment Act, [75 of 1997](#) as amended;
 - 3.2.3. the Skills Development Act, [97 of 1998](#);
 - 3.2.4. the Skills Development Levies Act, [9 of 1999](#); and
 - 3.2.5. the Promotion of Equality and Prevention of Unfair Discrimination Act, [4 of 2000](#).
- 3.3. This Code applies to all employers and employees covered by the Act.
- 3.4. This Code is intended to be a tool to aid employers to implement employment equity by providing principles that should be incorporated into employment equity plans and that guide policies and practices. This Code is also intended to provide guidelines to employers to consider and apply as appropriate to their circumstances.

Footnotes

- 1 Code of Good Practice on the Handling of Sexual Harassment Cases; Code of Good Practice on the Preparation, Implementation and Monitoring of Employment Equity Plans; Code of Good Practice on the Employment of People with Disabilities and Code of Good Practice on Key Aspects of HIV/AIDS and Employment.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1358 of 4 August 2005: Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices/ 4. STRUCTURE OF THE CODE

4. STRUCTURE OF THE CODE

- 4.1. The structure of this Code mirrors the life cycle of an employee in employment. It deals with possible barriers and unfair discrimination that could occur at each phase, including commencing employment, during employment and on termination of employment. It also describes affirmative action measures that could be used at each phase to advance the objectives of the Act.
- 4.2. Each topic focuses on the following areas:
 - 4.2.1. **Scope.** This section provides a brief definition of the topic in the context of the employment life cycle.
 - 4.2.2. **Impact of employment equity.** This section deals with non-discrimination principles and affirmative action measures that are relevant to the topic.
 - 4.2.3. **Policy and practice matters.** This section provides information about the policy and practice matters that could arise, and makes suggestions regarding their implementation.
 - 4.2.4. **Link with other areas.** This section identifies cross-references to other key topics as well as other relevant Codes and legislation dealt with in the Codes.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1358 of 4 August 2005: Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices/ 5. IMPLEMENTING EMPLOYMENT EQUITY

5. IMPLEMENTING EMPLOYMENT EQUITY

5.1. SCOPE

- 5.1.1. Implementing employment equity involves two key initiatives:
 - 5.1.1.1. Eliminating unfair discrimination in human resource policies and practices in the workplace; and
 - 5.1.1.2. Designing and implementing affirmative action measures to achieve equitable representation of designated groups in all occupational categories and levels in the

workplace.

- 5.1.2. This section provides a general outline of these areas and the different conceptual and methodological approaches used to deal with them in the workplace.

5.2. IMPACT ON EMPLOYMENT EQUITY

Eliminating unfair discrimination

- 5.2.1. [Section 6](#) of the Employment Equity Act prohibits unfair discrimination² against employees or job applicants on one or more grounds of personal or physical characteristics like 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. These "prohibited" or other arbitrary grounds cannot be taken into account in employment decision-making. However, it is fair for them to be taken into account where they are relevant to either affirmative action measures or the inherent requirements of a job.
- 5.2.2. The Act prohibits both direct and indirect unfair discrimination. Direct unfair discrimination is easy to identify in the workplace because it makes a direct distinction on the basis of one or more of the prohibited grounds. Indirect unfair discrimination (often called adverse impact or systemic discrimination) on the other hand, is more difficult to recognise. Indirect unfair discrimination occurs when a policy and practice appears to be neutral but has a discriminatory effect or outcome for a particular group of employees and cannot be justified. The employer's motive and intent is generally considered to be irrelevant in determining whether unfair discrimination has occurred. In certain circumstances, the refusal to make reasonable accommodation of an employee's needs and circumstances, where this can be done without undue hardship to the employer, can constitute unfair discrimination.
- 5.2.3. Equality can involve a formal notion of treating everyone who is in a similar position the same. This can perpetuate unfairness when those who hold similar positions eg. all senior managers have different needs and circumstances that impact on their ability to perform effectively. The Constitution requires employers to move beyond formal equality to substantive equality by acknowledging the differences between employees and treating them differently on the basis of those differences. This is necessary to ensure that all employees are treated fairly. Equity therefore invokes the requirement of "fair" treatment in order to achieve substantive equality as an outcome in the workplace. Equal treatment and equal opportunity, like equality, subjects everyone to the same rules without distinction. Equity requires changing the rules so that their application is fair.
- 5.2.4. Unfair discrimination is prohibited in the workplace. In order for employers to execute one of their primary responsibilities of eliminating all forms of unfair discrimination in the workplace, it is recommended that all employers should conduct an audit and analysis of all their employment policies and practices, as well as the working environment and facilities. The audit should identify whether any of the policies or practices applicable in the workplace contain any unfair discrimination or barriers to the recruitment, promotion, advancement and retention of members of designated groups. Once the actual or potential barriers are identified, an employer should consult about the strategies for eliminating these barriers. These strategies should be incorporated into the development and implementation of the Employment Equity Plan for that workplace. Regular monitoring in the workplace should occur to ensure that the unfair discriminatory policies or practices do not recur or manifest themselves in different ways.

Implementing affirmative action measures to achieve employment equity

- 5.2.5. Removing barriers³ is only the first step towards ensuring fairness and equity in the workplace. In the context of historical disparities in South Africa, the Act requires employers, employees and representative trade unions to jointly develop strategies to advance designated groups by adopting appropriate affirmative action measures and incorporating them into formal Employment Equity Plans. Affirmative action measures are essentially remedial measures designed to redress the imbalances of the past. This is a mandatory strategy to achieve equity in employment as an outcome⁴.

5.3. POLICY AND PRACTICE

- 5.3.1. This section provides guidance in relation to the audit, analysis and consultation aspects of the employer's obligations⁵.
- 5.3.2. Under the Act every designated employer is required to undertake four processes when developing a strategy to implement employment equity:
- 5.3.2.1. consulting with its employees and representative trade unions;
 - 5.3.2.2. auditing and analysing all employment policies and practices in the workplace and developing a demographic profile of its workforce;
 - 5.3.2.3. preparing and implementing an employment equity plan; and
 - 5.3.2.4. reporting to the Department of Labour on progress made on the implementation of its employment equity plan.

The policy and practice analysis

- 5.3.3. Employers should develop realistic employment equity plans that are workplace specific and

capable of measurement. This should be informed by conducting a comprehensive audit and analysis of all existing and potentially unfair discriminatory practices and barriers.

- 5.3.4. The analysis of policies and practices as well as other written documentation can be done through the collection of the information, listing what is applicable and identifying whether any documentation reflects direct or indirect unfair discrimination or barriers to the advancement of designated groups.
- 5.3.5. Practices are generally the informal or unwritten rules that prevail in the workplace and can be analysed through a combination of employee attitudinal surveys, individual interviews and focus groups to establish perceptions of their impact on achieving employment equity.
- 5.3.6. The relevant questions to be posed in the analysis would involve looking at whether the policy or practice is:
 - 5.3.6.1. unfairly discriminatory;
 - 5.3.6.2. valid;
 - 5.3.6.3. applied consistently to all employees; and
 - 5.3.6.4. compliant with legislation.
- 5.3.7. An employer should formulate appropriate barrier removal measures for each of the forms of unfair discrimination identified in the audit of policies and practices. These mechanisms would also be the subject of consultation and should be incorporated into the Employment Equity Plan of that employer. Appropriate timeframes, strategies and responsibilities should be allocated for each barrier removal measure.
- 5.3.8. An employer should communicate the outcome of the audit and analysis to employees in as transparent a manner as possible. The method of communication will depend on the culture of the employer; the frequency and common terms of communication; and the role of the Employment Equity Forum or other consultative structure. The leadership of the employer should also receive feedback to be able to provide strategic input with regard to appropriate barrier removal.

Developing a workforce profile and setting numerical targets for equitable representivity

- 5.3.9. A workforce profile is a snapshot of employee distribution in the various occupational categories and levels. Under-representation refers to the statistical disparity between the representation of designated groups in the workplace compared to their representation in the labour market. This may indicate the likelihood of barriers in recruitment, promotion, training and development.
- 5.3.10. Collection of information for the workforce profile is done through an employee survey. It is preferable for employees to identify themselves to enable the employer to allocate them to a designated group. Only in the absence of an employee's self-identification, can an employer rely on existing or historical data to determine the employee's designated group status.
- 5.3.11. The workforce profile should indicate the extent to which designated groups are under-represented in that workforce in occupational categories and levels. This should be compared to the Economically Active Population at national, provincial or regional, or metropolitan economically active population or other appropriate benchmarks. Employers should set numerical targets for each occupational category and level informed by under-representation in the workforce profile and national demographics. The extent of under-representation revealed by the workforce profile represents the ideal goal reflected as the percentage for each occupational category and level for that workplace.
- 5.3.12. Employers, employees and trade unions should prioritise the least under-represented groups within the workforce. For example, an employer in the consultation process should focus more on the areas where the most imbalances appeared during the audit and analysis.
- 5.3.13. Numerical targets will contribute to achieving a critical mass of the excluded group in the workplace. Their increased presence and participation will contribute to the transformation of the workplace culture and to be more affirming of diversity. Employers are required to make reasonable progress towards achieving numerical targets to achieve equitable representation. This means that an employer should track and monitor progress on a regular basis and update its profile continuously to reflect demographic changes.
- 5.3.14. **Consultation**

The success of employment equity depends largely on the efficacy of the consultation process. Employers, employees and trade unions must be willing to play a constructive role in the consultation process. Regular and meaningful consultation will contribute to a joint commitment to workplace transformation. It may also foster workplace democracy and productivity. Consultation will ensure that realistic employment equity plans are prepared which address the training and development of designated groups and the adaptation of the workplace to affirm difference.

The involvement of trade unions in the consultation process is not enough. Employers must also consult with employees from across all occupational categories and levels.
- 5.3.15. It is essential to ensure that whatever form consultation takes, it does not undermine existing collective bargaining processes or existing relationships.

- 5.3.16. Transformation committees or other structures that already exist, which bring together employees and management, may need to be adopted in order to serve the consultation purposes of the Act. Necessary adaptations may include bringing in representatives from segments of the workforce that do not already participate, including designated or non-designated groups or trade unions. Where workplace forums exist, there should be a vehicle for consultation, and attempts should be made to ensure that these are as representative as possible. Where no structures exist or current structures are impractical for employment equity consultation, the employer should initiate a process to establish a consultative structure and or support an employee initiative of this nature. Criteria for appointment of representatives to the structure, the number of representatives, their roles and responsibilities and mandates will have to be clearly set out. The representatives on the structure should be trained on understanding and implementing the key components of the Employment Equity Act.
- 5.3.17. Disputes will inevitably arise in the course of consultation. Employees may feel that they are not being sufficiently included in decision-making, or employers may grow frustrated at delays that are occasioned as a result of the need to consult.

5.4. KEY LINKS TO OTHER TOPICS IN THE CODE

- 5.4.1. **Performance management** - senior management performance should be, amongst others, measured against the extent to which they have achieved their numerical targets.
- 5.4.2. **Recruitment and selection** - an employer must take cognisance of numerical targets when offering employment to suitably qualified job applicants.
- 5.4.3. **Promotions** - succession planning and decisions on promotion must take account of an employer's numerical targets and ensure that under-represented groups in identified categories are developed and promoted.

PART A: COMMENCING EMPLOYMENT

An employer can use a number of outreach and proactive mechanisms to attract applicants from under-represented groups.

Footnotes

- 2 Unfair discrimination can take place by means of an action or an omission.
- 3 A barrier exists where a policy and practice, which also includes procedures, guidelines or rules, or an aspect of it that limits the opportunities of employees.
- 4 This is covered in more detail in the Code of Good Practice on the Preparation, Implementation and Monitoring of Employment Equity Plans.
- 5 The planning and reporting processes are dealt with in the Code of Good Practice on the Preparation, Implementation and Monitoring of Employment Equity Plans.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1358 of 4 August 2005: Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices/ 6. JOB ANALYSIS AND JOB DESCRIPTIONS

6. JOB ANALYSIS AND JOB DESCRIPTIONS

6.1. SCOPE

- 6.1.1. A job description outlines the role and duties of the job and consists of two components:
- 6.1.1.1. a description of the outputs of the job (what the job proposes to do). This description should provide an accurate and current picture of what functions make up a job, and should not include unrelated tasks. This should outline the job's location, purpose, responsibilities, authority levels, supervisory levels and interrelationships between the job and others in the same area; and
- 6.1.1.2. a description of the inputs of the job (i.e. what the person doing the job is required to do). This description should provide details about the knowledge, experience, qualifications, skills and attributes required to perform the job effectively.
- 6.1.2. Employers should conduct a job analysis when developing a job description. A job analysis is the process used to examine the content of the job, breaking it down into its specific tasks, functions, processes, operations and elements.

6.2. IMPACT ON EMPLOYMENT EQUITY

Job descriptions may either advance or undermine employment equity depending on how they are written.

A job description should clearly state the essential or inherent requirements of the job. These are the minimum requirements that an employee needs in order to be able to function effectively in that job. These requirements should not be overstated so as to present arbitrary or discriminatory barriers to

designated groups. However, in the interests of promoting the appointment of employees who may not meet all the essential or inherent job requirements, an employer may decide that an employee who has, for instance, six out of the ten threshold or essential requirements, will be considered to be suitably qualified, subject to obtaining the outstanding requirements within a specified time.

6.3. POLICY AND PRACTICE

- 6.3.1. In order to ensure that job descriptions refer only to the essential or inherent job requirements, they should comply with the following criteria:
 - 6.3.1.1. Each task or duty in the job description is essential to be able to perform the job and is not overstated;
 - 6.3.1.2. The job description is free of jargon and is written clearly;
 - 6.3.1.3. The competency specification includes only criteria essential to perform the duties. This should be objective and avoid subjective elements that can be interpreted differently;
 - 6.3.1.4. Experience requirements that are not essential, related or arbitrary to the job should be excluded; and
 - 6.3.1.5. Criteria do not disadvantage employees from designated groups.
- 6.3.2. An employer may also use job descriptions to promote affirmative action, for instance, by incorporating potential as a requirement and making reference to development and training to acquire additional skills and competencies.
- 6.3.3. A job description should be capable of flexible interpretation in the interest of promoting affirmative action. In this regard, an employer may list all the minimum or essential requirements of the job.

6.4. KEY LINKS TO OTHER TOPICS IN THE CODE

- 6.4.1. **Recruitment and selection** - Job descriptions that are flexible may aid the recruitment of employees from designated groups in order to create equitable representation. Rigid job descriptions may operate as a barrier to attracting individuals from designated groups with potential.
- 6.4.2. **Performance management** - Specificity of job descriptions contributes to setting clear performance objectives in an employee's career development plan. This may avoid perceptions of unfair or discriminatory treatment in performance.
- 6.4.3. **Skills development** - A clear job description enables the identification of skills and competency gaps. These gaps could be closed through appropriate interventions like training and development.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1358 of 4 August 2005: Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices/ 7. RECRUITMENT & SELECTION

7. RECRUITMENT & SELECTION

7.1. SCOPE

- 7.1.1. Recruitment and selection is the process that employers use to attract applicants for a job to determine their suitability. This involves various selection techniques such as short listing, scoring, interviews, assessment and reference checks.
- 7.1.2. This section identifies some of the strategies that can be used to attract a wide pool of applicants from designated groups.

7.2. IMPACT ON EMPLOYMENT EQUITY

Recruitment and selection processes should be conducted fairly and without unfair discrimination. One of the barriers in the recruitment process is the inability to attract sufficient numbers from the designated groups. Attracting as many applicants as possible from designated groups may ensure that a larger skills pool is available from which to recruit. Recruitment and selection is often the most important mechanism to achieve numerical targets and to increase the representivity of designated groups in the workplace.

- 7.2.1. A number of areas in recruitment and selection should be reviewed to eliminate unfair discrimination: These include:
 - 7.2.1.1. Advertising and head hunting;
 - 7.2.1.2. The job application form;
 - 7.2.1.3. The short listing process;
 - 7.2.1.4. Interviews;
 - 7.2.1.5. Job offers;
 - 7.2.1.6. Record keeping; and

7.2.1.7. Reference checking.

7.3. POLICY AND PRACTICE

- 7.3.1. The recruitment process should be informed by the employer's employment equity plan, including the recommended affirmative action provisions.
- 7.3.2. Employers should have written policies and practices that outline their approach to recruitment and selection. This document should:
 - 7.3.2.1. reflect the values and goals of the employer's employment equity policy or ethos; and
 - 7.3.2.2. include a statement relating to affirmative action and the employer's intention to redress past inequalities.
- 7.3.3. Where an employer utilises the services of recruitment agencies, it should make the recruitment agency aware of its employment equity policy.

Advertising positions

- 7.3.4. When advertising positions employers should refer to their employment equity policy or values and indicate their position on affirmative action.
- 7.3.5. Job advertisements should place emphasis on suitability for the job, and should accurately reflect the inherent or essential requirements (i.e. the core functions) of the job and competency specifications.
- 7.3.6. Employers may consider placing all advertisements for positions internally even if a job is being advertised externally. This will make current employees aware of the opportunities that exist within the workplace.
- 7.3.7. When advertising positions, employers may state that preference will be given to members of designated groups. However, this does not suggest that the process of recruitment excludes members from non-designated groups.
- 7.3.8. Where possible, employers should place their job advertisements so that it is accessible to groups that are under-represented.
 - 7.3.8.1. Employees who are on maternity leave should be informed of positions advertised in the workplace.

Job Application Forms

- 7.3.9. A job application form is a mechanism that is used by an employer as part of selecting a suitable applicant for a position.
- 7.3.10. The purpose of a job application form is to:
 - 7.3.10.1. standardise the information employers receive from job applicants. This should reduce the probability for unfair discrimination;
 - 7.3.10.2. ensure that the information received from job applicants focuses on the requirements of the job and does not result in indirect unfair discrimination.; and
 - 7.3.10.3. obtain biographical information to provide an employer with an easy mechanism for monitoring applications from various designated groups.

Short-listing of Job Applicants

- 7.3.11. Short listing is a process in which an employer considers all applications, including *curriculum vitae* and other relevant documents. An employer should place those job applicants who meet the criteria on a shortlist.
- 7.3.12. The process of short-listing job applicants should be standardized. Where no standards exist, an approach should be decided on before short-listing commences.
- 7.3.13. An employer should consider involving more than one person in the process of short-listing applicants to minimize individual bias.
- 7.3.14. The short-listing panel should be balanced in terms representivity.
- 7.3.15. Where an employer has outsourced the short-listing process, every effort must be made to ensure that the process is consistent with the recruitment and selection policies of the employer.
- 7.3.16. An employer should not rely on second hand knowledge or assumptions about the type of work the applicant may be able to do.
- 7.3.17. An employer should ensure that it short-lists as many suitably qualified applicants from designated groups as possible.
- 7.3.18. Suitably qualified⁶ applicants must meet the essential job⁷ requirements.
- 7.3.19. When short-listing, an employer could include applicants from designated groups who meet most but not all the minimum requirements. These applicants with potential could be considered for development to meet all the job requirements within a specified timeframe.

Interviews

- 7.3.20. An interview is a selection tool that provides an employer with the opportunity to meet a job

applicant face-to-face.

- 7.3.21. Employers should use the same panel in the short-listing and interviewing process.
- 7.3.22. Employers should provide training and guidance to the panel conducting the interviews on:
 - 7.3.22.1. interviewing skills;
 - 7.3.22.2. the measuring system;
 - 7.3.22.3. employment equity and affirmative action; and
 - 7.3.22.4. matters relating to diversity, including skills for recognizing different dimensions of merit.
- 7.3.23. Employers may develop a standard interview questionnaire. This is a questionnaire prepared before the interview listing a set of questions that will be asked of each applicant interviewed to determine the applicant's suitability for the job. The interview questionnaire should be based on the job description, particularly essential elements of the job and competency specifications. Employers should regularly audit their interview questionnaires to ensure that they do not contain questions that are potentially discriminatory.
- 7.3.24. An employer should consistently and objectively assess all applicants interviewed using as a basis the job description, competency specification and the measuring system. The same amount of time should be allocated for each candidate and the same or similar questions should be asked.
- 7.3.25. The measuring system should be standardized. An employer must allocate weightings to ensure that there is a balance between matching job requirements, numerical targets and the needs of the employer.

Making the job offer

- 7.3.26. Employers should ensure that a realistic job preview is provided to ensure that both the candidate and employer's expectations are congruent. This is to facilitate the retention of employees from designated groups by effectively managing expectations before the candidate accepts a position, i.e. it must be clear to the candidate on what their expectations are, lines of authority and specific responsibilities;
- 7.3.27. Where a candidate does not accept a job offer, an employer should conduct an "exit" type interview to establish the reasons for not accepting the offer. This will enable the employer to identify and remove existing barriers.

Record keeping

- 7.3.28. An employer should keep copies of all documents relating to each stage of the recruitment process for a reasonable period of time after the position has been filled. These documents will be important in the case where an applicant challenges the recruitment process and selection.
- 7.3.29. An employer may keep data on its recruitment processes to inform its employment equity strategy and for monitoring changes in attitudes and actions of managers. This information could include:
 - 7.3.29.1. the demographic details of candidates who apply, those who are short listed, interviewed and those who are made offers;
 - 7.3.29.2. the demographic details of candidates in relation to short listing, interviewing and job offers made in each department to establish which sections within the workplace are advancing the employment equity profile of the employer. The employer can then focus attention on those departments that are not successful in advancing the employment equity objectives; and
 - 7.3.29.3. the persons who were involved in the short listing, interview and job offer process.

Reference checks of job applicants

- 7.3.30. The purpose of a reference check is to verify information provided by an applicant during the selection process.
- 7.3.31. Reference checks should not be conducted in a manner that unfairly discriminates. The same type of reference checks must be conducted on all short-listed applicants.
- 7.3.32. An employer should only conduct integrity checks, such as verifying the qualifications of an applicant, contacting credit references and investigating whether the applicant has a criminal record, if this is relevant to the requirements of the job.

7.4. KEY LINKS TO OTHER TOPICS IN THE CODE

- 7.4.1. **Implementing Employment Equity** - Recruitment and selection must be aligned to the employer's affirmative action strategy, as reflected in its Employment Equity Plan, which sets out the detail in relation to the numerical targets for each designated group by occupational categories and levels.
- 7.4.2. **Disability** - The employer should not unfairly discriminate on the ground of disability. In the context of disability, there are specific recruitment and selection issues that arise. In particular, an employer is required to make reasonable accommodation for the needs of applicants with disabilities. Employers should seek guidance from the Code of Good Practice on the Employment of People with Disabilities and the Technical Assistance Guidelines on the

Employment of People with Disabilities.

- 7.4.3. **Attraction and Retention** - The ability of an employer to attract employees from designated groups will depend on a combination of factors, which include recruitment and selection practices, competitive benefits, career opportunities, an affirming environment, reputation and image of the employer.
- 7.4.4. **Assessments** - Where an employer makes use of assessments during the selection process, they should refer to the relevant section of this Code.
- 7.4.5. **HIV and AIDS Status** - An employer should not unfairly discriminate on the ground of HIV and AIDS. Employers could use the Code of Good Practice on Key Aspects of HIV/AIDS and Employment for guidance in this area.

Footnotes

- 6 A suitably qualified person in the Act is defined as any one or any combination of a person's formal qualification, prior learning; relevant experience or the capacity to acquire within a reasonable time the ability to do the job.
- 7 An essential job requirement is the skills, knowledge or experience that are necessary to perform a job.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1358 of 4 August 2005: Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices/ 8. INDUCTION

8. INDUCTION

8.1. SCOPE

Induction refers to the process where an employer introduces a new employee. This includes familiarizing the new employee with the vision, mission, values, job requirements and the policies and practices, as well as colleagues and the workplace environment.

8.2. IMPACT ON EMPLOYMENT EQUITY

A carefully planned and implemented induction process will ensure that all new employees, and in particular designated groups, are effectively integrated into the workplace from the commencement of their employment. Proper induction can also function as a retention measure, since an employee who is properly integrated is less likely to be marginalized and more likely to thrive within the workplace.

8.3. POLICY AND PRACTICE

- 8.3.1. The induction process is an opportunity to convey the employer's expectations and values and to indicate its commitment to equity and diversity. This can occur, not only at the level of introducing the new employee to policies that prohibit unfair discrimination, but also through ensuring that existing employees and leadership demonstrate the necessary supportive behaviour toward all employees.
- 8.3.2. The induction process can be useful in demonstrating the leadership's commitment to employment equity by creating an opportunity to send the appropriate message about zero tolerance for harassment and discrimination, as well as support for affirmative action. It can also serve to project senior role models from among the designated groups already employed.
- 8.3.3. To ensure that the induction process contributes to the effective integration of new employees from designated groups in the workplace, the employer could ensure that managers and human resource staff receive training on the induction process. Managers could also receive training on avoiding stereotypes or assumptions about new employees based on their personal or physical or racial characteristics, ethnicity or other arbitrary criteria.
- 8.3.4. During the induction process, new employees should receive copies of the applicable policies. Such policies should include a grievance procedure and other dispute resolution mechanisms. Reasonable accommodation should be made for employees with disabilities.

8.4. KEY LINKS TO OTHER TOPICS IN THE CODE

- 8.4.1. **Training and development and work assignment** - Where gaps have been identified during the interview, a training and development plan should be prepared with the new employee and should be introduced during the induction process.
- 8.4.2. **Elimination of barriers** - A successful induction will ensure that the employee does not experience barriers in socialising and networking, which would inevitably impact on prospects for advancement. The integration of employees from designated groups should be a conscious effort that extends beyond the induction process.
- 8.4.3. **Elimination of unfair discrimination** - The employment environment should be free from unfair discrimination and harassment and should also promote a common understanding of what discrimination means and how it will be dealt with.
- 8.4.4. **Grievance & resolution** - The grievance procedure should be conducive to raising issues that arise in the induction process.
- 8.4.5. **Performance Management** - All new employees should be provided with information of the work they are required to perform and the standard to which this work must be produced.

9. PROBATION

9.1. SCOPE

Probation involves the trial period for a new employee where the employer assesses the employee's ability and skills to function in the position in order to determine whether to offer the employee a permanent position.

9.2. IMPACT ON EMPLOYMENT EQUITY

The probation period can either undermine or support an employee from a designated group. An employer should provide the necessary organizational support to ensure that the new employee is successful. An employer should consider the initial work allocation given to a probationary employee to ensure that the new employee can cope with the demands of the new workplace.

9.3. POLICY AND PRACTICE

- 9.3.1. An employer should ensure that probationary employees⁸ from designated groups are not subjected to unfair discrimination. This can be done by ensuring that managers treat them fairly and consistently. There should be a written probation policy that clearly sets out the roles and responsibilities of the employee and company policies and procedures. These could include the expected performance standards; the frequency and form of performance reviews; the procedures the probationary employee should comply with when raising problems or grievances; the nature of support, mentoring and training and development.
- 9.3.2. An employer should ensure that managers understand the need for consistent fair treatment of all probationary employees in order to avoid unfair discrimination and perceptions.
- 9.3.3. Where an employee from a designated group requests reasonable accommodation during the probationary period, the employer should, as much as possible, provide it. Failure to provide reasonable accommodation may be construed as unfair discrimination.
- 9.3.4. Managers should, where relevant and appropriate, provide regular supervision and guidance to probationary employees, including training and counseling, to improve performance. Managers should keep records of their discussions with probationary employees, as it may provide useful data about an employee's movement in the employment equity planning and measurement process. Information used to make decisions about employees should be reviewed, signed and dated by the employee. If the employer has a human resources department, this department should be informed of issues concerning the probationary employee's performance.
- 9.3.5. By conducting an audit of policies and practices, an employer may identify barriers in the probationary process that impact on designated groups. Strategies to remove these barriers may then be developed and incorporated into the Employment Equity Plan.
- 9.3.6. An employer may consider keeping a record of the number of employees from designated groups who are not appointed at the end of their probationary period and compare this to probationary employees from non-designated groups. This analysis may indicate the existence of problems in a particular department or with a particular manager. Corrective measures can then be undertaken. To the extent possible, exit interviews may be conducted of probationary employees who are not appointed in order to identify barriers in the process or perceptions of unfair discrimination. Record keeping can facilitate measurement of employment equity progress and may enable an employer to identify problems with retention of designated groups.

9.4. KEY LINKS TO OTHER TOPICS IN THE CODE

- 9.4.1. **Induction** - The links mentioned in the induction section are equally applicable to probation.
- 9.4.2. **Performance management** - success during probation is often associated with meeting the employer's clearly specified and objective performance standards according to which regular evaluations of the employee's performance are conducted.
- 9.4.3. **Mentoring and Development** - An employer may consider mentoring, coaching and training interventions to support employees from designated groups during the probationary period.

Footnotes

8 See Item 8 of Schedule 8 of the Labour Relations Act: The Code of Good Practice on Dismissal

10. MEDICAL, PSYCHOLOGICAL AND OTHER SIMILAR ASSESSMENTS⁹

10.1. SCOPE

Appropriate medical, psychological and other similar assessments, if properly used by employers, could contribute positively toward the recruitment and development of suitably qualified applicants and employees. Assessments, whether medical, psychological or other similar assessments, should include rather than exclude individuals with potential and those suitably qualified.

10.2. IMPACT ON EMPLOYMENT EQUITY

- 10.2.1. **The Act prohibits medical testing, unless legislation permits or requires the testing; or it is justifiable in the light of medical facts, employment conditions, social policy, the fair distribution of employee benefits or the inherent requirements of the job. Psychological and similar assessments are also prohibited by the Act, unless the assessment being used has been scientifically shown to be valid and reliable; can be applied fairly to all employees; and is not biased against any employee or group. Assessments are required to be free from unfair discrimination based on the prohibited grounds. Tests that directly or indirectly unfairly discriminate on these grounds are inappropriate and should be avoided.**
- 10.2.2. An assessment is seen to be directly unfairly discriminatory when it excludes employees from designated groups on the basis of one or more of the prohibited grounds. Indirect unfair discrimination, however, is the more likely outcome. This occurs when, on average, the majority of a particular group assessed scores below the minimum requirement compared to other groups or individuals.
- 10.2.3. Assessments should be used to identify candidates with potential and persons who are suitably qualified. These assessments should then be followed-up by relevant intervention measures like appropriate training and development.

10.3. POLICY AND PRACTICE

- 10.3.1. An employer who uses medical, psychological and other similar assessments should develop a written policy for the workplace, which identifies the purpose, context, methods and criteria applicable to selecting and conducting assessments.
- 10.3.2. An employer should ensure that assessments used are valid, reliable and fair¹⁰, so that no group or individual is unfairly disadvantaged as a result of the assessment. Bias in the application of the assessment should be eliminated. The test should match the job in question and should measure the minimum level of the competencies required to perform the job, which must be based on the inherent requirements or essential functions of the relevant job. Tests should avoid arbitrary or irrelevant questions. Only assessments that have been professionally validated as reliable predictors of performance for a particular job, irrespective of race, gender or disability, should be used.
- 10.3.3. Administrators and users of medical, psychological and other similar assessments should be qualified and registered with the appropriate recognised professional body of South Africa. Assessors should be trained to understand, evaluate and interpret the evidence or outcomes of the assessment objectively against the skills and abilities required for the job and must be able to justify their decisions. The assessment process should also minimise the opportunity for assessors to make subjective or arbitrary judgments that could, deliberately or inadvertently, work to the advantage of one group over another. Assessors should make sure they assess against the competencies for the job.
- 10.3.4. Special care should be taken to ensure that the language used is sensitive and accessible to those who are being assessed.
- 10.3.5. All employees or applicants for a particular job should be assessed against the same criteria. The process should make accommodation for diversity and special needs.
- 10.3.6. An employer should keep assessment records for at least one year¹¹.
- 10.3.7. Employers should ensure that reasonable accommodation is made for employees or applicants where required, and that unfair discrimination does not occur in the arrangements for the administering of tests or in using assessment centres¹².

10.4. KEY LINKS TO OTHER TOPICS IN THE CODE

- 10.4.1. **Skills development** - Assessments can be used to identify potential amongst employees or applicants from designated groups. This links to affirmative action in training and development. Enabling an individual access to specific training and development programmes, or any other relevant intervention can eliminate skills and competency gaps identified in an employee.

PART B: DURING EMPLOYMENT

Footnotes

⁹ Medical, psychological and other similar assessments are also covered in [Section 7](#) of the Employment Equity Act as well as the Code of Good Practice on Key Aspects of HIV/AIDS and Employment and in the Code of Good Practice the

Employment of People with Disabilities.

- 10 Validity is the extent to which a test measures what it is intended to measure and indicates the degree of accuracy of either predictions or inferences based upon the test score. Reliability is the extent to which a test is dependable, stable and consistent when administered to the same individuals on different occasions. Fairness relates to how the results of the assessments are applied: it is the total of all the variables that play a role or influence the final decision of an employer. This can include the assessment, integration of data, recommendations based on these data or the final decision made by the employer.
- 11 Psychological assessments are valid for 1 year
- 12 For example, the dates or times for the test coincide with religious festivals or observances, or the employer does not take into account dietary preferences or cultural norms that could cause disadvantage; or where the facilities used are inappropriate (for example the assessment centre is on the first floor of a building with no elevator and the employee or job applicant is in a wheelchair).

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1358 of 4 August 2005: Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices/ 11. TERMS AND CONDITIONS OF EMPLOYMENT

11. TERMS AND CONDITIONS OF EMPLOYMENT

11.1. SCOPE

This section of the Code deals with terms and conditions of employment including working time and rest periods, leave of all kinds¹³, rates of pay, overtime rates, allowances, retirement schemes, medical aid and other benefits.

11.2. IMPACT ON EMPLOYMENT EQUITY

- 11.2.1. An employer may not discriminate unfairly in the terms and conditions of work or access to benefits, facilities or services that are available to employees.
- 11.2.2. Eligibility for benefits should not be determined on the basis of one or more of the prohibited grounds or other arbitrary grounds.

11.3. POLICY AND PRACTICE

- 11.3.1. Every employer is required by the Act to audit its terms and conditions of employment to identify whether they contain any unfair direct or indirect discrimination policies and practices. This should be followed by monitoring all changes in the terms and conditions of employment to ensure that all barriers or unfair discrimination policies and practices are removed. An employer should also regularly conduct practice audits to test the perceptions of employees about whether its terms and conditions of employment and practices are non-discriminatory. An employer may address deficiencies identified through appropriate awareness raising initiatives and other barrier removal mechanisms. These should form a component of the employer's Employment Equity Plan.
- 11.3.2. Employers should provide training, information and literature to trade union representatives and employees on the applicable terms, conditions and available benefits.
- 11.3.3. Maternity leave should not result in the loss of benefits for employees upon return to employment.
- 11.3.4. An employer should provide reasonable accommodation for pregnant women and parents with young children, including health and safety adjustments and antenatal care leave.
- 11.3.5. Employers should endeavour to provide an accessible, supportive and flexible environment for employees with family responsibilities. This includes considering flexible working hours and granting sufficient family responsibility leave for both parents.
- 11.3.6. Employers should examine the use of terms and conditions of their fixed term contract employees¹⁴ to ensure that they are not unfairly discriminated against. Fixed-term-contracts can potentially undermine employment equity. This may occur where the employer tends to appoint certain groups of employees (i.e. black people, lower level employees and women) to fixed term contracts as a matter of practice.

11.4. KEY LINKS TO OTHER TOPICS IN THE CODE

- 11.4.1. **Remuneration** - An employer must provide equal pay for equal work or for work of equal value.
- 11.4.2. **Retention** - Favourable terms and conditions of employment for employees can serve as an affirmative action measure to promote, attract and retain individuals from designated groups, but should be used with caution as a justified affirmative action measure.
- 11.4.3. **Working environment** - Flexibility in the terms and conditions of employment (i.e. working hours and schedules, work from home options, job sharing, career breaks, etc.) are examples of a flexible working environment that may promote the retention of employees, particularly members from designated groups.

Footnotes

- 13 Leave includes annual leave, sick leave, maternity leave and family responsibility leave or any other types of leave.

- 14 A 'fixed term contract employee' is a person who is employed on a contract that includes an agreement detailing the relationship between the employer and employee, which is determined by an objective condition that creates no false expectations of renewal of the contract, and is based on a specific duration or time frame with dates or the completing of a specific task or happening or event.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1358 of 4 August 2005: Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices/ 12. REMUNERATION

12. REMUNERATION

12.1. SCOPE

Remuneration is any payment in money or in kind, or both in money and in kind, made or owing to any person in return for services rendered¹⁵. Employers must ensure that remuneration policies and practices are applied consistently without unfair discrimination on the basis of any one or combination of the prohibited grounds.

12.2. IMPACT ON EMPLOYMENT EQUITY

12.2.1. Remuneration differentials most commonly constitute direct unfair discrimination, where an employer pays designated employees less than non-designated employees doing the same or equivalent work simply because they are designated employees. Remuneration discrimination can also be indirect or systemic because it stems from remuneration policies and practices that have an adverse or disparate impact on black people, women and people with disabilities.

12.3. POLICY AND PRACTICE

12.3.1. Employers should audit their existing remuneration policies to ensure that they are based on the principles of pay equity. This requires a comparison of jobs as well as a job evaluation system that is objective, rational and applied consistently to all job functions. It is recommended that all employers consider developing a written remuneration policy, or at the very least written guidelines, to ensure that clear rules exist on how remuneration is determined. This should be communicated in an appropriate format to all employees.

12.3.2. Employers should conduct regular audits of their remuneration practices among employees to identify the lack of awareness about applicable criteria and perceptions of unfair discrimination in remuneration.

12.3.3. Where barriers or discrimination in remuneration are identified, and unless these can be justified, the employer should in consultation with stakeholders develop a strategy for barrier removal.

12.3.4. Job evaluation systems should be objective as these are often the basis on which remuneration differentials emerge.

12.3.5. Remuneration should be based on the value of the post. In this regard, the following factors may be taken into account:

12.3.5.1. Performance and Outputs: the employee's outputs, measured by the performance management process, should carry the most weight in determining individual remuneration levels.

12.3.5.2. Employee potential: This involves estimated ability and competence, as well as the capacity to develop these over time. Estimated ability refers to conceptual and management skills which have not yet been demonstrated, whilst competence refers to knowledge and expertise gained, which can be informed by previous outputs or experience.

12.3.6. Employers should monitor income differentials to ensure that these do not contribute to unfair discrimination.

12.4. KEY LINKS TO OTHER TOPICS IN THE CODE

12.4.1. **Performance Management** - Although indirect factors such as motivation and commitment may be considered, it is important to ensure that these are free of unfair discrimination.

12.4.2. **Recruitment and Selection** - In order to attract employees from designated groups, an employer should offer market related salaries and benefits.

Footnotes

- 15 The meaning of remuneration in relation to leave pay, notice pay and severance pay is clarified by the Determination issued by the Minister of Labour in terms of [Section 35](#) of the Basic Conditions of Employment Act.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1358 of 4 August 2005: Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices/ 13. JOB ASSIGNMENTS

13. JOB ASSIGNMENTS

13.1. SCOPE

Job assignments relate to the type of work that is allocated to an employee by their employer. An employer should make decisions on the allocation of job assignments on objective criteria.

13.2. IMPACT ON EMPLOYMENT EQUITY

Unfair direct and indirect discrimination often occur as a result of the way in which work is allocated in a workplace. Where job assignments are based on prohibited grounds or arbitrary characteristics, this may perpetuate unfair discrimination and may result in undermining employment equity. Discrimination in job assignments may occur where there is informal mentoring by a manager who is perceived to favour a particular employee.

13.3. POLICY AND PRACTICE

- 13.3.1. As part of the policy and practices audit, an employer should identify whether any unfair discrimination occurs in the ability of all employees to access opportunities.
- 13.3.2. Employers should guard against conduct that perpetuates perceptions of favouritism, which could lead to allegations of unfair discrimination. Access to opportunities should occur on an objective and fair basis to ensure that such perceptions do not arise, and where they do arise, they should be dealt with effectively and expeditiously.
- 13.3.3. Employers should also monitor behaviour of managers in allocating job assignments, particularly where certain trends can be determined, as these may indicate the existence of indirect unfair discrimination.

13.4. KEY LINKS TO OTHER TOPICS IN THE CODE

- 13.4.1. **Induction** - An employer should explain, especially during the induction process, the policies or guidelines that apply in relation to how work or opportunities are allocated.
- 13.4.2. **Job analysis and job descriptions** - A clear job description could ensure that no unrealistic expectations are raised regarding access to opportunities.
- 13.4.3. **Performance management** - Access to work assignments that enhance career opportunities, or are considered to be desirable, should be allocated objectively by linking them to the career path of employees. These should be clearly communicated to employees to ensure that no misperceptions arise and to prevent allegations of unfair discrimination.
- 13.4.4. **Retention** - In some instances, allowing certain employees access to work related opportunities that are considered to be "exciting" could be used as a retention measure - i.e. where an employer gives preference to senior managers from designated groups in allocating these opportunities. This should be used with caution as it can have significant organisational implications and can cause resentment where the objectives of such a strategy are not clearly understood or communicated.
- 13.4.5. **Skills development** - Access to opportunities and work assignments should form part of an employee's development plan and an employer's Workplace Skills Plan.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1358 of 4 August 2005: Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices/ 14. PERFORMANCE MANAGEMENT

14. PERFORMANCE MANAGEMENT

14.1. SCOPE

Performance management is a business process that is used to monitor, measure and link what employees do on a continuous basis with the goals, values, culture and business objectives of the employer. It is a process intended to establish a shared understanding about what is to be achieved; how it is to be achieved; and the implications where it is not achieved. This includes clarifying the expectations that the employer has of the employee.

Performance management also involves the training and development of employees.

14.2. IMPACT ON EMPLOYMENT EQUITY

- 14.2.1. Discrimination in work assignments and performance measurement is more difficult to detect and difficult to prove without an objective, written system that clearly expresses criteria according to which performance will be measured and managed.
- 14.2.2. The manner in which the performance of an employee is managed may impact on the value that the employee adds to the workplace. It may also impact on how peers perceive the performance and advancement of an employee and on the support received by that employee. Performance management should not be a punitive process, but rather one that facilitates setting clear objectives for development and growth. Providing opportunities for development for employees from designated groups is a critical challenge for many employers.

14.3. POLICY AND PRACTICE

- 14.3.1. In order to effectively manage performance in a non-discriminatory and fair manner that encourages development, an employer should ensure that managers:
 - 14.3.1.1. receive coaching and diversity training to ensure that they are able to objectively and consistently manage performance and provide honest feedback whilst being sensitive to employee differences;
 - 14.3.1.2. understand and are able to properly implement the performance management system; and
 - 14.3.1.3. are able to provide the necessary coaching, mentoring and support to employees to motivate them towards performance excellence.
- 14.3.2. Performance management systems could in addition:
 - 14.3.2.1. Measure and incentivise managers for their leadership, mentoring and diversity skills, as well as for achieving employment equity objectives;
 - 14.3.2.2. Incorporate review processes, which may apply measures relating to competencies of managers in diversity management, including feedback from employees and peers;
 - 14.3.2.3. Develop clear learning objectives for all employees, particularly from designated groups. This should link to the acquisition of additional skills and competencies for challenging positions into which employees may be promoted or transferred; and
 - 14.3.2.4. Ensure that the performance management system is linked to the inherent requirements of the job and is free of any unfair discrimination.
- 14.3.3. Employers should review the results of performance appraisals to assess if there are any significant variations across designated groups. Where such variations exist, employers should identify the reasons for these discrepancies and take action to remove them.

14.4. KEY LINKS TO OTHER TOPICS IN THE CODE

- 14.4.1. **Working environment** - a consistent and sustained performance management culture may impact on the integration and retention of employees from designated groups. It may also have implications for issues that go beyond performance and productivity, eg. elevating employee morale, which in turn leads to productive employees and a more enabling workplace.
- 14.4.2. **Remuneration** - because performance management is linked to reward, it would be useful for employers to conduct an analysis of the distribution of increases and/or bonuses paid to employees that can be attributed to performance outcomes. This will enable the identification of areas of potential unfair discrimination and ensure that action is taken to eliminate barriers.
- 14.4.3. **Skills development** - effective and regular performance management may facilitate the identification of training and development needs, which may be addressed through appropriate interventions. These will enable an employee to effectively perform in the existing position or to develop into a more challenging position.
- 14.4.4. **Retention** - If performance management is linked to employee development and growth, it will impact significantly on an employer's ability to retain its employees.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1358 of 4 August 2005: Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices/ 15. SKILLS DEVELOPMENT

15. SKILLS DEVELOPMENT

15.1. SCOPE

- 15.1.1. The Skills Development Act and the Skills Development Levies Act provide reinforcing and supporting tools for developing employees in line with employer business objectives. This contributes to a critical pool of candidates from designated groups from which employers could recruit, thus facilitating accomplishment of Employment Equity Act objectives.
- 15.1.2. This section describes the areas that impact on an employer's ability to develop employees from designated groups, which includes:
 - 15.1.2.1. effectively identifying training needs and matching these with the needs of the employer;
 - 15.1.2.2. providing effective mentoring and coaching;
 - 15.1.2.3. providing structured on-the-job training;
 - 15.1.2.4. considering accelerated development for employees with potential;
 - 15.1.2.5. providing meaningful job roles;
 - 15.1.2.6. implementing individual development plans;
 - 15.1.2.7. providing access to opportunities to act in a higher position;
 - 15.1.2.8. providing shadowing¹⁶ opportunities;

- 15.1.2.9. creating challenging work assignments; and
- 15.1.2.10. developing and promoting positive role models for designated groups.
- 15.1.3. The section also deals with the retraining of managers and supervisors to enable them to effectively manage a diverse workforce.

15.2. IMPACT ON EMPLOYMENT EQUITY

Skills development of employees is a key driver for the achievement of employment equity objectives. The Act positions skills development of designated groups as an affirmative action measure. Development and training are key strategies to enable designated groups to advance and to reach equitable representation in all occupational categories and levels.

15.3. POLICY AND PRACTICE

- 15.3.1. Every employer should develop written policies and practices to reflect its commitment to training and development. These policies and practices should refer to the objective of encouraging the training of employees while prioritising designated groups. The policy may incorporate preference in access to training and development opportunities for designated groups, until their representation in all occupational categories and levels has reached critical mass. This policy may then form the basis for the Workplace Skills Plan.
- 15.3.2. Employers should assist employees to identify and address their skills gaps by formulating appropriate objectives in their personal development plans, agreeing to timeframes and accessing the resources required to meet these objectives.
- 15.3.3. Employers and employees should also strive to create an organisational culture that encourages and rewards learning for everyone in the workplace. An employer may achieve these objectives through:
 - 15.3.3.1. appropriately structured career breaks;
 - 15.3.3.2. bursary schemes;
 - 15.3.3.3. on the job learning;
 - 15.3.3.4. mentoring and coaching.
 - 15.3.3.5. employee counselling for growth and advancement; and
 - 15.3.3.6. access to literacy and numeracy programmes.
- 15.3.4. The competency requirements for senior managers, team leaders, line managers, supervisors and professional staff should include specifications related to the development of employees.
- 15.3.5. Employers should consider conducting leadership and management development programmes to ensure that leaders and managers have the necessary knowledge and skills to effectively manage, develop and empower employees. Every effort should be made to create a work climate that is conducive to the successful integration and retention of employees from designated groups.
- 15.3.6. Employers should communicate their training and development priorities to all senior and line managers responsible for performance management. An employer should use these requirements to guide the identification of potential individuals in a proactive manner and identify individuals who can be scheduled for training and development.
- 15.3.7. All formal training offered to employees, whether through in-house training or from an external training provider, should ideally be linked to unit standards or qualifications that are registered on the National Qualifications Framework. This ensures that employees are able to receive nationally recognised credits and certificates for their learning achievements. This may redress past imbalances in formal education opportunities for people from designated groups.
- 15.3.8. Where employers consider implementing the Recognition of Prior Learning (RPL) principles to redress historical education and training disadvantages to promote employment equity and validate employee skills and knowledge, this should be based on an employer specific RPL policy¹⁷.
- 15.3.9. Where applicable, employers should consider implementing Learnerships¹⁸ to offer occupationally driven, outcomes based learning while creating employment opportunities for previously disadvantaged individuals.
- 15.3.10. In procuring formal training courses from internal or external providers, employers should take into account the equity profile of the provider.
- 15.3.11. In procuring formal training courses from external providers, employers should ideally offer preference to suitable Black Economically Empowered companies in support of the development and sustainability of Black Economic Empowerment initiatives.
- 15.3.12. Employers, particularly those whose workforces include employees who are not functionally literate, should consider offering Adult Basic Education and Training (ABET) opportunities.
- 15.3.13. An employer's employment equity policy or policies should be a standard component of all training and development courses to ensure that employees understand its philosophy in relation to the workplace.
- 15.3.14. An employer should offer diversity training to all employees.

- 15.3.15. Staff responsible for selecting employees for training, either as part of their induction or to develop particular skills, should themselves be trained to:
- 15.3.15.1. recognise potential, particularly from designated group employees;
 - 15.3.15.2. select trainees according to objective criteria or in terms of the Workplace Skills Plan or training and development policy;
 - 15.3.15.3. align training and development access for designated groups to numerical targets and other objectives set in the Employment Equity Plan; and
 - 15.3.15.4. identify and address any barriers or unfair discrimination practices in the allocation of training opportunities.
- 15.3.16. An employer should monitor training opportunities in order to identify and address any disparities between groups and to ensure that training is done to achieve the employment equity objectives set out in its Employment Equity Plan.
- 15.3.17. An employer should conduct post training impact evaluations to track the progress of employees to ensure that training employment equity objectives are met.

15.4. KEY LINKS TO OTHER TOPICS IN THE CODE

- 15.4.1. **Implementing employment equity** - Employees from designated groups who are provided with effective training and development interventions are likely to perform better. This may contribute towards improved workplace performance and may increase the profile of employees from designated groups.
- 15.4.2. **Performance management** - The performance management system should include the measurement of line managers and supervisors in relation to the contribution they make to the skills development of employees.
- 15.4.3. **Promotion** - Effective training and development of employees from designated groups may enhance their skills and knowledge and ultimately their chances for career advancement.

Footnotes

- 16 A person following and observing another in order to gain experience or insight into a job.
- 17 RPL as defined by South African Qualifications Authority (SAQA), is a process whereby people's prior learning can be formally recognized in terms of registered qualifications and unit standards, regardless of where and how the learning was attained. RPL acknowledges that people never stop learning, whether it takes place formally at an educational institution, or whether it happens informally.
- 18 Learnerships are created in terms of the Skills Development Act, [No. 97 of 1998](#) (Chapter 4, [Sections 16 to 19](#)).

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1358 of 4 August 2005: Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices/ 16. PROMOTION AND TRANSFER

16. PROMOTION AND TRANSFER

16.1. SCOPE

Promotions and transfers are processes that facilitate employee mobility for various purposes, including career development, succession planning and operational requirements. This should facilitate representation of members of designated groups in all occupational categories and levels, thus meeting employment equity objectives.

16.2. IMPACT ON EMPLOYMENT EQUITY

Promotions and transfers have the potential to impact on numerical goals and accelerate equitable representation of all groups in occupational categories and levels within a workplace. These initiatives are key drivers for employment equity in that they can involve fast tracking the advancement towards achieving numerical targets.

16.3. POLICY AND PRACTICE

- 16.3.1. Employers are prohibited from unfair discrimination in promotion and transfer decisions. One of the mechanisms for eliminating unfair discrimination is to ensure that written policies and practices specify the criteria, which apply to promotions and transfers. Managers implementing the policies and practices should be monitored to ensure that they are not applying these inconsistently.
- 16.3.2. An employer may implement a policy of preference toward members of designated groups in transfers and promotions as a legitimate affirmative action measure.
- 16.3.3. Lateral transfers to equivalent positions may be effectively used to achieve employment equity targets. Reasonable provision must be made where an employee requests a transfer.

16.4. KEY LINKS TO OTHER TOPICS IN THE CODE

- 16.4.1. **Retention** - Promotions and transfers may contribute to retention, specifically in instances where employees from designated groups do not feel sufficiently challenged or rewarded in an existing position.

- 16.4.2. **Skills Development** - Linking promotions and transfers to development and growth opportunities for designated groups will ensure that they do not occur in isolation from numerical targets and employment equity objectives.
- 16.4.3. **Remuneration** - Linking promotions and transfers to remuneration may encourage employees to transfer to a less popular operational or geographic area.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1358 of 4 August 2005: Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices/ 17. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

17. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

17.1. SCOPE

- 17.1.1. This section deals with information employees are entitled to obtain from their employers and information employers may disclose about their employees.
- 17.1.2. The relevant provisions of [Section 16](#) of the Labour Relations Act, 1995, apply to the disclosure of information in terms of this part of the Code, in addition to any other laws, including the Regulation of Interception of Communications and Communication-Related Information Act, 2002 and the Promotion of Access to Information Act, 2000.

17.2. IMPACT ON EMPLOYMENT EQUITY

- 17.2.1. When engaging in employment equity consultation, the Act requires that designated employers disclose to consulting parties all relevant information.
- 17.2.2. The object of disclosure is to make the process of consultation as participative and as meaningful as possible to ensure good faith engagement and to develop trust between employers and employees.
- 17.2.3. Timely disclosure of information will facilitate consensus regarding appropriate employment equity initiatives to reduce challenges.
- 17.2.4. An employer must disclose information that is relevant and that is reasonably required by the consulting parties to engage effectively on employment equity.
- 17.2.5. Information is generally considered to be relevant if it is likely to influence the formulation, presentation or pursuance of a position or demand proposed by a consulting party in their deliberations on employment equity.

17.3. POLICY AND PRACTICE

Type of information

- 17.3.1. The employer can comply with many of these requirements by referring the consulting parties to the documents that contain the necessary information if they are reasonably accessible to such consulting parties.
- 17.3.2. Information should be supplied in a manner and format that are accessible to all employees in the workplace.

Confidentiality and Disclosure

- 17.3.3. Private, personal information is regarded as confidential information. It will include information that may be typically found in an employee's personnel file. This may include information concerning the employee's financial circumstances, marital circumstances, criminal record or health status (eg. HIV and AIDS, alcoholism, etc.). The employer may not disclose this kind of information unless the employee consents in writing.

Collection and communication of employee data: Balancing the need for information against the right to privacy

- 17.3.4. Information is collected on employees from the time when they are job applicants. The collection and disclosure of information may in some circumstances violate the right to privacy. It is therefore important for employers to balance the need for requiring certain information against the need to maintain high standards of personal privacy and the confidences of third parties.
- 17.3.5. An employer should not collect personal information from employees, unless-
 - 17.3.5.1. The information is collected for a lawful purpose that is directly related and necessary to implement employment equity in the workplace, eg. for making recruitment, development and promotion decisions; and
 - 17.3.5.2. The information is reasonably necessary for that purpose.
- 17.3.6. An employer may not collect personal data regarding an employee's sex life, political, religious or other beliefs, or criminal convictions, except in exceptional circumstances where such information may be directly relevant to an employment decision.

Security of disclosed information

- 17.3.7. Information collected on employees, such as race, gender, sexual orientation, religion, performance, training records, psychological assessments or health, or any other information imparted by employees to their employer, should be kept secure and only those entitled to see it in the course of their duties should have access.
- 17.3.8. For governance purposes, employers should ideally have a written security policy for the gathering and disclosure of information. Employers should keep a written record of the names of those, whether internal or external to the employer, to whom employee information has been revealed and for what purpose.

Employee rights

- 17.3.9. Employees should be afforded opportunities of checking the accuracy of their information and rectifying and updating it, particularly where it relates to employment equity.
- 17.3.10. Employees can insist on the rectification or deletion of incorrect or misleading information. Where information is corrected, those alterations should be communicated to subsequent users of the information.

17.4 KEY LINKS TO OTHER TOPICS IN THE CODE

- 17.4.1. **Employment equity implementation** - The disclosure of information by an employer must occur within the context of an employer's employment equity policies. Disclosure of information is a necessary pre-requisite to meaningful consultation by parties, as required under the Act.
- 17.4.2. **Recruitment and Selection** - Information about employees, which is collected by an employer during the recruitment process or during employment, must be collected for a lawful purpose and must be directly related to the function or job requirement.
- 17.4.3. **Assessments** - An employee's manager, with the assistance of an expert in testing, should only consider psychological assessments of an employee if the assessments are current.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1358 of 4 August 2005: Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices/ 18. RETENTION

18. RETENTION

SCOPE

The retention of all employees, specifically employees from designated groups, is a key challenge for employers given the opportunities for mobility that exist in the global economy. This section identifies some challenges and their implications for implementing employment equity to retain employees from designated groups.

IMPACT ON EMPLOYMENT EQUITY

Retention of employees from designated groups is critical for achieving and sustaining numerical targets and goals as envisaged in the Act. Employers who seek to retain their talented and skilled employees, particularly those from designated groups, should develop and implement retention strategies.

18.1. POLICY AND PRACTICE

- 18.1.1. Employers may consider identifying trends that exist in their workplaces regarding the reasons for termination. This will enable employers to develop appropriate strategies to retain employees, particularly employees from designated groups. These strategies should be directed at removing barriers that cause termination of employment.
- 18.1.2. Employers may consider negotiating retrenchment criteria that deviate from the "last in first out" principle, where the implementation of this principle will detrimentally affect the representivity of designated groups in that workplace.
- 18.1.3. Employers could also implement various incentives to promote retention.

18.2. KEY LINKS TO OTHER TOPICS IN THE CODE

- 18.2.1. **Induction** - An effective induction process should be implemented to integrate employees, particularly those from designated groups, into the workplace.
- 18.2.2. **Terms and conditions of employment** - Equitable and favourable terms and conditions of employment as well as an environment that affirms diversity contribute to long-term employee retention.
- 18.2.3. **Skills development** - Providing equitable training and development opportunities contribute towards employee retention, especially if this is linked to career development.
- 18.2.4. **Remuneration** - fair remuneration contributes to the retention of employees.
- 18.2.5. **Performance Management and Reward** - Recognising and rewarding good performance may contribute to retention.
- 18.2.6. **Termination** - An exit interview may provide information on the reasons for employee turnover.

19. HARASSMENT

19.1. SCOPE

This section deals with the elimination of harassment in the workplace. It provides a framework for facilitating and promoting the development and implementation of policies and practices that result in workplaces free of harassment where employers, employees and associated parties¹⁹ put a premium on one another's integrity and dignity. This in turn builds a workforce that respects one another's privacy and the right to equity and equality in the workplace.

19.2. IMPACT ON EMPLOYMENT EQUITY

19.2.1. [Section 6](#) of the Act and other related legislation recognize that harassment in the workplace, whether direct or indirect, is a form of unfair discrimination and is prohibited on one or a combination 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 and birth.

19.2.2 Harassment is unwanted or unsolicited attention based on one or more of the prohibited grounds. It involves conduct that is unwanted by the person to whom it is directed and who experiences the negative consequences of that conduct. The conduct can be physical, verbal or non-verbal. It affects the dignity of the affected person or creates a hostile working environment. It often contains an element of coercion or abuse of power by the harasser.

19.3. POLICY AND PRACTICE

19.3.1. Every employer is under obligation in terms of the Act to take steps to prevent workplace harassment. This includes ensuring that a clear rule prohibiting harassment and other forms of unfair discrimination that exists in the workplace, and that all employees understand it. This should be incorporated in a formal written policy like a code of conduct with an appropriate dispute resolution procedure that is communicated throughout the workplace and displayed in prominent places.

19.3.2. The policy should make it clear that harassment is a form of unfair discrimination, and will be regarded by the employer as a serious form of misconduct, which will be subjected to disciplinary action and may result in dismissal.

19.3.3. On an incremental scale of "minor", "serious" and "very serious", harassment is a very serious offence. The disciplinary code of an employer should provide for very serious offences like harassment by placing a waiver on all warning procedures, and moving directly to a disciplinary enquiry that could be followed by a hearing.

19.4. KEY LINKS TO OTHER TOPICS IN THE CODE

19.4.1. **Recruitment & Selection** - Applicants for a job are normally most vulnerable to harassment in exchange for special favours. Therefore special attention should be placed on behaviour that is likely to be interpreted as harassment.

19.4.2. **Promotion & Transfer** - Mechanisms should be put in place to prevent 'welcome' or 'unwelcome' harassment that could be seen as influencing promotion and transfer decisions.

19.4.3. **Discipline, Grievance & Dispute Resolution** - Appropriate policies and procedures, which promote appropriate behaviour and serves as a guard against harassment, should be developed and implemented by employers.

Footnotes

19 Associated parties may include suppliers and contractors.

20. DISCIPLINE, GRIEVANCE AND DISPUTE RESOLUTION²⁰

This section of the Code is based on the principle that employers and employees should treat each other with mutual respect. To this end, the Code seeks to balance the right of employees to fair employment practices against the right of employers to expect satisfactory conduct and performance by employees.

20.1. SCOPE

20.1.1. This section deals with issues employers may consider when managing grievances filed by employees or disciplining employees for transgressing workplace policies and practices.

20.2. IMPACT ON EMPLOYMENT EQUITY

20.2.1. The manner in which discipline and grievance are managed can generate conflict in a workplace and may undermine employment equity achievements and policies. Employers should ensure that their disciplinary and grievance policies are consistently and impartially applied.

20.2.2. This section of the Code is not intended to serve as a substitute for grievance or disciplinary procedures concluded at a workplace. An employer should evaluate whether their existing grievance, discipline and dispute resolution procedures are conducive to dealing with unfair discrimination and harassment.

20.3. POLICY AND PRACTICE

The Grievance Process

20.3.1. Unfair discrimination or allegations of a breach of the Act should be dealt with as quickly and as thoroughly as possible. Conflict is best managed if addressed expeditiously and according to fair and impartial principles.

20.3.2. Employers should endeavour to protect complainants and ensure that complaints and grievances lodged are dealt with sensitively and discretely.

20.3.3. Employers should take disciplinary action against any employee who retaliates against a fellow employee for using the grievance procedure to address a concern or grievance concerning an alleged act of harassment, unfair discrimination or a breach of the Act,

20.3.4. Employers should consider workplace policies that make any act of unfair discrimination or breach of the Act a form of very serious misconduct.

20.3.5. Employers should ensure that employees are aware of or can reasonably be expected to be aware of workplace policies and practices, particularly in relation to unfair discrimination.

20.3.6. Employers are responsible for ensuring the consistent application and enforcement of policies to avoid allegations of arbitrary or unfair application of discipline on the basis of one or more of the prohibited grounds. Policies on discipline must apply equally to all employees.

20.3.7. Disciplinary action should seek to correct an employee's behaviour. Disciplinary measures may include counselling, warnings or creative solutions. The primary aim of discipline should be to encourage a culture of respect for difference and dignity.

20.3.8. Employers should value and encourage greater awareness of diversity.

20.3.9. Employers should keep a record of all grievances, disputes and disciplinary actions taken and conduct regular audits to determine the extent to which:

20.3.9.1. employees have utilised the procedures. This information should be disaggregated by race, gender and disability;

20.3.9.2. the grievances filed by employees where breaches of the Act are alleged; and

20.3.9.3. the outcome of processes.

20.3.10. Employers may use the outcome of this review to assess whether its policies are being utilised and whether they are being used to address grievances and disputes that arise in the workplace in relation to unfair discriminatory practices or any other breaches of the Act.

20.4. KEY LINKS TO OTHER TOPICS IN THE CODE

20.4.1. **Working environment** - Conflict is inherent in workplaces. Employers need to manage the manifestations of conflict in a manner that discourages unfair discrimination.

20.4.2. **Harassment** - Employees must be made aware that harassment is serious misconduct, and it will be dealt with effectively and efficiently.

PART C: ENDING EMPLOYMENT

Footnotes

20 Schedule 8 of the Labour Relations Act, which includes the Code of Good Practice on Dismissal deals with some of the key aspects of dismissals for reasons related to conduct and capacity. The Code of Good Practice on Dismissal also deals with termination based on operational requirements.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1358 of 4 August 2005: Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices/ 21. TERMINATING EMPLOYMENT

21. TERMINATING EMPLOYMENT

21.1. SCOPE

An employer may terminate the employment of an employee by agreement or for reasons based on misconduct, incapacity or for operational requirements. This section outlines some of the key employment equity considerations in ensuring that employment is terminated in a fair and consistent manner.

21.2. IMPACT ON EMPLOYMENT EQUITY

21.2.1. Terminations should be fairly and lawfully effected and must serve the purposes of the employer without discriminating against any employee.

21.2.2. In the context of termination for operational requirements, an employer, when consulting with the affected party, should consider the appropriateness of adopting the standard selection criteria of Last In First Out (LIFO) as this may undermine the retention of designated groups. In the context of employment equity, traditional criteria may undermine the progress made to achieve numerical targets and would need to be revisited to ensure that they support the achievement of employment equity objectives.

21.3. POLICY AND PRACTICE

21.3.1. In order to achieve numerical targets, employers may initiate voluntary exit strategies to make space for designated groups. This strategy should be preceded by consultation in order for it to be accepted as a legitimate affirmative action measure. It should be transparent and effectively communicated to those existing incumbents who may be affected. Employers should be guided by the long-term viability and sustainability of institutional knowledge in making the decisions to use voluntary exits of non-designated groups, as a strategy to achieve numerical targets. An employer should implement this strategy in tandem with skills development, career development and succession planning to ensure that skills that are core to the employer are replaced.

21.3.2. When terminating the employment of an employee for reasons of incapacity based on disability or chronic illness, employers should refer to the Code of Good Practice on Key Aspects of HIV/AIDS and Employment and the Code of Good Practice on the Employment of People with Disabilities.

21.4. KEY LINKS TO OTHER TOPICS IN THE CODE

21.4.1. **Skills development** - An employer should provide skills training to its managers to ensure that they do not act in a discriminatory manner.

21.4.2. **Disputes and grievance resolution** - Termination of employment must be conducted according to fair labour practices and in line with the employer's procedures, including its discipline, grievance and dispute resolution procedures.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1358 of 4 August 2005: Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices/ 22. EXIT INTERVIEWS

22. EXIT INTERVIEWS

22.1. SCOPE

22.1.1. Exit interviews are conducted by the employer with the employee at the time of voluntary termination, retirement or retrenchment.

22.1.2. The purpose of an exit interview is to obtain information about the employee's experience during employment. These exit interviews could provide valuable information about barriers and other factors that could have contributed to the termination.

22.2. IMPACT ON EMPLOYMENT EQUITY

An employer should analyse the information it obtains from exit interviews and identify trends, which should inform barrier removal initiatives.

22.3. POLICY AND PRACTICE

22.3.1. To make exit interviews an effective process, employers should consider:

22.3.1.1. Conducting a standard exit interview providing a set of guidelines for consistent application;

22.3.1.2. Conducting an exit interview that allows the departing employee to comment on any discriminatory practices in the workplace;

22.3.1.3. Senior employees, who are skilled at obtaining information, should conduct exit interviews. Alternatively, an employer may consider using an independent person or persons from designated groups to ensure that the departing employee is able to speak as openly and honestly as possible about their experiences; and

22.3.1.4. Information disclosed in exit interviews is confidential and can only be used to identify themes or problems in the workplace.

22.3.2. Employers may consider developing periodic reports reflecting trends that may have emerged

during exit interviews, including the identification of barriers experienced by employees from designated groups.

22.3.3. Senior management should take action to eliminate barriers that are identified during exit interviews.

22.3.4. Employers may consider comparing their staff turnover rates against similar jobs within the same sector. If turnover is higher than these benchmarks then an employer should consider initiating interventions to address the problems.

22.4. KEY LINKS TO OTHER TOPICS IN THE CODE

22.4.1. **Retention** - There are numerous factors that impact on the retention of employees from designated groups. These factors include work climate, competitive remuneration, effective performance management, learning pathways, organisational culture, incentive schemes, challenging work assignments, work-life balance and workplace environment.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 451 of 15 June 2012: Code of Good Practice on HIV and AIDS and the world of work (Government Gazette No. 35435)

GN 451 of 15 June 2012: Code of Good Practice on HIV and AIDS and the world of work (Government Gazette No. 35435)

DEPARTMENT OF LABOUR

I, Mildred Nelisiwe Oliphant, Minister of Labour, hereby give notice that the Code of Good Practice on HIV and AIDS and the World of Work set out in this schedule is issued on the advice of the Commission for Employment Equity in terms of [Section 54 \(1\) \(a\)](#) of the Employment Equity Act, 1998 (Act [No. 55 of 1998](#)).

(Signed)

**MN OLIPHANT
MINISTER OF LABOUR
23/04/2012**

South African Code of Good Practice on HIV and AIDS and the World of Work

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PREAMBLE

HIV and AIDS continue to negatively impact on the livelihoods of millions of persons living with or affected by the epidemic in South Africa. Within the world of work, HIV and AIDS impact severely on productivity as a consequence of ill health resulting in increased absenteeism, low morale, and increased staff turnover due to early deaths and possibly a change in markets and demands for services.

In 2000, South Africa published a Code of Good Practice on Key Aspects of HIV and AIDS and Employment (the Code) in line with the Employment Equity Act. The Code's primary objective was to guide employers, workers and trade unions to develop and implement HIV and AIDS workplace policies and programmes. The Code was intended to protect and promote mutual respect, dignity and the workers' rights through the elimination of unfair discrimination against people living with or affected by HIV and AIDS.

This Code has been utilised and referred to extensively in the development and implementation of HIV and AIDS workplace *Policies* and Programmes. It has also been taken into account in some of the judgments by the Courts in cases of unfair discrimination in relation to HIV.

Subsequent to the adoption of the International Labour Organization (ILO) Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200), South Africa as a member state took a decision to review its Code and

align it to the ILO Recommendation. The revised Code seeks to assist employers, workers and their organizations in developing appropriate responses in order to manage HIV and AIDS, TB and STIs in the world of work within the framework of decent work in both the formal and informal sectors and in the public and the private sectors.

In line with the ILO Recommendation No. 200, this Code provides for further emphasis on the fundamental human rights of all workers, including the principle of gender equality and the broadening of the scope to cover all those involved in the world of work.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 451 of 15 June 2012: Code of Good Practice on HIV and AIDS and the world of work (Government Gazette No. 35435)/ 1. DEFINITIONS

1. DEFINITIONS

In this Code, unless the context indicates otherwise:

"Affected Persons"	: means persons whose lives are changed by HIV and AIDS owing to the broader impact of the pandemic;
"AIDS"	: means Acquired Immunodeficiency Syndrome which results from advanced stages of HIV infection and is characterized by opportunistic infections or HIV-related cancers, or both;
"CCMA"	: means the Commission for Conciliation, Mediation and Arbitration;
"Confidentiality"	: means the right of every person, worker, job applicant, jobseekers, interns, apprentices, volunteers and laid-off and suspended workers to have their information, including medical records and HIV status kept private;
"Counselling"	: means a confidential interactive session between a professional and a client aimed to explore and identify the risks of the client to HIV and AIDS;
"EAP"	: means Employee Assistance Programme offered by many employers which is intended to help workers deal with personal problems that might adversely impact their work performance, health, and well-being;
"the Act"	: means the Employment Equity Act, 1998 (Act No. 55 of 1998);
"HIV"	: means the Human Immunodeficiency Virus, a virus that weakens the human immune system;
"Informed consent"	: means a process of obtaining consent from a patient/worker to ensure that the person fully understands the nature, implications and future consequences of the HIV test before such person consents to take the test;
"PLHIV"	: means persons living with HIV;
"Post Exposure Prophylaxis"	: means antiretroviral, including medicines that are taken after exposure or possible exposure to HIV. The exposure may be occupational, as in a needle stick injury, or non-occupational, as in unprotected sex with a person with HIV infection. The latter is sometimes referred to as Non Occupational-Post Exposure Prophylaxis;
"Reasonable Accommodation"	: means any modification or adjustment to a job or to the working environment that enables a person living with HIV and AIDS to have access to or participate or advance in employment;
"STIs"	: means Sexually Transmitted Infections which are spread by the transfer of organism from person to person during sexual contact e.g. syphilis;
"Stigma"	: means the social mark which, when associated with a person, usually causes marginalisation or presents an obstacle to the full enjoyment of social life by the person living with or affected by HIV and AIDS;
"TB"	: means tuberculosis which is an infectious disease characterised by the growth of nodules (tubercles) in the tissues, especially the lungs. Tuberculosis is more common in persons with immune system problems such as HIV and AIDS;

"Unfair Discrimination"	means any distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
"VCT"	means Voluntary Counselling and Testing, which provides the opportunity for the client to confidentially explore and understand his or her HIV risks and to learn his or her HIV status with the support of a counsellor;
"Vulnerability"	means the unequal opportunities, social exclusion, unemployment or precarious employment, resulting from the social, cultural, political and economic factors that make a person more susceptible to HIV infection and to developing AIDS;
"Worker"	means any person working under any form or arrangement;
"Workplace"	means any place where workers work;
"World of Work"	means a working environment in which persons are in some way or another associated with and also includes persons as reflected in Clause 4 of this Code.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 451 of 15 June 2012: Code of Good Practice on HIV and AIDS and the world of work (Government Gazette No. 35435)/ 2. INTRODUCTION

2. INTRODUCTION

- 2.1 HIV and AIDS are a serious public health challenge which has socio economic, employment and human rights implications.
- 2.2 HIV poses a significant obstacle to the attainment of decent work and sustainable development. It has led to the loss of the livelihoods of millions of persons living with or affected by HIV and AIDS. Its effects are concentrated among the most productive age groups and it imposes huge costs on enterprises through falling productivity, increased labour costs and the loss of skills and experience.
- 2.3 HIV and AIDS affect every workplace, with prolonged staff illness, absenteeism, and death, which impacts on productivity, employee benefits, occupational health and safety, production costs, workplace morale and escalating HIV associated with TB and STIs.
- 2.4 HIV thrives in an environment of poverty, rapid urbanisation, violence and destabilisation. Transmission is exacerbated by disparities in resources and patterns of migration from rural to urban areas. Women are particularly more vulnerable to infection in cultures and economic circumstances where they have limited sexual reproductive choices and rights.
- 2.5 Through this Code, the country commits to mitigate the impact of the epidemic in the world of work taking into account all relevant Conventions of the International Labour Organization, including Recommendation No. 200.
- 2.6 One of the most effective ways of reducing and managing the impact of HIV and AIDS in the workplace is through the implementation of workplace HIV and AIDS policies and programmes. Addressing aspects of HIV and AIDS in the workplace will enable employers, workers and their organisations and government to actively contribute towards local, national and international efforts to prevent and control HIV and AIDS.
- 2.7 Every person should take personal responsibility in relation to HIV and AIDS to educate themselves, prevent transmission, seek available treatment and treat others with dignity and respect. All persons have the responsibility to support the achievement of the objectives of this Code.
- 2.8 Partnerships between government, employers, workers and their organisations and other relevant stakeholders are encouraged to ensure effective delivery of services and increased coverage.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 451 of 15 June 2012: Code of Good Practice on HIV and AIDS and the world of work (Government Gazette No. 35435)/ 3. OBJECTIVES OF THE CODE

3. OBJECTIVES OF THE CODE

The primary objective of this Code is to provide guidelines to assist employers, workers and their organisations to develop and implement comprehensive gender sensitive HIV and AIDS workplace policies and programmes. These policies and programmes must be developed within the framework of decent work in the formal and informal sectors in both the public and private sectors to-

- (a) eliminate unfair discrimination and stigma in the workplace based on real or perceived HIV status, including dealing with HIV testing, confidentiality and disclosure;

- (b) promote access to education, equitable employee benefits and employment protection;
- (c) manage grievance procedures in relation to HIV and AIDS;
- (d) create a safe and healthy working environment;
- (e) promote appropriate and effective ways of managing HIV and AIDS and TB in the workplace; and
- (f) give effect to the international and regional obligations of the Republic of South Africa on HIV and AIDS and TB in the world of work.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 451 of 15 June 2012: Code of Good Practice on HIV and AIDS and the world of work (Government Gazette No. 35435)/ 4. SCOPE OF THE CODE

4. SCOPE OF THE CODE

This Code applies to:

- 4.1 All workers working under all forms or arrangements, and at all workplaces, including-
 - (a) persons in any employment or occupation;
 - (b) those in training, including interns and apprentices;
 - (c) volunteers;
 - (d) jobseekers and job applicants; and
 - (e) laid-off and suspended workers.
- 4.2 All sectors of economic activity, including the private and public sectors and the formal and informal economies.
- 4.3 Armed forces and uniformed services.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 451 of 15 June 2012: Code of Good Practice on HIV and AIDS and the world of work (Government Gazette No. 35435)/ 5. KEY PRINCIPLES

5. KEY PRINCIPLES

The guiding principles in this Code are based on International Conventions and Recommendations, The Constitution of the Republic of South Africa and national laws, which include:

5.1 Respect for human rights, fundamental freedoms and equality

The response to HIV and AIDS must be recognised as a contributing factor to the realization of human rights, dignity, fundamental freedoms, responsibility and equality for all, including workers and their dependants.

5.2 HIV and AIDS is a workplace issue

HIV and AIDS is a workplace issue and must be treated like any other serious illness or condition in the workplace. HIV and AIDS must be included among the essential elements of the national, provincial, local and sectoral response to the pandemic with full participation of all stakeholders.

5.3 Reduce HIV-related stigma and unfair discrimination and promote equality of opportunity and fair treatment

Elimination of unfair discrimination remains a key principle for protection of the rights of individuals. There must be no unfair discrimination against or stigmatisation of workers on the grounds of real or perceived HIV status. It is the responsibility of every worker and employer to eliminate unfair discrimination in the workplace.

5.4 Gender Equality

Women and girls are at greater risk and more vulnerable to HIV infection and are disproportionately affected by HIV compared to men as a result of gender inequality. Women's empowerment is a key factor in responding to HIV and AIDS and the world of work. Measures must be taken in the world of work to ensure gender equality, prevent violence and harassment, protect sexual and reproductive health and rights and involve men and women workers, regardless of their sexual orientation, in the HIV response.

5.5 The right to access and continue in employment

Real or perceived HIV status is not a valid cause for termination of employment. Workers with HIV-

related illness must not be denied the possibility of continuing to carry out their work unless proven medically unfit to do so. As with many other conditions, workers with HIV and AIDS must be reasonably accommodated and be able to work for as long as medically fit. Medical examination should be limited to the capacity of a worker to perform the task(s) of a particular job.

5.6 Prevention

Prevention of all modes of HIV transmission and TB is a fundamental priority for the country. In keeping with this principle the workplace must facilitate access to comprehensive information and education to reduce the risk of HIV transmission and HIV-TB co-infection and STIs.

5.7 Treatment, Care and Support

Treatment, care and support services on HIV and AIDS must be accessible to all workers and their dependants. All workers must have access to affordable health services, social security, insurance schemes or other employment-related benefits either through the employer, the State or non-governmental organisations. Programmes of care and support must include measures of reasonable accommodation in the workplace for persons living with HIV or HIV-related illnesses.

5.8 Social Dialogue/Consultations

Implementation of policies and programmes on HIV and AIDS should be based on cooperation and trust amongst government, employers and workers and their representatives. Employers and workers should engage in the design, implementation and evaluation of national and workplace programmes, with the active involvement of persons living with HIV and AIDS.

5.9 Occupational Health and Safety

The workplace must be safe and healthy for all workers, and they must benefit from programmes to prevent specific risks of occupational transmission of HIV and related transmissible diseases, such as TB, especially in jobs most at risk, including the health care sector.

5.10 Testing, Confidentiality and Disclosure

Workers and their dependants must enjoy protection of their privacy, including confidentiality relating to their own HIV status or that of their co-workers. Workers must not be required to undergo HIV testing or other forms of screening for HIV unless found to be justified by the Labour Court. The results of HIV testing must be confidential and not endanger access to jobs, tenure, job security or opportunities for advancement.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 451 of 15 June 2012: Code of Good Practice on HIV and AIDS and the world of work (Government Gazette No. 35435)/ 6. LEGAL FRAMEWORK

6. LEGAL FRAMEWORK

6.1 This Code must be read in conjunction with The Constitution of the Republic of South Africa, 1996 (Act [No. 108 of 1996](#)) and all relevant legislation as amended, which includes-

- (a) Basic Conditions of Employment Act, 1997 (Act [No. 75 of 1997](#));
- (b) Compensation for Occupational Injuries and Diseases Act, 1993 (Act [No. 130 of 1993](#));
- (c) Employment Equity Act, 1998 (Act [No. 55 of 1998](#));
- (d) Labour Relations Act, 1995 (Act [No. 66 of 1995](#));
- (e) Occupational Health and Safety Act, 1993 (Act [No. 85 of 1993](#));
- (f) Unemployment Insurance Act, 2001 (Act [No. 63 of 2001](#));
- (g) Children's Act, 2005 (Act [No. 38 of 2005](#));
- (h) Medical Schemes Act, 1998 (Act [No. 131 of 1998](#));
- (i) Mine Health and Safety Act, 1996 (Act [No. 29 of 1996](#));
- (j) National Health Act, 2003 (Act [No. 61 of 2003](#));
- (k) Occupational Diseases in Mines and Works Act, 1973 (Act [No. 78 of 1973](#));
- (l) Promotion of Access to Information Act, 2000 (Act [No. 2 of 2000](#)); and
- (m) Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act [No. 4 of 2000](#)).

6.2 The contents of this Code must be taken into account when developing, implementing or reviewing any workplace policies or programmes and must be read in conjunction with the following legislative provisions as amended-

6.2.1 In accordance with both the common law and [Section 14](#) of The Constitution of the Republic of South Africa, all persons with HIV and AIDS have a right to privacy, including privacy concerning

- their HIV status. Accordingly, there is no general legal duty on a worker to disclose his or her HIV status to his or her employer or to other workers;
- 6.2.2 This Code is issued in terms of [Section 54 \(1\) \(a\)](#) of the Employment Equity Act and is based on the principle that no person may be unfairly discriminated against on the basis of real or perceived HIV status;
- 6.2.3 [Section 6 \(1\)](#) of the Employment Equity Act provides that no person may unfairly discriminate against a worker or an applicant for employment, in any employment policy or practice, on the basis of his or her HIV status;
- 6.2.4 [Section 6 \(3\)](#) of the Employment Equity Act prohibits harassment of a worker based on his or her HIV status. Measures must be adopted at the workplace to reduce the transmission of HIV and AIDS to alleviate its impact by ensuring actions to prevent and prohibit violence and harassment in the workplace;
- 6.2.5 [Section 7 \(2\)](#) of the Employment Equity Act prohibits testing of a worker to determine that worker's HIV status unless such testing is determined to be justifiable by the Labour Court in terms of [section 50 \(4\)](#) of the Employment Equity Act;
- 6.2.6 In accordance with Section 187 (1) (f) of the Labour Relations Act, a worker with HIV and AIDS must not be dismissed based on his or her HIV and AIDS status;
- 6.2.7 In terms of Section 8 (1) of the Occupational Health and Safety Act, an employer is obliged to provide a safe workplace;
- 6.2.8 Sections 2 (1) and 5 (1) of the Mine Health and Safety Act provide that an employer is required to create a safe workplace;
- 6.2.9 A worker who is infected with HIV as a result of an occupational exposure to infected blood or bodily fluids must apply for benefits in terms of [Section 22 \(1\)](#) of the Compensation for Occupational Injuries and Diseases Act;
- 6.2.10 In accordance with the Basic Conditions of Employment Act, every employer is obliged to ensure that all workers receive certain basic standards of employment, including the minimum number of sick leave days ([Section 22 \(2\)](#));
- 6.2.11 In accordance with Section 24 (2) (e) of the Medical Schemes Act, a registered medical aid scheme must not unfairly discriminate directly or indirectly against its members on the basis of their "state of health";
- 6.2.12 In accordance with [Section 20](#) of the Unemployment Insurance Act, every employer is obliged to ensure that all workers are able to exercise their right to illness benefits;
- 6.2.13 [Section 20 \(1\)](#) of the National Health Act states that Health Care personnel must not be unfairly discriminated against on account of their health status. However, the head of the health establishment concerned, subject to any applicable law and in accordance with any guidelines determined by the Minister, may impose conditions on the service that may be referred by a health care provider or health care worker on the basis of his or her health status;
- 6.2.14 In terms of section 13 (1) (b) of the Children's Act, every child has the right to have access to information regarding his or her HIV Status;
- 6.2.15 In accordance with section 16 (5) of the Labour Relations Act an employer is not required to disclose the HIV status of a worker unless that worker consents to the disclosure of his or her HIV status;
- 6.2.16 [Sections 37 \(1\)](#) and 63 (1) of the Promotion of Access to Information Act provide that employers must not disclose the HIV status of a worker unless that worker agrees to or consents to the disclosure of his or her HIV status;
- 6.2.17 In terms of section 1 (c) of the Occupational Diseases in Mines and Works Act, TB is a compensable disease where it is found, in the opinion of the certification committee, that a person contracted such disease while the person was performing risk work or where such person was already affected at any time within the twelve month period immediately following the date on which that person performed such work for the last time; and
- 6.2.18 According to section 99 (3) of the Occupational Diseases in Mines and Works Act, where the certification committee has found that a person is suffering from TB which is attributable partly to HIV but not mainly to work at a mine or works and where such person is not in receipt of full benefits for the TB in terms of the Compensation for Occupational Injuries and Diseases Act, or any other law, such person may receive benefits not exceeding one half of the benefits provided for in terms of the Occupational Diseases in Mines and Works Act.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 451 of 15 June 2012: Code of Good Practice on HIV and AIDS and the world of work (Government Gazette No. 35435)/ 7. ELIMINATION OF UNFAIR DISCRIMINATION AND PROMOTION OF EQUAL OPPORTUNITY AND TREATMENT

7. ELIMINATION OF UNFAIR DISCRIMINATION AND PROMOTION OF EQUAL OPPORTUNITY AND

TREATMENT

Policies and programmes must respect national guidelines on Counselling, HIV Testing, Confidentiality and Disclosure.

7.1 Counselling and Informed Consent

- 7.1.1 HIV testing of workers must be provided with informed consent and proper counselling. Where employers or workers facilitate provision of HIV testing facilities, they must ensure a conducive environment for counselling.
- 7.1.2 Pre-Test counselling should take place prior to a worker being tested to determine his or her HIV status.
- 7.1.3 Post-Test counselling should take place to determine whether a worker has tested negative or positive. Proper procedures should be followed in advising the worker on the next steps, depending on the HIV test results.
- 7.1.4 No employer may require a worker or an applicant for employment to undertake an HIV test in order to ascertain that worker's HIV status. Testing must be with consent and voluntary.

7.2 HIV Testing

- 7.2.1 Authorisation for mandatory HIV testing of workers may only be obtained from the Labour Court in terms of [Section 7 \(2\)](#) of the Employment Equity Act.
- 7.2.2 Mandatory Testing for HIV is not a requirement in the world of work, including the following circumstances-
 - (a) during an application for employment;
 - (b) as a condition of employment;
 - (c) during procedures related to termination of employment; and
 - (d) as an eligibility requirement for training or staff development programmes.
- 7.2.3 Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles. The information obtained must not be used to unfairly discriminate against workers. Testing will not be considered anonymous if there is a reasonable possibility that a worker's HIV status can be deduced from the results.

7.3 Confidentiality and Disclosure

- 7.3.1 All persons, including those with HIV and AIDS have the legal right to privacy. A worker is therefore not legally required to disclose his or her HIV status or related medical information to his or her employer or to other workers.
- 7.3.2 The results of HIV testing must be confidential and not endanger access to jobs, tenure, job security or opportunities for advancement.
- 7.3.3 Where a worker chooses to voluntarily disclose his or her HIV status to the employer or to other workers, this information must not be disclosed to others without the worker's express written consent. Where written consent is not possible, steps must be taken to confirm that the worker wishes to disclose his or her HIV status.
- 7.3.4 Mechanisms must be created to encourage openness, acceptance and support for those employers and workers who wish to voluntarily disclose their HIV status within the workplace.
- 7.3.5 Access to personal data relating to a worker's HIV status and related medical data must be bound by the rules of confidentiality consistent with the relevant national laws.

7.4 Reasonable Accommodation

- 7.4.1 [Section 15 \(2\) \(c\)](#) of the Employment Equity Act requires employers to provide reasonable accommodation for all workers, including persons living with HIV and AIDS, in order for them to access and enjoy equal employment opportunities.
- 7.4.2 The obligation to make reasonable accommodation may arise when a worker voluntarily discloses his or her HIV status.
- 7.4.3 Employers must also accommodate workers when the work or the work environment changes or impairment varies which affects the worker's ability to perform the essential functions of the job.
- 7.4.4 Reasonable accommodation includes but is not limited to-
 - (a) adapting existing facilities to make them accessible;
 - (b) adapting existing equipment or acquiring new equipment including computer hardware and software;
 - (c) re-organizing workstations;
 - (d) changing training and assessment materials and systems;
 - (e) restructuring jobs so that non-essential functions are re-assigned;

(f) adjusting working time and leave; and

(g) providing specialised supervision, training and support in the workplace.

7.5 Employee Benefits

7.5.1 Workers with HIV and AIDS must not be unfairly discriminated against in the allocation of employee benefits.

7.5.2 Where an employer offers a medical benefit, that employer must ensure that this benefit does not unfairly discriminate, directly or indirectly, against any worker on the basis of his or her real or perceived HIV status.

7.5.2.1 There should be no unfair discrimination against workers or their dependants based on real or perceived HIV status to access social security systems and occupational insurance schemes or in relation to benefits under such schemes, including health care and disability, death and survivor's benefits.

7.6 Grievance Procedures

7.6.1 Grievance mechanisms and procedures must be easily accessible to ensure effective redress in cases of violation.

7.6.2 Employers must make workers aware of the grievance procedures, particularly to address unfair discrimination relating to HIV in the workplace.

7.6.3 Employers should ensure that the rights of workers with regard to HIV and AIDS, TB and other illnesses and the remedies available to them in the event of a breach of such rights become integrated into existing grievance procedures.

7.6.4 Where all internal dispute resolution process has been exhausted and the grievance remains unresolved, any party to the dispute may refer the dispute to the CCMA for the unfair discrimination within six months in terms of [section 10 \(2\)](#) of the Employment Equity Act.

7.7 Termination of Employment

7.7.1 Real or perceived HIV status in itself is not a valid cause for termination of employment. Workers with HIV-related illness must not be denied the opportunity of continuing to carry out their work.

7.7.2 Where a worker has become too ill to perform his or her current work, an employer is obliged to explore alternatives, including reasonable accommodation and redeployment.

7.7.3 Where a worker has become too ill to perform his or her current work, an employer is obliged to follow accepted guidelines regarding dismissal for incapacity before terminating a worker's services, as set out in the Code of Good Practice on Dismissal contained in Schedule 8 of the Labour Relations Act.

7.7.4 The employer must ensure that as far as possible, the worker's right to confidentiality regarding his or her HIV status is maintained during any incapacity proceedings. A worker must not be compelled to undergo an HIV test or to disclose his or her HIV status as part of such proceedings unless the Labour Court has authorized such a test.

7.7.5 Where a worker alleges unfair dismissal for HIV and AIDS, he or she should refer the matter to the CCMA for unfair dismissal in terms of sections 185 or 187 of the Labour Relations Act within 30 days of the dismissal.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 451 of 15 June 2012: Code of Good Practice on HIV and AIDS and the world of work (Government Gazette No. 35435)/ 8. PROMOTING A HEALTHY AND SAFE WORKING ENVIRONMENT

8. PROMOTING A HEALTHY AND SAFE WORKING ENVIRONMENT

Prevention strategies must be adapted to national conditions and the type of workplace and must take into account gender, cultural, vulnerable populations, social and economic concerns.

8.1 Prevention Programmes

Workplace prevention programmes must ensure-

(a) That accurate and up to date relevant and timely information is made available and accessible to all in a culturally sensitive format and language through the different channels of communication available;

(b) Comprehensive education programmes to help women and men understand and reduce the risk of all modes of HIV transmission. This must include mother-to-child transmission and to understand the importance of changing risk behaviours related to infection;

(c) Effective occupational safety and health measures, including harm-reduction strategies;

(d) Measures to encourage workers to know their own HIV status through voluntary counselling and testing;

- (e) Access to all means of prevention, including male and female condoms, medical male circumcision, elimination of mother-to-child transmission and where appropriate information about correct use and the availability of post-exposure prophylaxis; and
- (f) Effective measures to reduce high-risk behaviours, including for the most at-risk groups with a view to decreasing the incidence of HIV and AIDS.

8.2 Treatment, Care and Support

- 8.2.1 Employers must ensure that workplace policies and programmes pertaining to health interventions are determined in consultation with workers and their representatives and should be linked to public health services.
- 8.2.2 Employers must ensure that those workers and their dependants living with HIV and AIDS related illnesses benefit from access to health care, whether this is provided under public health, social security systems or private insurance or other schemes.
- 8.2.3 All persons covered by this Code, including workers and their dependants living with HIV and AIDS, must be entitled to health services in terms of [clause 8.2.2](#) of this Code including access to free or affordable-
 - (a) Voluntary counselling and testing;
 - (b) Antiretroviral treatment and adherence education, information and support;
 - (c) Nutrition consistent with treatment requirements;
 - (d) Treatment for opportunistic infections and STIs, and any HIV-related illnesses, in particular tuberculosis; and
 - (e) Support and prevention programmes including psychosocial support.
- 8.2.4 Programmes of care and support must include measures of reasonable accommodation in the workplace for workers living with HIV or HIV-related illnesses.
- 8.2.5 Care and support are critical elements that must guide a workplace in responding to HIV and AIDS. Mechanisms must be created to encourage openness, acceptance and support for workers infected and affected by HIV and AIDS and to ensure that they are not unfairly discriminated against nor stigmatised.
- 8.2.6 Workplaces must endeavour to provide counselling and other forms of social support to workers infected and affected by HIV and AIDS. Where health-care services exist at the workplace, appropriate treatment must be provided. Where these services are not possible, workers must be informed about the location of available outside services.
- 8.2.7 Workers with HIV and AIDS must be treated no less favourably than workers with other serious illnesses in terms of benefits, workers' compensation and reasonable accommodation.
- 8.2.8 Workers with HIV and AIDS should be encouraged to use expertise and assistance from within the organisation for counselling. Where this is not available, employers may then acquire the necessary assistance and expertise from the outside.

8.3 Occupational Health and Safety

- 8.3.1 An employer is obligated to provide and maintain a workplace that is safe and without risk to the health of its workers.
- 8.3.2 HIV and AIDS must form an integral part of any workplace Occupational Health and Safety strategy.
- 8.3.3 The working environment must be safe and healthy in order to prevent transmission of HIV and TB in the workplace.
- 8.3.4 Every workplace must ensure that it complies with the provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents and the Mine Health and Safety Act. Every workplace must also ensure that its policy deals with, amongst others, the risk of transmission, appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace.
- 8.3.5 All workers must be made aware of the procedures to be followed in applying for compensation for occupational infections and diseases and the reporting of all occupational accidents.
- 8.3.6 Health and safety measures adopted at the workplace to prevent workers' exposure to HIV and TB and to minimise the risk of such workers contracting HIV and TB, must include universal precautions, accident and hazard prevention strategies, work practice control, personal protective equipment, environmental control measures and post exposure prophylaxis.
- 8.3.7 Employers, workers and their organizations must take responsibility for contributing towards a safe and healthy working environment as per the Occupational Health and Safety Act.

8.4 Children and Young Persons

- 8.4.1 Government, employers and workers, including their organisations, must adopt appropriate measures to combat child labour and child trafficking that may result from the death or illness of family members or caregivers due to HIV and AIDS and to reduce the vulnerability of children

to HIV and AIDS and TB. This is considered in view of the relevant International, Regional and National standards on Fundamental Principles and Rights of children and young persons. Special measures must be taken to protect these children from sexual abuse and sexual exploitation.

- 8.4.2 Measures must be taken to protect children and young workers against HIV and TB infection. Such measures must include the special needs of children and young persons in the response to HIV and AIDS in national, provincial, local, sectoral and workplace policies and programmes. These should include objective sexual and reproductive health education, in particular the dissemination of information on HIV and AIDS through vocational training and in youth employment programmes and services.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 451 of 15 June 2012: Code of Good Practice on HIV and AIDS and the world of work (Government Gazette No. 35435)/ 9. MANAGEMENT OF HIV AND AIDS IN THE WORKPLACE

9. MANAGEMENT OF HIV AND AIDS IN THE WORKPLACE

9.1 Assess the impact of HIV and AIDS in the Workplace

Employers, trade unions and employees must develop and effectively implement integrated gender sensitive strategies to respond to the impact of HIV and AIDS, including TB and STIs, in the workplace. This must be done as far as possible in cooperation with national, provincial, local and sectoral initiatives, including-

- (a) Impact assessment that includes risk profiling, resource implications, environmental assessment, vulnerability and susceptibility to HIV infection; and
- (b) The development and implementation of HIV and AIDS workplace policies and programmes that are free from unfair discrimination and promote human rights.

9.2 Developing HIV and AIDS Workplace Programmes

In developing and implementing long and short term measures to deal with and reduce this impact, the following must be taken into account-

- (a) Compliance with legal obligations;
- (b) Management commitment;
- (c) Consultation with relevant stakeholders;
- (d) Development and effective implementation of HIV and AIDS and TB Workplace Policies, Prevention and Wellness Programmes;
- (e) Resources, including human, financial and operational resources must be allocated for the effective development and implementation of policies and programmes;
- (f) Policies and programmes must be informed by the outcomes of research and evidence; and
- (g) Monitoring and Evaluation of HIV and AIDS policies and programmes must be put in place.

9.3 Education, Training and Information

All social partners have the responsibility to promote education, training and information about HIV and AIDS in the world of work.

- 9.3.1 Training, safety instructions and any necessary guidance in the workplace related to HIV and AIDS must be provided in a clear and accessible form for all workers.
- 9.3.2 Training, instructions and guidance must be sensitive to gender and cultural concerns and adapted to the characteristics of the workforce, taking into account the risk factors for the workforce.
- 9.3.3 Up to date scientific and socio-economic information and, where appropriate, education and training on HIV and AIDS must be available to employers and workers' representatives, in order to assist such employers and workers' representatives to make informed decisions and take appropriate measures in the workplace.
- 9.3.4 Workers including the most vulnerable must receive awareness raising information and appropriate training on HIV infection control procedures in the context of workplace accidents and first aid. All Workers, including those whose jobs put them at risk of exposure to human blood, blood products and other body fluids must receive additional training in exposure prevention, exposure registration procedures and post-exposure prophylaxis.
- 9.3.5 Workers and their representatives must be informed and consulted on measures taken to implement workplace policies and programmes related to HIV and AIDS, TB and other related illnesses.

10. MONITORING AND EVALUATION (M&E)

- 10.1 Employers and workers, including their organisations, should-
 - (a) design and implement a HIV and AIDS workplace M&E plan that includes strategies to address TB and STIs in the world of work;
 - (b) identify the key elements needed to make the M&E system work;
 - (c) select and make use of indicators that are specific, measurable, attainable, relevant and time-bound; and
 - (d) gather and analyse qualitative and/or quantitative information and communicate it effectively.
- 10.2 Employers in collaboration with the workers must establish monitoring and evaluation mechanisms for workplace programmes in order to track implementation and strategically respond to the epidemic.
- 10.3 Data should be disaggregated in order to prioritise targeted intervention measures.
- 10.4 The monitoring mechanism strategies should take into account and support the national monitoring and evaluation efforts that relates to curbing HIV and AIDS, TB and STIs.
- 10.5 Small businesses that are not in a position to have sophisticated monitoring and evaluating mechanisms in place must adopt simple strategies to monitor and evaluate the HIV and AIDS, TB and STIs programmes in order to track implementation.

GN 448 of 1 June 2015: Code of Good Practice on Equal Pay/Remuneration for Work of Equal Value (Government Gazette No. 38837)

DEPARTMENT OF LABOUR

I Mildred Nelisiwe Oliphant, Minister of Labour, hereby in terms of [section 54 \(1\)](#) of the Employment Equity Act, 1998 (Act [No. 55 of 1998](#) as amended), and on the advice of the Commission for Employment Equity, issue a Code of Good Practice on Equal Pay/Remuneration for Work of Equal Value.

(Signed)

MINISTER OF LABOUR

MN OLIPHANT, MP

DATE: 16/04/2015

CODE OF GOOD PRACTICE ON EQUAL PAY/REMUNERATION FOR WORK OF EQUAL VALUE

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1. OBJECTIVES

- 1.1. The objective of this Code is to provide practical guidance to employers and employees on how to apply the principle of equal pay/remuneration for work of equal value¹ in their workplaces.
- 1.2. This Code seeks to promote the implementation of pay/remuneration equity in the workplace by employers, including the State, employees and trade unions through human resources policies, practices and job evaluation processes.
- 1.3. The Code further aims to encourage employers to manage their pay/remuneration policies, practices and proper consultation processes within a sound governance framework in order to drive and maximise on the principle of equal pay/remuneration for work of equal value that is fair, free from unfair discrimination and consistently applied.

Footnotes

- 1 In this Code, "work of equal value" is used to include work that is the same or substantially the same or work of equal value as referred to in [section 6 \(4\)](#) of the Act.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 448 of 1 June 2015: Code of Good Practice on Equal Pay/Remuneration for Work of Equal Value (Government Gazette No. 38837)/ 2. SCOPE

2. SCOPE

- 2.1. This Code is issued in terms of [section 54](#) of the Employment Equity Act, 1998 (Act [No. 55 of 1998](#)) as amended, its regulations and other Codes issued in terms of the Act. In particular, this Code must be read in conjunction with-
 - 2.1.1. the regulations made by the Minister of Labour in terms of [section 6 \(5\)](#) of the Employment Equity Amendment Act, 2013 on the criteria and methodology for assessing work of equal value²; and
 - 2.1.2. the Code of Good Practice on the Integration of Employment Equity into Human Resources Policies, Practices and Procedures (HR Code), in particular Part B dealing with Terms and Conditions of Employment.
- 2.2. This Code applies to all employers and employees covered by the Act. To obtain greater clarity as to the definition of an employee, reference should be made to the Code of Good Practice: Who is an Employee issued by the National Economic Development and Labour Council (NEDLAC) in terms of the Labour Relations Act, 1995 (Act [No. 66 of 1995](#)), as amended.
- 2.3. The Code promotes the elimination of unfair discrimination in respect of pay/remuneration by applying the principle of equal pay/remuneration for work of equal value.
- 2.4. The term "remuneration" as defined in the Basic Conditions of Employment Act³, 1997 (Act [No. 75 of 1997](#)), as amended and other labour legislation includes any payment in money or in kind, or both, made or owing to any person in return for working for another person, including the State.
- 2.5. Employers must, therefore, examine all aspects of their pay/remuneration policies and practices to ensure compliance with the principle of equal pay/remuneration for work of equal value.
- 2.6. The code provides guidance when interpreting the Employment Equity Act (the Act) and its regulations.

Footnotes

- 2 Any reference to regulations in this Code refers to the Employment Equity Regulations, 2014.
- 3 BCEA Schedule on Calculation of Employee's Remuneration in terms of section 35 (5), as published under GN 691, 23 May 2003, which provides guidance on calculating remuneration.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 448 of 1 June 2015: Code of Good Practice on Equal Pay/Remuneration for Work of Equal Value (Government Gazette No. 38837)/ 3. LEGAL FRAMEWORK AND PRINCIPLES

3. LEGAL FRAMEWORK AND PRINCIPLES

- 3.1. [Section 9 \(3\)](#) of the Constitution of the Republic of South Africa states that, "the State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth".
- 3.2. Furthermore, [section 9 \(4\)](#) of the Constitution states that, "no person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination".
- 3.3. The International Labour Organisation (ILO) Equal Remuneration Convention 1951 (No. 100), which South Africa ratified in 2000, obliges ratifying member States to give effect to the principle of equal pay/remuneration for men and women workers for work of equal value.
- 3.4. The obligation to eliminate unfair discrimination in respect of pay/remuneration arises under Chapter 2 of the Act. [Section 5](#) of the Act requires employers to take positive steps to eliminate unfair

discrimination in their workplaces.

- 3.5. Every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice.
- 3.6. Employers must ensure that pay/remuneration policies and practices are applied consistently without unfair discrimination on the basis of any one or combination of the listed or on any other arbitrary grounds.
- 3.7. [Section 6 \(4\)](#) of the Act, which came into effect on 1 August 2014, provides that a difference in terms and conditions of employment between employees of the same employer, performing the same or substantially the same work or work of equal value, that is directly or indirectly based on any one or more of the grounds listed in subsection (1) or on any other arbitrary ground, is unfair discrimination.
- 3.8. [Section 27](#) of the Act requires designated employers to report on the pay/remuneration and benefits received by employees in each occupational level of their workforce, and where there are disproportionate income differentials or unfair discrimination by virtue of a difference in terms and conditions of employment, employers must take steps to progressively reduce these differentials. Guidance in this regard is provided for in the Code of Good Practice on the Integration of Employment Equity into Human Resources Policies, Practices and Procedures (HR Code).
- 3.9. [Regulations 2 to 7](#) of the Employment Equity Regulations, 2014, published on 1 August 2014 cover the definition of work of equal value, criteria and the methodology for assessing work of equal value.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 448 of 1 June 2015: Code of Good Practice on Equal Pay/Remuneration for Work of Equal Value (Government Gazette No. 38837)/ 4. ELIMINATING UNFAIR DISCRIMINATION IN RESPECT OF PAY/REMUNERATION

4. ELIMINATING UNFAIR DISCRIMINATION IN RESPECT OF PAY/REMUNERATION

- 4.1. An employer must, in order to eliminate unfair discrimination, take steps to eliminate differences in terms and conditions of employment, including pay/remuneration, of employees who perform the same or substantially the same work or work of equal value that are directly or indirectly based on one or more listed or on any other arbitrary ground.
- 4.2. The principle of equal pay/remuneration for work of equal value addresses a specific aspect of workplace discrimination and the undervaluing of work on the basis of a listed or on any other arbitrary ground in terms of [section 6 \(1\)](#) of the Act.
- 4.3. In South Africa, for historical reasons, the undervaluing of work has the greatest significance when examining work performed by employees who are female, black or those with disabilities. However, differences based on any of the listed or any other arbitrary ground may constitute unfair discrimination.
- 4.4. When examining whether the obligation to apply pay/remuneration equity in the workplace is being complied with, three key issues require scrutiny-
 - 4.4.1. Are the jobs that are being compared the same, substantially the same or of equal value in terms of an objective assessment?
 - 4.4.2. Is there a difference in the terms and conditions of employment, including pay/remuneration, of the employees in the jobs that are being compared?
 - 4.4.3. If there are differences in the terms and conditions of employment, can these be justified on fair and rational grounds?
- 4.5. Differences in terms and conditions of employment, including pay/remuneration, of employees of the same employer may not necessarily constitute unfair discrimination where the complainant and the comparator do not perform the same, similar or work of equal value.
- 4.6. A difference in pay/remuneration will only be unfair discrimination if the differences are directly or indirectly based on race, sex, gender, disability or any other listed or on any other arbitrary ground.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 448 of 1 June 2015: Code of Good Practice on Equal Pay/Remuneration for Work of Equal Value (Government Gazette No. 38837)/ 5. EVALUATING JOBS

5. EVALUATING JOBS

- 5.1. Article 3 of the ILO Equal Remuneration Convention 1951 (No. 100) requires that "*measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed*".
- 5.2. While the Convention only applies to equal pay/remuneration for work of equal value between men and women, the need to conduct an objective appraisal of jobs is a necessary element of applying the principle in all contexts, in particular, to eliminate residual structural inequalities related to legislated and practised racial discrimination that applied in the labour market in South Africa.
- 5.3. In order to ascertain the value of the job for the purpose of applying the principle of equal

pay/remuneration for work of equal value, an objective assessment in accordance with relevant and appropriate criteria must be undertaken.

- 5.4. The basic criteria commonly used to evaluate the value of jobs by an employer are-
 - 5.4.1. The responsibility demanded of the work, including responsibility for people, finances and material.** This includes tasks that have an impact on who is accountable for delivery of the enterprise's or organisation's goals, for example, its profitability, financial soundness, market coverage and the health and safety of its clients. It is important to consider the various types of responsibility associated with the enterprise's or organisation's goals independently from the hierarchical level of the job or the number of employees it involves supervising.
 - 5.4.2. The skills, qualifications, including prior learning and experience required to perform the work, whether formal or informal.** This includes knowledge and skills which are required for a job. What is important is not how these were acquired but rather that their content corresponds to the requirements of the job being evaluated. Qualifications and skills can be acquired in various ways including academic or vocational training certified by a diploma, paid work experience in the labour market, formal and informal training in the workplace and volunteer work.
 - 5.4.3. Physical, mental and emotional effort required to perform the work.** This refers to the difficulty related to and the fatigue and tension caused by performing job tasks. It is important not to only consider physical efforts but also take mental and psychological effort into consideration.
 - 5.4.4. The assessment of working conditions may include an assessment of the physical environment, psychological conditions, time when and geographic location where the work is performed.** For example, one may consider factors such as noise levels and frequent interruptions for office jobs as conditions of work.
- 5.5. Best practice indicates that the four criteria should form part of every job evaluation. These four criteria are generally regarded as being sufficient for evaluating all the tasks performed in an organisation, regardless of the economic sector in which the enterprise operates.
- 5.6. The weighting attached to each of these factors may vary depending on the sector, employer and the job concerned. These factors do not constitute any particular preference in respect of weighting allocation.
- 5.7. In addition, employers may take into account the conditions under which work is performed in evaluating the value of work. However, many employers take working conditions into account when determining pay/remuneration by, for example, paying an allowance, rather than as part of the job evaluation process.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 448 of 1 June 2015: Code of Good Practice on Equal Pay/Remuneration for Work of Equal Value (Government Gazette No. 38837)/ 6. COMPARING AND EVALUATING MALE- AND FEMALE-DOMINATED JOBS

6. COMPARING AND EVALUATING MALE- AND FEMALE-DOMINATED JOBS

- 6.1. Discrimination in pay/remuneration based on the sex of employees is an international phenomenon found to a greater or lesser degree in all countries. The ILO has suggested that due to-
 - 6.1.1. stereotypes with regard to women's work;
 - 6.1.2. traditional job evaluation methods that were designed on the basis of male dominated jobs; and
 - 6.1.3. weaker bargaining power on behalf of female workers.⁴
- 6.2. The use of job evaluation does, in itself, not ensure that there is an absence of unfair discrimination.
 - 6.2.1. It is acknowledged that traditional job evaluation methods were designed on the basis of male-dominated jobs.
 - 6.2.2. Predominantly female jobs often involve different requirements from those of predominantly male jobs, whether in terms of qualifications, effort, responsibility or working conditions.
 - 6.2.3. Traditionally, female-dominated jobs were evaluated based on methods designed mainly for male-dominated jobs, which partly accounts for wage discrimination.
 - 6.2.4. It is important to be vigilant when selecting the method of job evaluation and to ensure that its content is equally tailored to both female-dominated and male-dominated jobs. For instance, responsibility for money or equipment is often valued more than other forms of responsibility.
 - 6.2.5. Jobs involving caring for others or cleaning may be undervalued because of the erroneous assumption that the skills involved in these jobs are intrinsic to nature of women and not acquired through learning and experience.⁵
- 6.3. Employers may therefore be required to establish the value of male- and female-dominated jobs in order to be able to ascertain whether particular jobs have been undervalued and to align female-

dominated jobs with comparable male-dominated jobs in the organisation.

- 6.4. The fact that there are no comparable male-dominated jobs to female-dominated jobs within the employer's organisation, does not necessarily imply that there is no discrimination on grounds of sex or gender (or other prescribed grounds).
- 6.5. An employee may base a claim on the ground that they would have received higher pay/remuneration if they were not female. To succeed in such a claim, the employee would have to show that a male employee hired to perform the work would have been employed on different terms and conditions of employment.

Footnotes

- 4 See, for instance, *Promoting Equity Gender-Neutral Job Evaluation: A Step-by-Step Guide* (ILO, Geneva, 2008) and *Equal Pay: An introductory guide* (ILO, Geneva, 2013).
- 5 *Equal Pay: An introductory guide* (ILO, Geneva, 2013), Part 5.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 448 of 1 June 2015: Code of Good Practice on Equal Pay/Remuneration for Work of Equal Value (Government Gazette No. 38837)/ 7. FACTORS JUSTIFYING DIFFERENTIATION IN PAY/REMUNERATION

7. FACTORS JUSTIFYING DIFFERENTIATION IN PAY/REMUNERATION

- 7.1. Once jobs have been evaluated and/or graded, the various jobs are allocated pay/remuneration packages in accordance with the pay/remuneration philosophy of the employer and the value of the jobs. Employers are required to ensure that unfair discrimination does not occur at any of these stages.
- 7.2. Where employees perform work that is the same or substantially the same or is work of equal value, a difference in terms and conditions of employment, including pay/remuneration, is not unfair discrimination if the differentiation is not based on a listed or on any other arbitrary ground in terms of [section 6 \(1\)](#) of the Employment Equity Act, as amended.
- 7.3. [Regulation 7](#) of the Employment Equity regulations lists a number of grounds which are commonly taken into account in determining pay/remuneration. Subject to what is stated below, it is not unfair discrimination if the difference is fair and rational and is based on any one or a combination of the following factors-
 - 7.3.1. the individuals' respective seniority or length of service;
 - 7.3.2. the individuals' respective qualifications, ability, competence or potential above the minimum acceptable levels required for the performance of the job;
 - 7.3.3. the individuals' respective performance, quantity or quality of work, provided that employees are equally subject to the employer's performance evaluation system, and that the performance evaluation system is consistently applied;
 - 7.3.4. where an employee is demoted as a result of organisational restructuring or for any other legitimate reason without a reduction in pay/remuneration and fixing the employee's salary at this level until the pay/remuneration of employees in the same job category reaches this level;
 - 7.3.5. where an individual is employed temporarily in a position for purposes of gaining experience or training and as a result receives different pay/remuneration or enjoys different terms and conditions of employment;
 - 7.3.6. the existence of a shortage of relevant skill in a particular job classification; and
 - 7.3.7. any other relevant factor that is not unfairly discriminatory in terms of [section 6 \(1\)](#) of the Act.
- 7.4. These factors may not be used to determine pay/remuneration in a manner that is biased or indirectly discriminates against an employee or group of employees based on a listed or on any other arbitrary ground in terms of [section 6 \(1\)](#) of the Act.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 448 of 1 June 2015: Code of Good Practice on Equal Pay/Remuneration for Work of Equal Value (Government Gazette No. 38837)/ 8. PROCESS FOR EVALUATING JOBS FOR THE PURPOSE OF EQUAL PAY/REMUNERATION FOR WORK OF EQUAL VALUE

8. PROCESS FOR EVALUATING JOBS FOR THE PURPOSE OF EQUAL PAY/REMUNERATION FOR WORK OF EQUAL VALUE

- 8.1. The following process may be used to determine equal pay/remuneration for work of equal value-
 - 8.1.1. determine the scope of the audit to be conducted to identify inequalities in pay/remuneration on account of gender, race, disability or any other listed or on any other arbitrary ground;
 - 8.1.2. identify jobs that would be subjected to the audit;
 - 8.1.3. ensure that job profiles or job descriptions exist and are current before evaluating jobs;

- 8.1.4. utilise a job evaluation and/or grading system that is fair and transparent and does not have the effect of discriminating unfairly on any listed or arbitrary ground;
- 8.1.5. compare jobs that are the same, similar or of equal value in the employer's own organisation or company. This should include comparing female-dominated jobs with male-dominated jobs as well as other jobs that may have been undervalued due to, race, disability or other discriminatory grounds;
- 8.1.6. select a method of comparing pay/remuneration, both in money and kind, in the relevant jobs: this can be done by using either the average or the median earning of employees in the relevant jobs as the basis for pay/remuneration comparisons or by using another method that will compare pay/remuneration in a fair and rational manner;
- 8.1.7. identify the reasons for differentiating in pay/remuneration as contemplated by [regulation 7](#) in the Employment Equity regulations and determine whether they are justifiable;
- 8.1.8. where differentiation is found not to be justifiable, determine how to address inequalities identified, without reducing the pay/remuneration of employees to bring about equal remuneration; and
- 8.1.9. monitor and review the process annually.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1085 of 9 November 2015: Code of Good Practice on Employment of Persons with Disabilities (Government Gazette No. 39383)

GN 1085 of 9 November 2015: Code of Good Practice on Employment of Persons with Disabilities (Government Gazette No. 39383)

DEPARTMENT OF LABOUR

Notice is hereby given in terms of [section 54](#) of the Employment Equity Act [55 of 1998](#), that the Minister of Labour, having been advised by the Commission for Employment Equity, has replaced the Code of Good Practice on employment of people with disabilities published under Government Notice 1345 in *Government Gazette* 23702 of 19 August 2002 as corrected by Government Notice 1064 in *Government Gazette* 23718 of 19 August 2002, as set out in this schedule.

(Signed)

M N Oliphant

Minister of Labour

Date: 21/10/2015

CODE OF GOOD PRACTICE ON THE EMPLOYMENT OF PERSONS WITH DISABILITIES

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National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1085 of 9 November 2015: Code of Good Practice on Employment of Persons with Disabilities (Government Gazette No. 39383)/ 1. FOREWORD

1. FOREWORD

The **Employment Equity Act 55 of 1998 (the Act)** constitutes one of the key legislative and policy interventions within the ethos of South Africa's constitutional dispensation. It gives effect to the provisions relating to the implementation of the policies and practices that result in the promotion of equality and diversity in the workplace. Focus is placed on eliminating unfair discrimination and promoting the equitable representation of persons with disabilities in the workplace. Discrimination is a socially constructed action and can thus be avoided by ensuring better knowledge, understanding and awareness about disabilities and the challenges encountered by persons with disabilities.

Although many barriers such as widespread ignorance, fear and stereotypes have caused persons with disabilities to be unfairly discriminated against in society and in employment, South Africa can take pride in its effort to formulate policies to protect the rights of persons with disabilities.

Unfair discrimination against persons with disabilities is perpetuated in many ways, including the following:

- . Unfounded assumptions about the abilities and performance of job applicants and employees with disabilities;
- . Advertising and interviewing arrangements which either exclude persons with disabilities or limit their opportunities to prove themselves;
- . Using selection tests which discriminate unfairly;
- . Inaccessible workplaces; and
- . Inappropriate training for persons with disabilities.

The Code of Good Practice on the Employment of Persons with Disabilities (the Code) is thus part of a broader equality agenda for persons with disabilities to have their rights recognised in the labour market where they experience high levels of unemployment and often remain in low status jobs or earn lower than average remuneration.

The Code is particularly important since disability is a natural part of the human experience and in no way diminishes the rights of individuals to belong and contribute to the labour market. When opportunities and reasonable accommodation are provided, persons with disabilities can contribute valuable skills and abilities to every workplace, and contribute to the economy of our society.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1085 of 9 November 2015: Code of Good Practice on Employment of Persons with Disabilities (Government Gazette No. 39383)/ 2. AIM OF THE CODE

2. AIM OF THE CODE

- 2.1 The Act protects persons with disabilities against unfair discrimination in the workplace and directs employers to implement affirmative action measures to redress discrimination.
- 2.2 The Code is a guide for employers and employees on promoting equal opportunities and fair treatment for persons with disabilities as required by the Act.
- 2.3 The Code is intended to help employers and employees understand their rights and obligations in order to promote certainty and reduce disputes to ensure that persons with disabilities can enjoy and exercise their rights at work.
- 2.4 The Code is intended to help create awareness of the contributions persons with disabilities can make and to encourage employers to fully use the skills of such persons.
- 2.5 It is also intended to ensure that all employers identify, respect and promote the rights of any person with a disability, including the right to dignity, particularly pertaining to work and employment.¹

Footnotes

- 1 UN Convention on the Rights of Persons with Disabilities, Article 27 - Work and employment.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1085 of 9 November 2015: Code of Good Practice on Employment of Persons with Disabilities (Government Gazette No. 39383)/ 3. STATUS OF THE CODE

3. STATUS OF THE CODE

- 3.1 The Code is neither an authoritative summary of the law, nor does it create additional rights and obligations. It does however obligate employers with the responsibility to affirm the rights of persons with disabilities in the workplace, and further serves as a guide for any Court or tribunal to consider when interpreting or applying the Act.
- 3.2 The Code should be read in conjunction with the Act, its regulations and any other relevant Code of

Good Practice issued by the Minister of Labour.

- 3.3 The Code must be implemented in a manner that is sensitive to the fact that every person is unique and each situation may differ. It, therefore, follows that where reasonable and justifiable, the Code should be adapted to give effect to its intention.
- 3.4 Employers, employees and their organizations must use the Code to develop, implement and refine disability equity policies and programmes to suit the needs of their own workplaces.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1085 of 9 November 2015: Code of Good Practice on Employment of Persons with Disabilities (Government Gazette No. 39383)/ 4. LEGAL FRAMEWORK AND GUIDING PRINCIPLES

4. LEGAL FRAMEWORK AND GUIDING PRINCIPLES

The Code is issued in terms of section 54 (1) (a) of the Act and is based on the Constitutional principle that no one may unfairly discriminate against a person on the grounds of disability.

Key guiding principles of the Code²

- (a) Human rights and the respect for inherent dignity;
- (b) Independence and autonomy of individuals;
- (c) Non-discrimination;
- (d) Effective participation and inclusion in society;
- (e) Respect for difference and diversity;
- (f) Equality of opportunity; including equitable representation;
- (g) Accessibility;
- (h) Gender equality;
- (i) Mainstreaming; and
- (j) Health and safety.

Footnotes

- ² Adapted from Article 3 on general principles from the UN Convention on the Rights of Persons with Disabilities, 2007.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1085 of 9 November 2015: Code of Good Practice on Employment of Persons with Disabilities (Government Gazette No. 39383)/ 5. DEFINITIONS AND INTERPRETATION

5. DEFINITIONS AND INTERPRETATION

5.1 Discrimination on the basis of disability

"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.³

5.2 Definition of persons with disabilities for participation in broader society

The UN Convention on the Rights of Persons with Disabilities of 2007 adopts a broad definition for general international guidance to ensure the full, equal and effective participation of persons with disabilities in society.⁴

5.3 Definition of persons with disabilities involving work and employment

The Act includes a definition for persons with disabilities to ensure their full, equal and effective participation on matters pertaining to work and employment.⁵

The scope of protection for persons with disabilities in employment focuses on the **effect of a disability on the person in relation to the working environment**, and not on the diagnosis or the impairment.

Persons are considered as persons with disabilities if they:

- (a) have a physical or mental impairment;
- (b) which is long term or recurring; and

(c) which substantially limits their prospects of entry into, or advancement in employment.

5.3.1 Impairment

An impairment may either be physical or mental or a combination of both.

- (a) **'Physical' impairment** means a partial or total loss of a bodily function or part of the body. It includes sensory impairments such as being deaf, hearing impaired, or visually impaired.
- (b) **'Mental' impairment** means a clinically recognized condition or illness that affects a person's thought processes, judgment or emotions.

5.3.2 Long-term or recurring

- (a) **'Long-term'** means the impairment has lasted or is likely to persist for at least twelve months.
- (b) **'Recurring impairment'** is one that is likely to happen again and to be substantially limiting (see below). It includes a constant chronic condition, even if its effects on a person fluctuate.
- (c) **'Progressive conditions'** are those that are likely to develop or change or recur. Persons living with progressive conditions or illnesses are considered as people with disabilities once the impairment starts to be substantially limiting. Progressive or recurring conditions which have no overt symptoms or which do not substantially limit a person are not disabilities.

5.3.3 Substantially limiting

- (a) Impairment is substantially limiting, if in its nature, duration or effects it substantially limits the person's ability to perform the essential functions of the job for which they are being considered.
- (b) Some impairments are so easily controlled, corrected or lessened, that they have **no limiting effects**. For example, a person who wears spectacles or contact lenses does not have a disability unless even with spectacles or contact lenses the person's vision is substantially impaired.
- (c) For reasons of **public policy**, certain conditions or impairments may not be considered disabilities. These include but are not limited to-
 - (i) sexual behaviour disorders that are against public policy;
 - (ii) self-imposed body adornments such as tattoos and body piercing;
 - (iii) compulsive gambling, tendency to steal or light fires;
 - (iv) disorders that affect a person's mental or physical state if they are caused by current use of illegal drugs or alcohol, unless the affected person is participating in a recognized programme of treatment;
 - (v) normal deviations in height, weight and strength; and conventional physical and mental characteristics and common personality traits.
- (d) An assessment may be done by a suitably qualified person if there is uncertainty as to whether impairment (may be) is substantially limiting.

Footnotes

- 3 Article 2 of the UN Convention on people with Disabilities, 2007.
- 4 "Persons with disabilities" include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.
- 5 "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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1085 of 9 November 2015: Code of Good Practice on Employment of Persons with Disabilities (Government Gazette No. 39383)/ 6. REASONABLE ACCOMMODATION⁶ FOR PERSONS WITH DISABILITIES

6. REASONABLE ACCOMMODATION⁶ FOR PERSONS WITH DISABILITIES

- 6.1 Employers must reasonably accommodate the needs of persons with disabilities.⁷ The **aim of the accommodation** is to reduce the impact of the impairment of the person's capacity to fulfil the essential functions of a job.
- 6.2 Employers must assess and adopt **effective measures**, both in terms of cost and quality that is

consistent with removing the barriers to perform the job and to enjoy equal access to the benefits and opportunities of employment.

- 6.3 Reasonable accommodation requirement **applies to** applicants and employees with disabilities who are suitably qualified for the job, which may be required-
- (a) during the recruitment and selection processes;
 - (b) in the working environment;
 - (c) in the way work is usually done, evaluated and rewarded; and
 - (d) in the benefits and privileges of employment.
- 6.4 The obligation to make reasonable accommodation may arise when an applicant or employee **voluntarily discloses** a disability related accommodation need or when such a need is **reasonably self-evident** to the employer.
- 6.5 Employers must also accommodate employees when work or the **work environment changes or impairment varies** which affects the employee's ability to perform the essential functions of the job.
- 6.6 The employer **must consult** the employee, and where reasonable and by agreement with the employee, acquire the services of technical experts to establish appropriate mechanisms to accommodate the employee.
- 6.7 The **particular accommodation** will depend on the individual, the degree and nature of impairment and its effect on the person, as well as on the job and the working environment.
- 6.8 Reasonable accommodation may be **temporary or permanent**, depending on the nature and extent of the disability.
- 6.9 Reasonable accommodation includes but is not limited to-
- (a) adapting existing facilities to make them accessible;
 - (b) adapting existing equipment or acquiring new equipment including computer hardware and software;
 - (c) re-organizing workstations;
 - (d) changing training and assessment materials and systems;
 - (e) restructuring jobs so that non-essential functions are re-assigned;
 - (f) adjusting working conditions, including working time and leave; and
 - (g) providing specialized supervision, training and support in the workplace.
- 6.10 An employer may evaluate **work performance** against the same standards as other employees; however, the nature of the disability in certain circumstances may require an employer to adapt the way in which performance is measured.
- 6.11 The employer need not accommodate a qualified applicant or an employee with a disability if this would impose an **unjustifiable hardship** on the business of the employer.
- 6.12 'Unjustifiable hardship' is action that requires **significant or considerable difficulty or expense**. This involves considering, amongst other things, the effectiveness of the accommodation and the extent to which it would seriously disrupt the operation of the business.
- 6.13 An accommodation that imposes an unjustifiable hardship for one employer at a specific time may not be so for another or for the same employer at a different time.

Footnotes

- 6 UN Convention on the Rights of Persons with Disabilities, 2007 defines "Reasonable accommodation as "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms."
- 7 Section 1 of the Act defines reasonable accommodation as "any modification or adjustment to a job or to the working environment that will enable a person from a designated group to have reasonable access to or participate or advance in employment".

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1085 of 9 November 2015: Code of Good Practice on Employment of Persons with Disabilities (Government Gazette No. 39383)/ 7. RECRUITMENT AND SELECTION

7. RECRUITMENT AND SELECTION

7.1 Recruitment

7.1.1 When employers recruit they must-

- (a) identify the **inherent requirements** of the vacant position in terms of the essential functions of the job;

- (b) **describe clearly** the necessary skills and capabilities required for the job;
- (c) **set reasonable criteria** for selection, preferably in writing, for job applicants for such vacant positions.

- 7.1.2 The '**inherent requirements of the job**' are those requirements the employer stipulates as necessary for a person to be appointed to the job, and are necessary in order to enable an employee to perform the essential functions of the job.
- 7.1.3 **Application forms** should focus on identifying an applicant's ability to perform the inherent requirements of the job.
- 7.1.4 **Advertisements** should be accessible to persons with disabilities and, where reasonable and practical, circulated to organizations that represent the interests of persons with disabilities.
- 7.1.5 Advertisements or notices must include **sufficient detail** about the essential functions and the inherent requirements of the job so that potential applicants with disabilities can be able to make an informed decision.
- 7.1.6 Employers may not include criteria that is not necessary to perform the essential functions of the job, as selection based on non-essential functions may unfairly exclude persons with disabilities.
- 7.1.7 On request and if reasonable in the circumstances, notices and advertisements should be provided in a **format appropriate** to persons with disabilities such as large print, Braille, or audiotape.

7.2 Selection

- 7.2.1 Subject to reasonable accommodation, employers should apply the same criteria to test the ability of persons with disabilities as are applied to other applicants.
- 7.2.2 The purpose of the selection process is to assess whether or not the applicant is **suitably qualified**.⁸ This may require a two-stage process if the applicant has a disability, which includes:
 - (a) Determining whether an applicant is suitably qualified;
 - (b) Determining whether a 'suitably qualified applicant' needs any accommodation to be able to perform the essential functions of the job.
- 7.2.3 When assessing if an applicant is suitably qualified, an employer may not **request information** about actual or perceived disability from a previous employer or third party unless with the written consent of the applicant.
- 7.2.4 Employers must **monitor** their criteria for selection. If these criteria tend to exclude people with disabilities, they must be reviewed to ensure that they do not unfairly discriminate against persons with disabilities.

7.3 Interviews

- 7.3.1 Selection interviews must be **objective and unbiased**. Interviewers must avoid assumptions about persons with disabilities.
- 7.3.2 If the applicant has **disclosed a disability or has a self-evident disability**, the employer must focus on whether the applicant is suitable qualified for the work rather than on any actual or presumed disability.
- 7.3.3 Interviewers should ask applicants referred to in 7.3.2 above, to indicate how they would perform the essential functions or work and if reasonable accommodation is required.
- 7.3.4 If the employer **knows in advance** that the applicant has a disability, or if the applicant has a self-evident disability, the employer should if necessary, make reasonable accommodation during the interview.

7.4 Conditional Job Offers

- 7.4.1 If an applicant with a disability is suitably qualified, an employer may make a job offer **conditional on medical or functional testing** to determine an applicant's actual or potential ability to perform the essential functions of a specific job.
- 7.4.2 The testing must comply with the statutory requirements and must determine **if the applicant is able to perform** the essential functions of the job, with or without reasonable accommodation.
- 7.4.3 A conditional job offer may only be made to one person at a time, not to all applicants with disabilities that may have applied for the job.
- 7.4.4 The employer may withdraw the job offer if the testing shows that-
 - (a) Reasonable accommodation requirements would create **unjustifiable hardship**; or
 - (b) There is an objective justification that relates to the inherent requirements of the job; or
 - (c) There is an objective justification that relates to health and safety.

7.5 Terms and Conditions of Employment

- 7.5.1 An employer may not-
- (a) employ people with disabilities or,
 - (b) retain employees who become disabled, on **less favourable** terms and conditions than employees doing the same work, for reasons connected with the disability.
- 7.5.2 No person may harass an employee on the ground of disability. Such harassment may include teasing, ridicule and offensive remarks. Any alleged harassment should be handled by the employer in terms of the guidelines contained in the Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices and the Code of Good Practice on the Handling of Sexual Harassment Cases published in terms of the Labour Relations Act, 1995.

Footnotes

8 The Act provides for 'suitably qualified person' in sub sections 20 (3), 20 (4), and 20 (5). Sub section 20 (3) states that 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.

Subsection 20 (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. Subsection 20 (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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1085 of 9 November 2015: Code of Good Practice on Employment of Persons with Disabilities (Government Gazette No. 39383)/ 8. MEDICAL AND PSYCHOLOGICAL TESTING AND OTHER SIMILAR ASSESSMENTS

8. MEDICAL AND PSYCHOLOGICAL TESTING AND OTHER SIMILAR ASSESSMENTS

8.1 Medical Testing

- 8.1.1 Tests must comply with sections 7 and 8 of the **Act**.⁹ They must be **relevant and appropriate** to the kind of work for which the applicant or employee is being tested.
- 8.1.2 Employers should establish that **tests do not unfairly exclude** and are not biased in how or when they are applied, assessed or interpreted.
- 8.1.3 Tests to establish the **health** of an applicant or employee should be distinguished from tests that assess the ability to perform essential job functions or duties.
- 8.1.4 **Testing** to determine the health status of an employee should therefore only be carried out after an employer has established that the person is in fact competent to perform the essential job functions or duties and after a job offer has been made. The same applies to medical testing for admission to membership of an employee benefit scheme.
- 8.1.5 An employer who requires a person to undergo any medical, psychological testing and other similar assessments must **bear the costs** of the test.

8.2 Testing after Illness or Injury

- 8.2.1 If an employee has been **ill or injured**¹⁰ and it appears that the employee is not able to perform the job, the employer may require the employee to agree to a functional determination of disability.
- 8.2.2 Such medical or other appropriate tests shall be used to-
- (a) determine if the employee can safely perform the job; or
 - (b) to identify reasonable accommodation required for the employee.

8.3 Health Screening and Safety

- 8.3.1 Employers are required to provide and maintain a safe and healthy **working environment**.
- 8.3.2 An employer should not employ a person if the employer can demonstrate that a person with a disability would represent an actual substantial **risk** to him or her or other people, which could not be eliminated or reduced by applicable reasonable accommodation.
- 8.3.3 An employer is not obliged to retain an employee with a disability in the same position if an objective assessment shows that work would expose the employee or others to an actual substantive health and safety risk. This would only apply where there is no reasonable accommodation possible to mitigate the risk.

Footnotes

9 Section 7 of the Act provides that 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. Section 7 (2) Testing of an employee to determine that employee's HIV status is prohibited unless such testing is determined to be justifiable by the Labour Court in terms of

section 50 (4) of this Act. Psychological testing and other similar assessments of an employee are prohibited unless the test or assessment being used-

- (a) had been scientifically shown to be valid and reliable
 - (b) can be applied fairly to all employees;
 - (c) is not biased against any employee or group; and
 - (d) has been certified by the Health Professions Council of South Africa established by [section 2](#) of the Health Professions Act, 1974 (Act [No. 56 of 1974](#)), or any other body which may be authorized by law to certify those tests or assessments.
- 10 See also sections 10 and 11 of the '*Code of Good Practice: Dismissal*' published under [section 203](#) of the Labour Relations Act [66 of 1995](#) for provisions relating to "Incapacity: III health and injury" and dismissal.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1085 of 9 November 2015: Code of Good Practice on Employment of Persons with Disabilities (Government Gazette No. 39383)/ 9. PLACEMENT

9. PLACEMENT

- 9.1 Placement involves the **orientation and initial training** of a new employee.
- 9.2 Orientation and initial training should be **accessible**, responsive to and able to reasonably accommodate the needs of employees who have disabilities.
- 9.3 Subject to reasonable accommodation, new employees with disabilities and other employees who do not have disabilities must be **treated equally**.
- 9.4 An employer must make an effort to include disability sensitisation in the orientation/induction and other relevant training programmes of their organisations.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1085 of 9 November 2015: Code of Good Practice on Employment of Persons with Disabilities (Government Gazette No. 39383)/ 10. TRAINING AND CAREER ADVANCEMENT

10. TRAINING AND CAREER ADVANCEMENT

- 10.1 Employees with disabilities must be **consulted** in order to ensure input specific to their career advancement.
- 10.2 Facilities and materials for training, work organisation and recreation should be **accessible** to employees with disabilities.
- 10.3 Systems and practices to **evaluate work performance** must clearly identify and fairly measure and reward performance of the essential functions of the job. Work that falls outside the essential functions of the job must not be evaluated.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1085 of 9 November 2015: Code of Good Practice on Employment of Persons with Disabilities (Government Gazette No. 39383)/ 11. RETAINING PERSONS WITH DISABILITIES

11. RETAINING PERSONS WITH DISABILITIES

- 11.1 Employees who become **disabled during employment** should, where reasonable, be re-integrated into work. Employers should seek to minimize the impact of the disability on employees.
- 11.2 If an employee becomes disabled, the employer must **consult** the employee to assess if the disability can be **reasonably accommodated**.
- 11.3 If an employee becomes disabled, the employer must maintain contact with the employee and where reasonable encourage **early return-to-work**. This may require vocational rehabilitation, transitional work programmes and where appropriate, temporary or permanent flexible working time.
- 11.4 If an employee is **frequently absent** from work for reasons of illness or injury, the employer should consult the employee to assess if the reason for absence is a disability that requires reasonable accommodation.
- 11.5 If reasonable, employers should explore the possibility of offering **alternative work**, reduced work or flexible work placement, so that employees are not compelled or encouraged to terminate their employment.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1085 of 9 November 2015: Code of Good Practice on Employment of Persons with Disabilities (Government Gazette No. 39383)/ 12. TERMINATION OF EMPLOYMENT

12. TERMINATION OF EMPLOYMENT

- 12.1 If the employer is **unable** to retain the employee in employment in terms of paragraph 11 above, then the employer may terminate the employment relationship.
- 12.2 When employees who have disabilities are dismissed for **operational requirements**, the employer must ensure that any selection criteria used do not either directly or indirectly unfairly discriminate against persons with disabilities.
- 12.3 Employers who provide **disability benefits** must ensure that employees are appropriately advised before they apply for the benefits available and before resigning from employment because of a medical condition.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1085 of 9 November 2015: Code of Good Practice on Employment of Persons with Disabilities (Government Gazette No. 39383)/ 13. WORKERS' COMPENSATION

13. WORKERS' COMPENSATION

- 13.1 Employers should assist employees whose disability arose from a work related illness or accident, to receive the relevant statutory compensation.
- 13.2 Employers must also assist employees with disabilities with any unemployment insurance claims.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1085 of 9 November 2015: Code of Good Practice on Employment of Persons with Disabilities (Government Gazette No. 39383)/ 14. CONFIDENTIALITY AND DISCLOSURE OF DISABILITY

14. CONFIDENTIALITY AND DISCLOSURE OF DISABILITY

14.1 Confidentiality

- 14.1.1 Subject to sections 7¹¹ and 18 of the Act¹², employers, including health and medical services personnel, may only gather private information relating to employees if it is necessary to achieve a **legitimate purpose**, with the written consent of the person.
- 14.1.2 Employers must **protect the confidentiality** of the information that has been disclosed and must take care to keep records of private information relating to the disability of applicants and employees confidential and must be kept separate from general personnel records.
- 14.1.3 When an employer **no longer requires** this information, it must be destroyed.
- 14.1.4 Subject to paragraph 14.2.7, employers may not disclose any information relating to a person's disability without the **written consent** of the employee concerned unless legally required.

14.2 Disclosure

- 14.2.1 Persons with disabilities are entitled to keep their disability status confidential. But if the employer is **not aware of the disability** or the need to be accommodated, the employer is not obliged to provide it. This does not absolve an employer from their responsibility not to discriminate unfairly, directly or indirectly against job applicants.
- 14.2.2 A person with a disability may disclose their disability at any time, even if there is no immediate need for reasonable accommodation.
- 14.2.3 If the disability is **not self-evident** the employer may require the employee to disclose sufficient information to confirm the disability or the accommodation needs.
- 14.2.4 If on reasonable grounds the employer does not believe that the employee is disabled, or that the employee requires accommodation, the employer is entitled to request the employee to be tested to determine the employee's ability or disability, at the expense of the employer.
- 14.2.5 As information about disability may be **technical**, employers should ensure that a competent person interprets the information.
- 14.2.6 If an employer requires **further information** this must be relevant to a specific job and its essential functions.
- 14.2.7 An employer may not reveal the fact of an employee's disability, unless this is required for the health or safety of the person with the disability or other persons.
- 14.2.8 The employer may, after consulting the person with the disability, **advise relevant staff** that the employee requires accommodation.

Footnotes

- 11 Section 7 (1) of the Act provides that "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. 7 (2) Testing of an employee to determine that employee's HIV status is prohibited unless such testing is determined to be justifiable by the Labour Court in terms of

Section 50 (4) of this Act."

- 12 Section 18 (1) of the Act provides that "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 all those parties to consult effectively, and 18 (2) Unless this Act provides otherwise, the provisions of section 16 of the Labour Relations Act, with the changes required by context, apply to disclosure of information."

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1085 of 9 November 2015: Code of Good Practice on Employment of Persons with Disabilities (Government Gazette No. 39383)/ 15. EMPLOYEE BENEFITS

15. EMPLOYEE BENEFITS

- 15.1 An employer who provides or arranges for occupational insurance or other benefit plans directly or through a separate benefit scheme or fund, must ensure that they **do not unfairly discriminate**, either directly or indirectly against persons with disabilities.¹³
- 15.2 Employees with disabilities may not be **refused membership** of a benefit scheme only because they have a disability. To increase job security for employees who have disabilities and to reduce the costs of benefit schemes, designated employers should investigate and, if reasonable, offer **benefit schemes that reasonably accommodate** persons with disabilities. These include-
- (a) vocational rehabilitation, training and temporary income replacement benefits for employees who, because of illness or injury, cannot work for an extended period, and
 - (b) financial compensation for employees who because of a disability are able to continue to work, but at lower levels of pay than they enjoyed before becoming disabled.

Footnotes

- 13 Benefits in this Code refer to benefits such as fringe benefits, medical benefits, group disability assurance benefits, retirement schemes and life assurance schemes.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1085 of 9 November 2015: Code of Good Practice on Employment of Persons with Disabilities (Government Gazette No. 39383)/ 16. EMPLOYMENT EQUITY PLANNING IN RESPECT OF PERSONS WITH DISABILITIES

16. EMPLOYMENT EQUITY PLANNING IN RESPECT OF PERSONS WITH DISABILITIES

- 16.1 The Code of Good Practice for the Preparation, Implementation and Monitoring of Employment Equity Plans provides guidelines to employers and employees.¹⁴ This Code spells out **additional measures** to ensure that persons with disabilities who are suitably qualified for a job can enjoy equal opportunities and are equitably represented in the workforce.
- 16.2 Further guidance is also provided in the Code of Good Practice for Preparation, Implementation and Monitoring of Employment Equity Plans on how to conduct an analysis and develop an employment equity plan in templates annexed to the Employment Equity Regulations.
- 16.3 When designated employers are **consulting** in terms of section 16 of the Employment Equity Act, 1998 they should use the opportunity to heighten the awareness of their employees of the value and importance of recruiting and retaining the employees who have disabilities.
- 16.4 When an employer facilitates the establishment of a **consultative forum** in terms of section 16 (1) (a) and (b) of the Act¹⁵, the employer should take specific steps to promote the representation of employees with different disabilities in the forum.
- 16.5 If people with disabilities are under-represented in all occupational levels and categories in the workplace, the employer could **seek guidance** from organisations that represent persons with disabilities or relevant experts, for example in vocational rehabilitation and occupational therapy.
- 16.6 When designated employers are **compiling their workplace profile** in terms of Section 19 of the Act, employees with disabilities, including persons with non-visible disabilities, may choose to either:
- (a) not disclose their disability status; or
 - (b) disclose their disability openly to their employer; or
 - (c) disclose their disability in a confidential way which assures confidentiality of their identity and their impairment and any disability related accommodation that may be requested and/or required.
- 16.7 The workplace profile should include any employees who are **not in active employment**; for example, employees who are receiving total or partial income replacement benefits while recovering from illness or disability.
- 16.8 When designated employers are **setting targets**, they must aim to recruit and promote and retain persons with disabilities at all occupational levels, as persons with disabilities are often employed in low status work and tend to be promoted less often than employees without disabilities.

- 16.9 If employees with disabilities are **concentrated in particular occupational levels**, the employer should consider if its criteria for selection or performance standards could be adapted to facilitate employees with disabilities being employed in different levels.
- 16.10 Employers should regularly evaluate the **relationship between employees and the working environment**, and where necessary provide appropriate programmes to prevent injury, illness and disability and promote health and safety at work.
- 16.11 Employers should also adopt and implement the 'Universal Design'¹⁶ concept to promote accessibility to their goods and services.

Footnotes

- 14 See also Code of Good Practice on the Preparation, Implementation and Monitoring of Employment Equity Plans.
- 15 Section 16 (1) states that "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.
- 16 UN Convention on the Rights of Persons with Disabilities, 2007 defines "Universal Design" as the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design. 'Universal Design' shall not exclude assistive devices for particular groups of persons with disabilities where this is needed."

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1085 of 9 November 2015: Code of Good Practice on Employment of Persons with Disabilities (Government Gazette No. 39383)/ 17. EDUCATION AND AWARENESS

17. EDUCATION AND AWARENESS

- 17.1 The Department of Labour should ensure that copies of this code are available and accessible, particularly to persons with disabilities and organisations offering support to such persons and their families.
- 17.2 Employers and employer organizations should include the Code in their orientation, education and training programmes of employees.
- 17.3 Trade unions should include the Code in their education and training programmes of shop stewards and employees.
- 17.4 The Department of Labour should ensure that copies of this code are available and accessible, particularly to persons with disabilities and organisations offering support to such persons and their families.
- 17.5 Employers and employer organizations should include the Code in their orientation, education and training programmes of employees.
- 17.6 Trade unions should include the Code in their education and training programmes of shop stewards and employees.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 1085 of 9 November 2015: Code of Good Practice on Employment of Persons with Disabilities (Government Gazette No. 39383)/ 18. MONITORING AND EVALUATION

18. MONITORING AND EVALUATION

- 18.1 The responsibility for overseeing the implementation of the Code must be assigned to one or more senior manager(s) and must:
 - (a) be included in the performance contract of the senior manager(s).
 - (b) be treated seriously and weighted accordingly in the performance contract of the senior manager(s) concerned.
- 18.2 Predefined indicators must be established in order to ensure that what is being measured for monitoring and evaluation is established from the initial stages of the process.
- 18.3 Outcomes of the monitoring and evaluation process must enhance existing and inform future policies and practices.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 393 of 28 April 2017: Code of Good Practice on the Preparation, Implementation and Monitoring of the Employment Equity Plan (Government Gazette No. 40817)

**GN 393 of 28 April 2017: Code of Good Practice on the Preparation, Implementation and Monitoring of the
Employment Equity Plan
(Government Gazette No. 40817)**

DEPARTMENT OF LABOUR

Notice is hereby given under Section 54 (2) of the Employment Equity Act No. 55, 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 Employment Equity Plan, as outlined in this schedule.

**SCHEDULE
CODE OF GOOD PRACTICE ON THE PREPARATION, IMPLEMENTATION AND MONITORING OF THE
EMPLOYMENT EQUITY PLAN (EE PLAN)**

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National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 393 of 28 April 2017: Code of Good Practice on the Preparation, Implementation and Monitoring of the Employment Equity Plan (Government Gazette No. 40817)/ 1. OBJECTIVE

1. OBJECTIVE

The objective of this Code is to provide guidelines on good practice, in terms of the requirements of the Employment Equity Act, 1998 (Act [No. 55 of 1998](#)) as amended (**hereafter referred to as the Act**), for the preparation, implementation and monitoring of an employment equity plan (**hereafter referred to as the EE plan**)-

- (a) This Code applies to all employers that are required to prepare and implement an EE Plan in terms of the Act.
- (b) Designated employers should, in consultation with their employees, apply the guidelines as set out in this Code to prepare, implement and monitor their EE Plans.
- (c) Their employment equity plans, taking into account the specific circumstances of their organization(s).
- (d) An EE Plan prepared in line with this Code would enable employers to ensure that their human resource policies, procedures and practices are based on non-discrimination and reflect employment equity principles for accessing and commencing employment, during employment and upon termination of employment.
- (e) This Code is intended to guide employers in the preparation, implementation and monitoring of their EE Plans. It is intended to provide guidelines to employers to consider and apply appropriately to their circumstances.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 393 of 28 April 2017: Code of Good Practice on the Preparation, Implementation and Monitoring of the Employment Equity Plan (Government Gazette No. 40817)/ 2. LEGAL FRAMEWORK

2. LEGAL FRAMEWORK

- 2.1 This Code is issued in terms of section 54 of the Employment Equity Act and must be read in conjunction with the Act and other Codes issued in terms of the Act¹.
- 2.2 The Code should also be read in conjunction with the Constitution of South Africa and all relevant legislation, including the:
 - 2.2.1 Employment Equity Act, No. 55, of 1998;
 - 2.2.2 Employment Equity Amendment Act, [No. 47 of 2013](#);
 - 2.2.3 Employment Equity Regulations of 2014 as amended;
 - 2.2.4 Labour Relations Act, [No. 66 of 1995](#) as amended;
 - 2.2.5 Basic Conditions of Employment Act, No.75 of 1997 as amended;
 - 2.2.6 Skills Development Act, [No. 97 of 1998](#) as amended;

- 2.2.7 Skills Development Levies Act, [No. 9 of 1999](#) as amended;
- 2.2.8 Promotion of Equality and Prevention of Unfair Discrimination Act, [No. 4 of 2000](#) as amended;
- 2.2.9 Employment Services Act, Act [No. 4 of 2014](#) as amended; and
- 2.2.10 Broad Based Black Economic Empowerment Act, [No. 53 of 2003](#) as amended.

Footnotes

- 1 Code of Good Practice on the Integration of Employment Equity into Human Resources Policies and Practices, Code of Good Practice on the Handling of Sexual Harassment Cases; Code of Good Practice on the Employment of Persons with Disabilities and Code of Good Practice on HIV and AIDS and the World of Work; Code of Good Practice on Equal Pay/Remuneration for Work of Equal Value.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 393 of 28 April 2017: Code of Good Practice on the Preparation, Implementation and Monitoring of the Employment Equity Plan (Government Gazette No. 40817)/ 3. SCOPE

3. SCOPE

- 3.1 This Code is relevant to all employers that are regarded as designated employers in terms of the Act, including those employers who choose to voluntarily comply.
- 3.2 Designated employers and their employees should apply the guidelines set out in this Code to prepare, implement and monitor their EE Plans, taking into account the specific circumstances of their organizations.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 393 of 28 April 2017: Code of Good Practice on the Preparation, Implementation and Monitoring of the Employment Equity Plan (Government Gazette No. 40817)/ 4. PURPOSE AND RATIONALE OF THE EE PLAN

4. PURPOSE AND RATIONALE OF THE EE PLAN

- 4.1 The EE Plan is a designated employer's implementation programme to achieve equitable representation and fair treatment of the designated groups (i.e. Black people, women and persons with disabilities) in the workplace across all occupational levels.
- 4.2 The EE Plan addresses the barriers to fair employment practices, i.e. access and treatment in the policies and procedures identified in the consultation and the employment equity analysis process through remedial measures in terms of policies, procedures and practices and the working environment to ensure the equitable representation of the designated groups in the workplace within set timeframes.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 393 of 28 April 2017: Code of Good Practice on the Preparation, Implementation and Monitoring of the Employment Equity Plan (Government Gazette No. 40817)/ 5. STRUCTURE OF THE EE PLAN

5. STRUCTURE OF THE EE PLAN

- 5.1 The EE Plan must meet all the requirements of Section 20 of the Act.
- 5.2 The EE Plan must be developed using the EEA13 form contained in the Employment Equity Regulations of 2014, as amended.
- 5.3 The EE Plan must be informed by the analysis (EEA12) and as a minimum contain all the information required by EEA13 form in the regulations.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 393 of 28 April 2017: Code of Good Practice on the Preparation, Implementation and Monitoring of the Employment Equity Plan (Government Gazette No. 40817)/ 6. PROCESS FOR CONSTRUCTING PLAN

6. PROCESS FOR CONSTRUCTING PLAN

- (a) The development of an EE Plan must be an inclusive process that involves consultation and is informed by-
 - (i) an analysis of the workforce;

- (ii) analysis of the policies, procedures and practices; and
 - (iii) analysis of the work environment and diversity management experience.
- (b) Three phases are usually involved in relation to the EE Plan, i.e. the preparation phase, the implementation phase and the monitoring phase.

6.1 PREPARATION PHASE

6.1.1 INITIATOR TO STEER THE PROCESS, INCLUDING THE ASSIGNMENT OF ONE OR MORE SENIOR MANAGERS

- (a) An employer must initiate and steer the process for the preparation of an EE Plan, which could be assigning such responsibility to a permanent employee that reports directly to the Chief Executive Officer² (CEO) / Accounting Officer.
- (b) Notwithstanding the CEO / Accounting Officer is deemed to be the accounting officer for the implementation of the Act, the board may nevertheless agree on employment equity outcomes for the CEO / Accounting Officer.
- (c) The CEO / Accounting Officer may, particularly in the case involving a small workforce, assume the responsibility to initiate and steer the process for the development, implementation and monitoring of the EE Plan.
- (d) The CEO / Accounting Officer may, particularly in the case involving a large workforce, assign the responsibility for initiating the process for the development, implementation and monitoring of the EE Plan to senior managers.
- (e) One or more senior managers who are assigned the responsibility for the implementation and monitoring of EE Plans should be included from the preparation phase of the process.
- (f) The employer must-
 - (i) provide the assigned managers with the necessary authority and means, such as an appropriate budget, to perform their allocated functions; and
 - (ii) take reasonable steps to ensure that these managers perform their allocated functions by incorporating key employment equity outcomes in their performance contracts.

6.1.2 COMMUNICATION, AWARENESS AND CONSULTATION

When communicating on matters concerning employment equity, it is important to take special care that the content is communicated in clear and easily understood language to provide the entire workforce reasonable opportunity to grasp the content and subsequent rights.

6.1.2.1 All employees should be made aware and informed of-

- (a) The objectives, content and application of the Act, its regulations and Codes of good practice in preparation for their participation, including consultation.
- (b) Matters relating to the identification, prohibition and elimination of unfair discrimination and affirmative action to achieve equality and diversity in the workplace.
- (c) The proposed process to be followed by the employer.
- (d) The advantages to employees for participation in the process.
- (e) The need for the involvement of all stakeholders in order to promote positive outcomes.

6.1.2.2 Employers must consult with employees, both from designated and non-designated groups at all occupational levels in the organization, when conducting an analysis, preparing and implementing a plan and when submitting employment equity reports to the Department of Labour.

6.1.2.3 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, e.g. diversity management, coaching and mentoring.

6.1.2.4 Communication on employment equity should focus on positive outcomes, including the better utilization of all of the employer's human resources and the creation of a diverse and more productive workforce.

6.1.2.5 Consultation with employees should commence as early as possible in the process, which should involve-

- (a) An employer establishing a consultative forum or using an existing forum to consult with employees on employment equity matters.
- (b) Employee representatives and trade unions reflecting the interests of employees from both designated and non-designated groups and across all occupational levels of the workforce.
- (c) Where the employer does not have representatives from a specific group, a

member of the forum can be assigned to represent the interest of such groupings/ constituency until such time a representative is nominated.

- (d) Representative trade unions, where these exist, or representatives nominated by such trade unions must be included in the consultation process.
- (e) The employer should be represented by one or more members of senior management in the forum.

6.1.2.6 Consultation would include-

- (a) Reasonable opportunity for employee representatives to meet with the employer to consult on the conducting of an analysis, development of a plan and the submitting of reports to the Department of Labour.
- (b) The opportunity for both employer and employee representatives to provide feedback to their respective constituencies.
- (c) The request, receipt and consideration of relevant information.
- (d) The allocation of adequate time for each of the steps to be completed.

6.1.2.7 Regular (at least quarterly), structured and scheduled meetings must be held and the deliberations properly recorded to ensure a constructive and well-informed process.

6.1.2.8 Employee representatives must be allowed time to effectively participate in the consultation process.

6.1.2.9 The disclosure of relevant information by designated employers is vital for the successful implementation of the EE Plan, which should include-

- (a) the extent to which suitably qualified people from and amongst the different designated groups are equitably represented within each occupational level in that employer's workforce in relation to the demographic profile of the national and regional (provincial) economically active population.
- (b) steps taken by a designated employer to train suitably qualified people from the designated groups.
- (c) steps to be taken by a designated employer to recruit and promote persons from the designated groups to implement its EE Plan.
- (d) the extent to which the designated employer has made progress in eliminating employment barriers that adversely affect people from designated groups.
- (e) steps taken by an employer to appoint and retain suitably qualified people from the designated groups.
- (f) steps taken by the designated employer to provide reasonable accommodation for suitably qualified people from the designated groups.

6.1.2.10 Where a representative or trade union refuses to take part in the consultation process, the employer should record the circumstances in writing and a copy of this document should be provided to the representative or trade union concerned.

6.1.3 CONDUCTING AN ANALYSIS (*contained in EEA12 of regulations*)

Conducting of an analysis must be done in accordance with the EEA12 form of the Employment Equity Regulations of 2014, as amended. All areas of the EEA12 form template must remain, but the employer may add other areas, including columns and rows, in order to meet the objectives of the Act.

6.1.3.1 The purpose of the analysis is-

- (a) To determine the extent of under-representation of employees, i.e. both permanent and temporary³ workers, from the designated groups in the different occupational levels of the employer's workforce in terms of race, gender and disability.
- (b) To assess all employment policies, procedures and practices, and the working environment in order to-
 - (i) Identify any barriers that may contribute to the under-representation or under-utilization of employees from the designated groups;
 - (ii) Identify any barriers or factors that may contribute to the lack of Affirmation of diversity in the workplace;
 - (iii) Identify other employment conditions that may adversely affect designated groups; and
 - (iv) Identify practices or factors that positively promote employment equity and diversity in the workplace, including reasonable accommodation.

6.1.3.2 Workforce profile

- (a) The first step in conducting an analysis of the workforce profile is to

differentiate between employees of the various groups, both in terms of the designated (i.e. Blacks, women and persons with disabilities) and non-designated groups by using the EEA1 form, contained in the regulations, for employees to declare their status.

- (b) Existing and/or historical information may be used to assist to verify an employee's status.
- (c) An analysis of the workforce profile should provide a comparison of designated groups using up-to-date demographic data in terms of their economically active population and their representation at the various occupational levels, which is contained in the regulations as Form EEA8 for demographic information and EEA9 form for information distinguishing between the various occupational levels.
- (d) The analysis of the workforce profile must be based on a snapshot of each occupational level on a particular date in terms of race, gender and disability, and per occupational level on a particular date.
- (e) The under-representation or over-representation of a particular group, whether designated or non-designated, must be captured in the analysis and used to inform and prioritize strategies in the EE plan to address the under-representation.
- (f) Recruitment strategies may vary depending upon the level of responsibility and the degree of specialization of the occupation, usually the higher the degree of responsibility or specialization required for the job, the broader the recruitment strategy.

6.1.3.3 Review of employment policies, practices, procedures, and working environment

The review should include a critical examination of all established policies, practices, procedures and the working environment to identify barriers that directly or indirectly impede one or more of the designated groups' equitable representation in the workplace, including those relating to-

- (a) Recruitment, selection, pre-employment testing and induction, promotion, development and retention.
- (b) Succession and experience planning, promotions and transfers.
- (c) Job assignments and training opportunities.
- (d) Performance and remuneration, including equal pay for work of equal value⁴.
- (e) Discipline and dispute resolution.
- (f) Working conditions, including the accommodation of cultural, religious and other diversity differences.
- (g) Reasonable accommodation, including for persons with disabilities
- (h) Corporate culture.
- (i) Any other policy, procedure or practice that may arise from the consultation process.

Footnotes

- 2 The CEO is the accounting officer who could also be a Director General, Municipal Manager, etc.
- 3 Section 57 of the Act states-
 - (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 three months or longer.
 - (2) Where a temporary employment service, on the express or implied instruction of a client, commits an act of unfair discrimination, both the temporary employment service and the client are jointly and severally liable.
- 4 Section 16 (3) (4) (5) of the LRA states that-

Subject to subsection (5), whenever an employer is consulting or bargaining with a representative trade union, the employer must disclose to the representative trade union all relevant information that will allow the representative trade union to engage effectively in consultation or collective bargaining. The employer must notify the trade union representative or the representative trade union in writing if any information disclosed in terms of subsection (2) or (3) is confidential. An employer is not required to disclose information-that is legally privileged-

 - (a) that the employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of any court;
 - (b) that is confidential and, if disclosed, may cause substantial harm to an employee or the employer; or
 - (c) that is private personal information relating to an employee, unless that employee consents to the disclosure of that information.

If there is a dispute about what information is required to be disclosed in terms of this section, any party to the dispute may refer the dispute in writing to the Commission.

7. DEVELOPING THE EE PLAN

The employer must consult and attempt to reach consensus on the development of the EE Plan (EEA13) by taking the following into account-

- (a) Analysis report (EEA12).
- (b) National and provincial Economically Active Population (EAP)
- (c) Determining the duration of the EE Plan.
- (d) Determining the annual objectives of the EE Plan.
- (e) Corrective measures formulated, including goals and targets.
- (f) Time frames established.
- (g) The EE Plan drawn up in terms of section 20 of the Act.
- (h) Resources identified and allocated for the implementation of the EE Plan.
- (i) The EE Plan communicated.

7.1 Analysis Report

- 7.1.1 An employer must consult and attempt to reach reasonable consensus on the under-representation of the designated groups and the barriers they identified in the analysis report. The analysis report must be used to prioritize the targeted designated groups in accordance with their representation.
- 7.1.2 The analysis report must be used to determine and inform the affirmative action measures, including strategies, which would be included in the EE Plan as a response to barriers identified in policies, procedures and practices.

7.2 Duration of EE Plan

An employer should take the following into consideration when determining the duration of an EE Plan-

- (a) the EE Plan must not be shorter than one year and not longer than five years.
- (b) workforce size.
- (c) nature and location of workplace, including geographic spread.
- (d) the time needed to implement affirmative measures to achieve numerical and non-numerical goals as outlined in the EE Plan.
- (e) the start and end date of the EE Plan must be specific in terms of the day, month and the year.
- (f) An employer's business/strategic plan.

7.3 Objectives of the EE Plan

In determining the annual objectives for the EE Plan, the following must be taken into account-

- (a) The purpose or overall objective of the Act is to achieve equitable representation of the designated groups in the workplace that is free from unfair discrimination.
- (b) The objectives in the EE Plan must be specific, measurable, achievable, relevant and time bound (SMART).
- (c) Broader objectives of the business.
- (d) Prioritizing and resource availability and allocation.

7.4 Numerical goals and numerical targets

- (a) **Numerical goals** are the entire workforce profile in terms of race, gender and disability, and **not** the difference between the current workforce profile and the projected workforce profile the employer seeks to achieve at the end employment equity plan (EE Plan).
- (b) The **numerical targets** are the entire workforce profile in terms of race, gender and disability, and **not** the difference between the current workforce profile and the projected workforce profile the employer seeks to achieve by the next reporting period.
- (c) The numerical goals and the annual numerical targets must be informed by the outcome of the analysis and prioritized and weighted more towards the designated groups that are most under-represented in terms of the national and provincial economically active population, in terms of section 42 of the Act.
- (d) Planned vacancies and natural attrition (such as resignations, promotions and retirements) must be taken into consideration when determining numerical goals and targets.

7.5 Affirmative action measures

- 7.5.1 An employer must implement affirmative action measures in response to barriers identified in the analysis report (EEA12) to ensure that suitably qualified people from the designated groups have equal employment opportunities and are equitably represented in all occupational levels in the workforce, including-
- (a) measures to identify and eliminate employment barriers that adversely affect people from designated groups, directly or indirectly.
 - (b) measures to further diversity and the management of diversity in the workplace.
 - (c) reasonable accommodation for suitably qualified people from designated groups, including for persons with disabilities.
 - (d) measures to recruit, promote, retain and develop people from designated groups, including skills development and skills transfer.
 - (e) measures that include preferential treatment, numerical goals and measures other than numerical goals, but exclude quotas or the creation of absolute barriers.
- 7.5.2 All corrective measures to eliminate any barriers identified during the analysis must be specified in the EE Plan.

7.6 Consensus

- (a) The employer must consult and attempt to reach consensus on the annual objectives and corrective measures contained in the EE Plan.
- (b) Where consensus is not reached on a particular item in the EE Plan, the reasons related thereto must be recorded and attempts must be made to resolve them through the dispute resolution mechanisms outlined in the EE Plan.

7.7 Resources

Resources must be appropriately allocated, including human resources, financial resources and material resources.

7.8 Assignment of responsibility

The person in the workforce, including senior managers, responsible for monitoring and implementing the EE Plan must take into account-

- (a) The size of the organization.
- (b) Line functions.
- (c) Geographic location and spread.
- (d) Feedback requirements.
- (e) Responsibility and authority of the person.

7.9 Dispute Resolution

- (a) Internal procedures for resolving any dispute about the interpretation and implementation of the EE Plan should be agreed and specified in the EE Plan.
- (b) The last point of call for the resolving of any disputes about the interpretation and implementation of the EE Plan should be the Chief Executive Officer (CEO) / Accounting Officer of the organization.
- (c) Existing dispute resolution procedures could be used or tailored to resolve disputes concerning the interpretation and implementation of the EE Plan.
- (d) Where a dispute still remains after the internal dispute resolution processes were followed, a party to the dispute may make an application to the Commission for Conciliation, Mediation and Arbitration (CCMA) or the Labour Court.
- (e) Procedures must be time-bound, cost effective and simple for designated and non-designated employees to follow.

7.10 Monitoring and Evaluating the EE Plan

- (a) The person(s) responsible for the monitoring and evaluation of the EE Plan and the process to be followed, including the CEO / Accounting Officer and the Board, must be outlined in the EE Plan.
- (b) Regular meetings must be held and records of progress reports must be kept to effectively monitor and evaluate the implementation of the EE Plan, which where applicable should include the CEO / Accounting Officer and the Board.
- (c) Indicators for the monitoring and evaluation of the EE Plan must be predefined and agreed upon prior to the implementation of the EE Plan.
- (d) The outcome of the monitoring and evaluation process must inform strategies to implement the EE

Plan and for the preparation of successive plans to start at least six months prior to the expiry of the current EE Plan.

- (e) The EE Plan may only be reviewed if there is a major event or restructuring during its duration.

7.11 Communication

Communication of the EE Plan must be informed by a communication strategy that takes the following into account-

- (a) The mechanisms available to communicate, including print and electronic.
- (b) Various ways to communicate with different target groups, e.g. persons with disabilities.
- (c) The content of the EE Plan.
- (d) The persons responsible for implementing the EE Plan.
- (e) The manner in which disputes on the implementation and interpretation of the EE Plan would be managed.
- (f) Availability and accessibility of the EE Plan, including to persons with disabilities.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Codes/ GN 393 of 28 April 2017: Code of Good Practice on the Preparation, Implementation and Monitoring of the Employment Equity Plan (Government Gazette No. 40817)/ 8. REPORTING

8. REPORTING

- (a) A designated employer is expected to submit their employment equity report to the Department of Labour annually on the first working day of October or by a prescribed date for online reporting.
- (b) The employer must consult with its employees or employee representatives and union representatives through established forum(s) prior to submitting their EE Report to the Department of Labour.
- (c) The EE Report must be used as a monitoring and evaluation tool to inform future implementation strategies and the preparation of successive plans.
- (d) EE Reports must reflect the progress made against the employer's current EE Plan.
- (e) EE Reports must be completed by employers using the EEA2 and EEA4 form contained in the regulations.
- (f) Public companies must include their workforce profile in their financial report using the EEA10 form format contained in the regulations.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.480 of 26 May 2006: Amendments to the Employment Equity Regulations

GNR.480 of 26 May 2006: Amendments to the Employment Equity Regulations

DEPARTMENT OF LABOUR

I Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, under [section 55 \(1\)](#) of the Employment Equity Act, 1998 (Act [No 55 of 1998](#)), and on the advice of the Commission for Employment Equity, hereby amend the regulations made in terms of the Employment Equity Act, act [55 of 1998](#), published under Government Notice R 1360 in *Government Gazette* 20626 of 23 November 1999 and the Notice R 955 in *Government Gazette* 21583 of 2 October 2000 as set out in the schedule.

The amended regulations replaces the regulations published in Government Notice R 1360 *Government Gazette* 20626 of 23 November 1999 and the Notice R 955 in *Government Gazette* 21583 of 2 October 2000. These amendments are to be effective from the date of publication of this notice.

(Signed)

MMS MDLADLANA,
MP MINISTER OF LABOUR
25/4/06

SCHEDULE

ARRANGEMENT OF REGULATIONS

GENERAL ADMINISTRATIVE REGULATIONS

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| EEA8 | Annexure 1: Demographic data |
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GENERAL ADMINISTRATIVE REGULATIONS

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.480 of 26 May 2006: Amendments to the Employment Equity Regulations/ 1. Definitions.-In these regulations any expression that is defined in the Employment Equity Act, 1998, has that meaning and unless the context otherwise indicates:

1. Definitions.-In these regulations any expression that is defined in the Employment Equity Act, 1998, has that meaning and unless the context otherwise indicates:

- 1.1 **"Director-General"** means the Director-General of the Department of Labour, which also includes the highest authority of the Department of Labour in the:
 - (i) Kwa-Zulu/Natal Province;
 - (ii) Northern Cape Province;
 - (iii) Limpopo Province;
 - (iv) North West Province;
 - (v) Eastern Cape Province;
 - (vi) Mpumalanga Province;
 - (vii) Free State Province;
 - (viii) Gauteng Province (i.e. Gauteng South and Gauteng North); and
 - (ix) Western Cape Province.
- 1.2 **"the Act"** means the Employment Equity Act, 1998 (Act No.55 of 1998).
- 1.3 **"A workplace"** means the place or places where the employees of an employer work. If an employer carries on or conducts two or more operations that are independent of one another by reason of their size, function, or organization, the place or places where employees in connection with each other's independent operation, constitute the workplace for that operation.
- 1.4 **Non-permanent workers** refer to those workers who are employed to work for less than 24 hours per month, or those workers engaged to work for not more than 3 continuous months.
- 1.5 **"Designated groups"** means Black people (i.e. Africans, Coloureds and Indians), women and people with disabilities who are natural persons and:
 - 1.5.1 are citizens of the Republic of South Africa by birth or descent; or
 - 1.5.2 are citizens of the Republic of South Africa by naturalisation before the commencement date of

the Constitution of the Republic of South Africa Act of 1993; or

- 1.5.3 became citizens of the Republic of South Africa after the commencement date of the Constitution of the Republic of South Africa Act of 1993, but who, not for Apartheid policy that had been in place prior to that date, would have been entitled to acquire citizenship by naturalisation prior to that date.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.480 of 26 May 2006: Amendments to the Employment Equity Regulations/ 2. Assigning a Senior Manager(s).-Assigned manager(s) for employment equity must be:

2. Assigning a Senior Manager(s).-Assigned manager(s) for employment equity must be:

- 2.1 Permanent, and must have key employment equity outcomes incorporated into their performance contracts;
- 2.2 Given the necessary executive authority and mandate;
- 2.3 Provided with an appropriate budget and access to other required resources; and
- 2.4 Provided with time off from other duties and commitments.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.480 of 26 May 2006: Amendments to the Employment Equity Regulations/ 3. Consultations.-

3. Consultations.-

- 3.1 All employees must be informed of the content and application of the Act, employment equity and anti-discrimination issues, the process to be followed by the employer, and the need for the involvement of all stakeholders, as preparation for their participation and consultation.
- 3.2 A consultative forum must be established or an existing forum utilised. The forum must include employee representatives reflecting the interests of employees from both designated and non-designated groups. The employer should also be represented by one or more members of senior management in the forum.
- 3.3 Consultation must include:
 - . Regular meetings and feedback to employees and management; and
 - . Access to relevant information by employees.
- 3.4 Where a representative body or trade union refuses to take part in the consultation process, the employer must record the circumstances in writing. A copy of this document must be provided to the representative body or trade union concerned.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.480 of 26 May 2006: Amendments to the Employment Equity Regulations/ 4. Collecting information and conducting an analysis (Section 19 of the Act).-

4. Collecting information and conducting an analysis (Section 19 of the Act).-

- 4.1 When a designated employer collects information about individual employees for the purpose of compiling a workforce profile to determine the degree to which employees from designated groups might be underrepresented, the employer must request each employee in the workforce to complete a declaration using the EEA1 form.
- 4.2 Employees must at any time be able to add information to the EEA1 form.
- 4.3 Where an employee refuses to complete the EEA1 form or provides inaccurate information, the employer may establish the designation of an employee by using reliable historical and existing data.
- 4.4 A designated employer must use section B of the EEA2 form to develop the workforce profile of employees as required by section 19 (2) of the Act.
- 4.5 When a designated employer conducts the analysis required by section 19 (1) of the Act, the employer may refer to:
 - (a) Annexure 1, for demographic data;
 - (b) Annexure 2, which contains the definitions of occupational levels; and
 - (c) Annexure 3, which contains the definitions of occupational categories.
- 4.6 A designated employer must refer to the **Code of Good Practice: Preparation, Implementation and**

Monitoring of Employment Equity Plans as a guide when collecting information and conducting the analysis required by section 19 of the Act.

- 4.7 The analysis must involve reviewing of all policies, procedures and practices in order to eliminate unfair discrimination and promote employment equity in the workplace, including when commencing employment, during employment and ending employment.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.480 of 26 May 2006: Amendments to the Employment Equity Regulations/ 5. Duty to prepare and implement an employment equity plan (Section 20 of the Act).-

5. Duty to prepare and implement an employment equity plan (Section 20 of the Act).-

- 5.1 A designated employer may refer to the **Codes of Good Practice: Preparation, Implementation and Monitoring of Employment Equity Plans, and other relevant Codes** when preparing the employment equity plan required by section 20 of the Act.
- 5.2 A designated employer must retain the employment equity plan for a period of three years after the expiry of the plan, unless the employer employs fewer than 150 employees, in which case the plan must be retained for two years.
- 5.3 The employment equity plan must contain a description of the measures taken by the designated employer to eliminate unfair discrimination in that employer's workplace.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.480 of 26 May 2006: Amendments to the Employment Equity Regulations/ 6. Duty to report (Section 21 of the Act).-

6. Duty to report (Section 21 of the Act).-

- 6.1 Each designated employer must submit a report in terms of Section 21 of the Act using the EEA2 form.
- 6.2 Large employers must submit their first report within six months of being designated, and thereafter annually on the first working day of October; and small employers must submit their first report within twelve months of being designated, and thereafter on the first working day of October of every year that ends with an even number.
- 6.3 Large employers, i.e. employers with 150 and more employees, must complete the entire EEA2 reporting form. Small employers, i.e. employers with fewer than 150 employees, must only complete areas of the EEA2 form that apply to them. Areas that only apply to small employers shall be made available by the Department in a separate form as well. All relevant areas of the form must be fully and accurately completed by employers. Employers who fail to observe this provision will be deemed not to have reported.
- 6.4 A designated employer whose operations extend across different geographical areas, functional units, workplaces or industrial sectors must submit a consolidated report indicating names of these units, workplaces or subsidiaries and attach a separate report for each of them.
- 6.5 An employer who becomes a designated employer must notify the Director General in writing and provide valid reasons for not being able to report on the first working day of October. This notification must reach the Director General by no later than the last working day of August in the same year. The Director General will examine the reasons that were provided by the employer and shall decide on whether to accept or reject them, which may lead to the non-acceptance of the notification. The Director General's decision shall be final.
- 6.6 A designated employer must retain a copy of the report for a period of three years after it has been submitted to the Director-General, unless the employer has fewer than 150 employees, in which case the report must be retained for two years.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.480 of 26 May 2006: Amendments to the Employment Equity Regulations/ 7. Duty to inform (Section 25 of the Act).-

7. Duty to inform (Section 25 of the Act).-

- 7.1 Each employer must display the notice required by Section 25 (1) of the Act (i.e. the summary of the Act).
- 7.2 If there are employees in the workplace who are unable to read this notice, the employer must inform those employees about the provisions of the Act.
- 7.3 The notice referred to in clause (7.1) is annexed as EEA3 in the regulations.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.480 of 26 May 2006: Amendments to the Employment Equity Regulations/ 8. Income differentials (section 27 of the Act).-

8. Income differentials (section 27 of the Act).-

- 8.1 Each designated employer must submit a statement of income differentials required by section 27 of the Act in using the EEA4 form.
- 8.2 When completing the EEA4 form, designated employers must refer to EEA9 and the EEA10 for guidance.
- 8.3 Designated employers must submit the statement to: Employment Conditions Commission, c/o Employment Equity Registry, Department of Labour, Private BagX117, Pretoria, 0001.
- 8.4 Designated employers must retain a copy of the statement for a period of three years after it has been submitted to the Employment Conditions Commission, unless the employer has fewer than 150 employees, in which case the statement must be retained for two years.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.480 of 26 May 2006: Amendments to the Employment Equity Regulations/ 9. Proof of submission and authenticity.-

9. Proof of submission and authenticity.-

- 9.1 Whenever a person is required to satisfy any other person that a copy of any document required or prescribed by the Act or its regulations, excluding the EE report, has been submitted to the other party, that person may do so by providing:
 - (a) A copy of the proof of mailing the document by registered post to the other party;
 - (b) A copy of the telegram, telex, telefax or e-mail, including proof of transmission of the document to the other party;
 - (c) A copy of a receipt signed by the other party or on that party's behalf if the document was delivered by hand;
 - (d) A statement confirming delivery signed by the person who delivered the document.
- 9.2 A copy of any document submitted to a Labour Inspector or any official of the Department of Labour must be signed by an authorised person as proof of authenticity.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.480 of 26 May 2006: Amendments to the Employment Equity Regulations/ 10. Review by Director General (Section 43 of the Act).-

10. Review by Director General (Section 43 of the Act).-

- 10.1 The Director General may conduct a review to determine the extent to which an employer is complying with the Act.
- 10.2 The review shall be conducted using a system that includes a Numerical Analysis Model. This model shall be used as a filtering tool to assess the degree to which the various designated groups (i.e. Blacks, women and people with disabilities) are represented at each occupational level in an employer's workplace. In addition to Blacks, women and people with disabilities, African representation is included as a fourth variable for assessment in an employer's workplace.
- 10.3 The DG shall assess and rank each designated group to address their under representation by taking their National and Provincial Economically Active Population (EAP) into consideration. This principle shall also apply to groupings within each of these designated groups in terms of race and gender.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.480 of 26 May 2006: Amendments to the Employment Equity Regulations/ 11. Enforcement (Chapter 5 of the Act).-

11. Enforcement (Chapter 5 of the Act).-

11.1 Securing an undertaking (Section 36 of the Act):

A labour inspector must request and obtain a written undertaking using the EEA5 form.

11.2 Compliance order (Section 37 of the Act):

A labour inspector may issue a compliance order to a designated employer using the EEA6 form.

11.3 **Objections to compliance order (Section 39 of the Act):**

- (a) A designated employer may object to a compliance order by making a representation to the Director-General using the EEA7 form.
- (b) The objection must be lodged with the highest authority at the Provincial level of the Department of Labour.

FORMS AND ANNEXURES

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.841 of 18 August 2006: Amendments to the Employment Equity Regulations

GNR.841 of 18 August 2006: Amendments to the Employment Equity Regulations

DEPARTMENT OF LABOUR

I Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, under [section 55 \(1\)](#) of the Employment Equity Act, 1998 (Act [No 55 of 1998](#)), and on the advice of the Commission for Employment Equity, hereby amend the regulations made in terms of the Employment Equity Act, act [55 of 1998](#), published under Government Notice R 1360 in *Government Gazette* 20626 of 23 November 1999, the Notice R 955 in *Government Gazette* 21583 of 2 October 2000 and the notice in R 480 in *Government Gazette* 28858 of 26 May 2006 as set out in the schedule.

The amended regulations replaces the regulations published in Government Notice R 1360 *Government Gazette* 20626 of 23 November 1999, the Notice R 955 in *Government Gazette* 21583 of 2 October 2000 and the notice in R 480 in *Government Gazette* 28858 of 26 May 2006. These amendments are to be effective from the date of publication of this notice.

(Signed)

MMS MDLADLANA,
MP MINISTER OF LABOUR

SCHEDULE

ARRANGEMENT OF REGULATIONS

GENERAL ADMINISTRATIVE REGULATIONS

- [1.](#) Definitions
- [2.](#) Assigning a Senior Manager(s)
- [3.](#) Consultations
- [4.](#) Collecting information and conducting an analysis (section 19 of the Act)
- [5.](#) Duty to prepare and implement an Employment Equity Plan (section 20 of the Act)
- [6.](#) Duty to report (section 21 of the Act)
- [7.](#) Duty to inform (section 25 of the Act)
- [8.](#) Income differentials statement (section 27 of the Act)
- [9.](#) Proof of submission and authenticity
- [10.](#) Review by Director General
- [11.](#) Enforcement

FORMS AND ANNEXURES

- EEA1 Employee declaration in terms of section 19 (1) of the Act
- EEA2 Report to Director-General in terms of section 21 of the Act
- EEA3 Summary of the Act in terms of section 25 (1) of the Act
- EEA4 Statement on income differentials to the Employment Conditions Commission in terms of Section 27 of the Act
- EEA5 Securing an undertaking in terms of section 36 of the Act
- EEA6 Compliance order in terms of section 37 (1) of the Act
- EEA7 Objection against compliance order in terms of section 39 (1) of the Act
- EEA8 Annexure 1: Demographic data
- EEA9 Annexure 2: Occupational levels
- EEA10 Annexure 3: Occupational categories
- EEA11 Annexure 4: Request for employer's employment equity report
- EEA12 Annexure 5: Summary of the employment equity progress report

GENERAL ADMINISTRATIVE REGULATIONS

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.841 of 18 August 2006: Amendments to the Employment Equity Regulations/ 1. Definitions.-In these regulations any expression that is defined in the Employment Equity Act, 1998, has that meaning and unless the context otherwise indicates:

1. Definitions.-In these regulations any expression that is defined in the Employment Equity Act, 1998, has that meaning and unless the context otherwise indicates:

- 1.1 **"Director-General"** means the Director-General of the Department of Labour, which also includes the highest authority of the Department of Labour in the:
 - (i) Kwa-Zulu/Natal Province;
 - (ii) Northern Cape Province;
 - (iii) Limpopo Province;
 - (iv) North West Province;
 - (v) Eastern Cape Province;
 - (vi) Mpumalanga Province;
 - (vii) Free State Province;
 - (viii) Gauteng Province (i.e. Gauteng South and Gauteng North); and
 - (ix) Western Cape Province.
- 1.2 **"the Act"** means the Employment Equity Act, 1998 (Act No.55 of 1998).
- 1.3 **"A workplace"** means the place or places where the employees of an employer work. If an employer carries on or conducts two or more operations that are independent of one another by reason of their size, function, or organization, the place or places where employees in connection with each other's independent operation, constitute the workplace for that operation.
- 1.4 **Non-permanent workers** refer to those workers who are employed to work for less than 24 hours per month, or those workers engaged to work for not more than 3 continuous months.
- 1.5 **"Designated groups"** means Black people (i.e. Africans, Coloureds and Indians), women and people with disabilities who are natural persons and:
 - 1.5.1 are citizens of the Republic of South Africa by birth or descent; or
 - 1.5.2 are citizens of the Republic of South Africa by naturalisation before the commencement date (i.e. 27 April 1994) of the Constitution of the Republic of South Africa Act of 1993; or
 - 1.5.3 became citizens of the Republic of South Africa after the commencement date of the Constitution of the Republic of South Africa Act of 1993, but who, not for Apartheid policy that had been in place prior to that date, would have been entitled to acquire citizenship by naturalisation prior to that date.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.841 of 18 August 2006: Amendments to the Employment Equity Regulations/ 2. Assigning a Senior Manager(s).-Assigned manager(s) for employment equity must be:

2. Assigning a Senior Manager(s).-Assigned manager(s) for employment equity must be:

- 2.1 Permanent, report directly to the Chief Executive Officer on employment equity matters. This person must have key employment equity outcomes incorporated into their performance contracts;
- 2.2 Given the necessary executive authority and mandate;
- 2.3 Provided with an appropriate budget and access to other required resources.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.841 of 18 August 2006: Amendments to the Employment Equity Regulations/ 3. Consultations.-

3. Consultations.-

- 3.1 All employees must be informed of the content and application of the Act, employment equity and anti-discrimination issues, the process to be followed by the employer, and the need for the involvement of all stakeholders, as preparation for their participation and consultation.

- 3.2 A consultative forum must be established or an existing forum utilised. The forum must include employee representatives reflecting the interests of employees from all occupational categories and levels and both designated and non-designated groups.
- 3.3 Consultation must include:
 - . Regular meetings and feedback to employees and management; and
 - . Access to relevant information by employees.
- 3.4 Where a representative body or trade union refuses to take part in the consultation process, the employer must record the circumstances in writing. A copy of this document must be provided to the representative body or trade union concerned.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.841 of 18 August 2006: Amendments to the Employment Equity Regulations/ 4. Collecting information and conducting an analysis (Section 19 of the Act).-

4. Collecting information and conducting an analysis (Section 19 of the Act).-

- 4.1 When a designated employer collects information about individual employees for the purpose of compiling a workforce profile to determine the degree to which employees from designated groups might be underrepresented, the employer must request each employee in the workforce to complete a declaration using the EEA1 form.
- 4.2 Employees must at any time be able to add information to the EEA1 form.
- 4.3 Where an employee refuses to complete the EEA1 form or provides inaccurate information, the employer may establish the designation of an employee by using reliable historical and existing data.
- 4.4 A designated employer must use section B of the EEA2 form to develop the workforce profile of employees as required by section 19 (2) of the Act.
- 4.5 When a designated employer conducts the analysis required by section 19 (1) of the Act, the employer may refer to:
 - (a) Annexure 1, for demographic data;
 - (b) Annexure 2, which contains the definitions of occupational levels; and
 - (c) Annexure 3, which contains the definitions of occupational categories.
- 4.6 A designated employer must refer to the **Code of Good Practice: Preparation, Implementation and Monitoring of Employment Equity Plans** as a guide when collecting information and conducting the analysis required by section 19 of the Act.
- 4.7 The analysis must involve reviewing of all policies, procedures, practices and the work environment in order to eliminate unfair discrimination and promote employment equity in the workplace, including when commencing employment, during employment and ending employment.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.841 of 18 August 2006: Amendments to the Employment Equity Regulations/ 5. Duty to prepare and implement an employment equity plan (Section 20 of the Act).-

5. Duty to prepare and implement an employment equity plan (Section 20 of the Act).-

- 5.1 A designated employer may refer to the **Codes of Good Practice: Preparation, Implementation and Monitoring of Employment Equity Plans, and other relevant Codes** when preparing the employment equity plan required by section 20 of the Act.
- 5.2 A designated employer must retain the employment equity plan for a period of three years after the expiry of the plan, unless the employer employs fewer than 150 employees, in which case the plan must be retained for two years.
- 5.3 The employment equity plan must contain a description of the measures taken by the designated employer to eliminate unfair discrimination in that employer's workplace.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.841 of 18 August 2006: Amendments to the Employment Equity Regulations/ 6. Duty to report (Section 21 of the Act).-

6. Duty to report (Section 21 of the Act).-

- 6.1 Each designated employer must submit a report in terms of Section 21 of the Act using the EEA2 form together with the EEA4 to: Employment Equity Registry, Department of Labour, Private BagX117, Pretoria, 0001.
- 6.2 Large employers must submit their first report within six months of being designated, and thereafter annually on the first working day of October; and small employers must submit their first report within twelve months of being designated, and thereafter on the first working day of October of every year that ends with an even number.
- 6.3 Large employers, i.e. employers with 150 and more employees, must complete the entire EEA2 reporting form. Small employers, i.e. employers with fewer than 150 employees, must only complete areas of the EEA2 form that apply to them. Areas that only apply to small employers shall be made available by the Department in a separate form as well. All relevant areas of the form must be fully and accurately completed by employers. Employers who fail to observe this provision will be deemed not to have reported.
- 6.4 A designated employer whose operations extend across different geographical areas or workplaces must submit a report. Employers who submit consolidated reports must have individual employment equity (EE) plans and relevant information for each entity or workplace that have been included in the consolidated report. The consolidated report and the individual EE plans and relevant information must be made available at each entity or workplace. The method of reporting should be consistent from year-to-year or from reporting period to reporting period.
- 6.5 An employer who becomes a designated employer must notify the Director General in writing and provide valid reasons for not being able to report on the first working day of October. This notification must reach the Director General by no later than the last working day of August in the same year. The Director General will examine the reasons that were provided by the employer and shall decide on whether to accept or reject them, which may lead to the non-acceptance of the notification. The Director General's decision shall be final.
- 6.6 A designated employer must retain a copy of the report for a period of three years after it has been submitted to the Director-General, unless the employer has fewer than 150 employees, in which case the report must be retained for two years.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.841 of 18 August 2006: Amendments to the Employment Equity Regulations/ 7. Duty to inform (Section 25 of the Act).-

7. Duty to inform (Section 25 of the Act).-

- 7.1 Each employer must display the notice required by Section 25 (1) of the Act (i.e. the summary of the Act).
- 7.2 If there are employees in the workplace who are unable to read this notice, the employer must inform those employees about the provisions of the Act.
- 7.3 The notice referred to in clause (7.1) is annexed as EEA3 in the regulations.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.841 of 18 August 2006: Amendments to the Employment Equity Regulations/ 8. Income differentials (section 27 of the Act).-

8. Income differentials (section 27 of the Act).-

- 8.1 Each designated employer must submit a statement of income differentials required by section 27 of the Act in using the EEA4 form.
- 8.2 When completing the EEA4 form, designated employers must refer to EEA9 and the EEA10 for guidance.
- 8.3 Designated employers must submit the EEA4 statement together with the EEA2 Forms to: Employment Equity Registry, Department of Labour, Private BagX117, Pretoria, 0001.
- 8.4 Designated employers must retain a copy of the statement for a period of three years after it has been submitted to the Employment Conditions Commission, unless the employer has fewer than 150 employees, in which case the statement must be retained for two years.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.841 of 18 August 2006: Amendments to the Employment Equity Regulations/ 9. Proof of submission and authenticity.-

9. Proof of submission and authenticity.-

- 9.1 Whenever a person is required to satisfy any other person that a copy of any document required or prescribed by the Act or its regulations, excluding the EE report, has been submitted to the other party,

that person may do so by providing:

- (a) A copy of the proof of mailing the document by registered post to the other party;
 - (b) A copy of the telegram, telex, telefax or e-mail, including proof of transmission of the document to the other party;
 - (c) A copy of a receipt signed by the other party or on that party's behalf if the document was delivered by hand;
 - (d) A statement confirming delivery signed by the person who delivered the document.
- 9.2 A copy of any document submitted to a Labour Inspector or any official of the Department of Labour must be signed by an authorised person as proof of authenticity.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.841 of 18 August 2006: Amendments to the Employment Equity Regulations/ 10. Review by Director General (Section 43 of the Act).-

10. Review by Director General (Section 43 of the Act).-

- 10.1 The Director General may conduct a review to determine the extent to which an employer is complying with the Act.
- 10.2 The review shall be conducted using a system that includes a Numerical Analysis Model. This model shall be used as a filtering tool to assess the degree to which the various designated groups (i.e. Blacks, women and people with disabilities) are represented at each occupational level in an employer's workplace. In addition to Blacks, women and people with disabilities, African representation is included as a fourth variable for assessment in an employer's workplace.
- 10.3 The DG shall assess and rank each designated group to address their under representation by taking their National and Provincial Economically Active Population (EAP) into consideration. This principle shall also apply to groupings within each of these designated groups in terms of race and gender.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.841 of 18 August 2006: Amendments to the Employment Equity Regulations/ 11. Enforcement (Chapter 5 of the Act).-

11. Enforcement (Chapter 5 of the Act).-

11.1 Securing an undertaking (Section 36 of the Act):

A labour inspector must request and obtain a written undertaking using the EEA5 form.

11.2 Compliance order (Section 37 of the Act):

A labour inspector may issue a compliance order to a designated employer using the EEA6 form.

11.3 Objections to compliance order (Section 39 of the Act):

- (a) A designated employer may object to a compliance order by making a representation to the Director-General using the EEA7 form.
- (b) The objection must be lodged with the highest authority at the Provincial level of the Department of Labour.

FORMS AND ANNEXURES

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.733 of 14 July 2009: Repeal of the Employment Equity Regulations (Government Gazette No. 32393)

**GNR.733 of 14 July 2009: Repeal of the Employment Equity Regulations
(Government Gazette No. 32393)**

(Editorial Note: Please note that both GNR.733 and GNR.736 repeal GNR.841 as per the original *Government Gazette*.)

DEPARTMENT OF LABOUR

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, in terms of [section 55 \(1\)](#) of the Employment Equity Act, 1998 (Act [No. 55 of 1998](#)), and on the advice of the Commission for Employment Equity, hereby repeal the regulations made in terms of the Employment Equity Act, Act [55 of 1998](#), regulations published in notice R.841 in

(Signed)

M M S MDLADLANA, MP

MINISTER OF LABOUR

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.736 of 14 July 2009: General Administrative Regulations, 2009 (Government Gazette No. 32393)

**GNR.736 of 14 July 2009: General Administrative Regulations, 2009
(Government Gazette No. 32393)**

(Editorial Note: Please note that both GNR.736 and GNR.733 repeal GNR.841 as per the original *Government Gazette*.)

DEPARTMENT OF LABOUR

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby under [section 55 \(1\)](#) of the Employment Equity Act, 1998 (Act [No. 55 of 1998](#)), make the regulations in [the Schedule](#).

SCHEDULE

- [1.](#) Definitions
- [2.](#) Collecting information and conducting an analysis
- [3.](#) Duty to prepare and implement an Employment equity plan
- [4.](#) Duty to report
- [5.](#) Duty to inform
- [6.](#) Income differentials
- [7.](#) Securing an undertaking
- [8.](#) Compliance order
- [9.](#) Objections to compliance order
- [10.](#) Repeal
- [11.](#) Short Title

FORMS AND ANNEXURES

- [1.](#) EEA1 Employee declaration in terms of Section 19 (1) of the Act
- [2.](#) EEA2 Report to Director-General in terms of Section 21 of the Act
- [3.](#) EEA3 Summary of the Act in terms of Section 25 (1) of the Act
- [4.](#) EEA4 Statement of income differentials in terms of Section 27 of the Act
- [5.](#) EEA5 Securing an Undertaking in terms of Section 36 of the Act
- [6.](#) EEA6 Compliance order in terms of Section 37 (1) of the Act
- [7.](#) EEA7 Objection against Compliance Order in terms of Section 39 (1) of the Act
- [8.](#) EEA8 Annexure 1 : Demographic Data
- [9.](#) EEA9 Annexure 2 : Occupational Levels
- [10.](#) EEA10 Annexure 3 : Summary of the employment equity progress report
- [11.](#) EEA11 Annexure 4 : Request for employer's employment equity report

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.736 of 14 July 2009: General Administrative Regulations, 2009 (Government Gazette No. 32393)/ 1. Definitions.-In these Regulations any word or expression to which a meaning has been assigned in the Act, has the meaning so assigned and, unless the context otherwise indicates-

1. Definitions.-In these Regulations any word or expression to which a meaning has been assigned in the Act, has the meaning so assigned and, unless the context otherwise indicates-

"large employers" mean designated employers who employ 150 or more employees;

"small employers" mean designated employers who employ fewer than 150 employees;

"temporary employees" mean workers who are employed to work for three consecutive months or less; and

"the Act" means the Employment Equity Act, 1998 (Act [No. 55 of 1998](#)).

Duties of a designated employer

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.736 of 14 July 2009: General Administrative Regulations, 2009 (Government Gazette No. 32393)/ 2. Collecting information and conducting an analysis.-(1) When a designated employer collects information contemplated in section 19 of the Act, the employer must request each employee in the workforce to complete a declaration using the EEA1 form.

2. Collecting information and conducting an analysis.-(1) When a designated employer collects information contemplated in section 19 of the Act, the employer must request each employee in the workforce to complete a declaration using the EEA1 form.

(2) An employee may add information to the EEA1 Form.

(3) Where an employee refuses to complete the EEA1 form or provides inaccurate information, the employer may establish the designation of an employee by using reliable historical and existing data.

(4) A designated employer must use section B of the EEA2 form to develop the profile of the employer's workforce as required by section 19 (2) of the Act.

(5) When a designated employer conducts the analysis required by section 19 (1) of the Act, the employer may refer to-

(a) Annexure 1 (EEA8), for demographic data; and

(b) Annexure 2 (EEA9), which contains the definitions of occupational levels.

(6) A designated employer must refer to the relevant Codes of Good Practice issued in terms of section 54 of Act as a guide when collecting information and conducting the analysis required by section 19 of the Act.

(7) A designated employer must conduct the analysis required by section 19 of the Act by reviewing its employment policies, practices, procedures and the working environment in order to identify employment barriers which adversely affect people from designated groups.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.736 of 14 July 2009: General Administrative Regulations, 2009 (Government Gazette No. 32393)/ 3. Duty to prepare and implement an employment equity plan.-(1) A designated employer must refer to the relevant Codes of Good Practice issued in terms of section 54 of the Act when preparing an employment equity plan contemplated in section 20 of the

3. Duty to prepare and implement an employment equity plan.-(1) A designated employer must refer to the relevant Codes of Good Practice issued in terms of section 54 of the Act when preparing an employment equity plan contemplated in section 20 of the Act.

(2) A designated employer must retain the employment equity plan for a period of three years after the expiry of the plan, unless the employer employs fewer than 150 employees, in which case the plan must be retained for two years.

(3) The employment equity plan must contain a description of the measures taken by the designated employer to eliminate unfair discrimination in that employer's workplace.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.736 of 14 July 2009: General Administrative Regulations, 2009 (Government Gazette No. 32393)/ 4. Duty to report.-(1) A designated employer must submit a report in terms of section 21 of the Act using the EEA2 form to the Director General, which report must be addressed to the Employment Equity Registry, Department of Labour, Private Bag X117, P

4. Duty to report.-(1) A designated employer must submit a report in terms of section 21 of the Act using the EEA2 form to the Director General, which report must be addressed to the Employment Equity Registry, Department of Labour, Private Bag X117, Pretoria, 0001.

(2) A large employer must submit its first report within six months of being designated, and thereafter annually on the first working day of October; and a small employer must submit their first report within twelve months of being designated, and thereafter on the first working day of October of every year that ends with an even number.

(3) A large employer must complete the entire EEA2 reporting form.

(4) A small employer must only complete areas of the EEA2 form that apply to it.

(5) A designated employer whose operations extend across different geographical areas or workplaces may

choose to submit a separate report for each registered entity or submit a consolidated report.

(6) An employer who submits a consolidated report contemplated in [subregulation \(5\)](#) must have a consolidated plan with individual employment equity plans and relevant information for each entity or workplace that has been included in the consolidated report.

(7) The consolidated report, the individual employment equity plan and relevant information must be made available at each entity or workplace.

(8) An employer must inform the Department immediately of any changes to its trade name or when an employer is no longer designated in terms of the Act.

(9) The method of reporting should remain for the period of the plan and must be consistent from year-to-year and from reporting period to reporting period.

(10) A large employer must retain a copy of the report for a period of three years after it has been submitted to the Director-General.

(11) A small employer must retain a copy of the report for a period of two years after it has been submitted to the Director-General.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.736 of 14 July 2009: General Administrative Regulations, 2009 (Government Gazette No. 32393)/ 5. Duty to inform.-The notice contemplated in section 25 (1) of the Act must be in the form of the EEA3 form.

5. Duty to inform.-The notice contemplated in section 25 (1) of the Act must be in the form of the EEA3 form.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.736 of 14 July 2009: General Administrative Regulations, 2009 (Government Gazette No. 32393)/ 6. Income differentials.-(1) A designated employer must submit a statement of income differentials required by section 27 of the Act in the form of the EEA4 form.

6. Income differentials.-(1) A designated employer must submit a statement of income differentials required by section 27 of the Act in the form of the EEA4 form.

(2) When completing the EEA4 form, a designated employer must refer to the EEA9 form for guidance on occupational levels.

(3) A designated employer must submit an Income Differential Statement in terms of section 27 of the Act using the EEA4 form to the Employment Conditions Commission, which must be addressed to the Employment Equity Registry, Department of Labour, Private Bag X117, Pretoria, 0001.

(4) A large employer must retain a copy of the statement of income differentials contemplated in [subregulation \(1\)](#) for a period of three years after it has been submitted to the Employment Conditions Commission.

(5) A small employer must retain a copy of the statement for a period of two years after it has been submitted to the Employment Conditions Commission.

Enforcement

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.736 of 14 July 2009: General Administrative Regulations, 2009 (Government Gazette No. 32393)/ 7. Securing an undertaking.-A labour inspector must request and obtain a written undertaking using the EEA5 form.

7. Securing an undertaking.-A labour inspector must request and obtain a written undertaking using the EEA5 form.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.736 of 14 July 2009: General Administrative Regulations, 2009 (Government Gazette No. 32393)/ 8. Compliance order.-A labour inspector may issue a compliance order to a designated employer using the EEA6 form.

8. Compliance order.-A labour inspector may issue a compliance order to a designated employer using the EEA6 form.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.736 of 14 July 2009: General Administrative Regulations, 2009 (Government Gazette No. 32393)/ 9. Objections to compliance order.-A designated employer may object to a compliance order by making a representation to the Director-General using the EEA7 form.

9. Objections to compliance order.-A designated employer may object to a compliance order by making a representation to the Director-General using the EEA7 form.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.736 of 14 July 2009: General Administrative Regulations, 2009 (Government Gazette No. 32393)/ 10. Repeal of laws.-The Employment Equity Regulations, 2006 as published in Government Gazette Regulation Notice No. R. 8531 of 18 August of 2006 is hereby repealed.

10. Repeal of laws.-The Employment Equity Regulations, 2006 as published in *Government Gazette* Regulation Notice No. R. 8531 of 18 August of 2006 is hereby repealed.

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the notice "Regulation Notice No. R. 8531" is intended to be "Regulation Notice No. R. 841".)

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Regulations/ GNR.736 of 14 July 2009: General Administrative Regulations, 2009 (Government Gazette No. 32393)/ 11. Short Title.-These Regulations are called the General Administrative Regulations, 2009.

11. Short Title.-These Regulations are called the General Administrative Regulations, 2009.

	labour Department: Labour REPUBLIC OF SOUTH AFRICA
PAGE 1 OF 1 EEA1	

DEPARTMENT OF LABOUR

DECLARATION BY EMPLOYEE (Confidential)					
PLEASE READ THIS FIRST	1. Name of employee:				
Purpose of this form This form is used to obtain information from employees for the purpose of assisting employers with conducting an analysis on the workforce profile. Employers should use this form to ascertain which employees are from designated groups in terms of the Employment Equity Act, 55 of 1998 .	2. Employee workplace No: (This is the number that an employer/company/organization uses to identify an employee in the workplace.)				
Who fills in this form Employees should fill in this form.	3. Please indicate to which categories you belong with an 'X' below:				
	<table border="1"><tr><td>Male</td><td>Female</td></tr><tr><td><input type="checkbox"/></td><td><input type="checkbox"/></td></tr></table>	Male	Female	<input type="checkbox"/>	<input type="checkbox"/>
Male	Female				
<input type="checkbox"/>	<input type="checkbox"/>				
Instructions Employers must ensure	<table border="1"><tr><td>African</td><td>Coloured</td><td>Indian</td><td>White</td></tr></table>	African	Coloured	Indian	White
African	Coloured	Indian	White		

that the contents of this form remain confidential, and that it is only used to comply with the Employment Equity Act, [55 of 1998](#).

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

Foreign National	
------------------	--

If you are not a citizen by birth, please indicate the date you acquired your citizenship:

Please note that people have the right to disclose or not to disclose their disability.


Person with a disability	
--------------------------	--

If yes, specify nature of disability:

4. I verify that the above information is true and correct.

Signed: Employee

Date:

	Labour Department Labour REPUBLIC OF SOUTH AFRICA	PAGE 1 OF 12 EEA2

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PLEASE READ THIS FIRST	SECTION A: EMPLOYER DETAILS & INSTRUCTIONS	
<p>PURPOSE OF THIS FORM</p> <p>This form enables employers to comply with Section 21 of the Employment Equity Act 55 of 1998.</p> <p>This form contains the format for employment equity reporting by employers to the Department of Labour. Both small employers (i.e. employers employing fewer than 150 employees) and large employers (i.e. employers employing 150 or more employees) are required to use this form.</p> <p>Those employers who are not designated, but wish to voluntarily</p>	Trade name	
	DTI registration name	
	DTI registration number	
	PAYE/SARS number	
	UIF reference number	
	EE reference number	
	Seta classification	
	Industry/Sector	
	Telephone number	
	Fax number	
	Email address	
	Postal address	

comply, must also use this reporting form. Although all sections of this form apply to large employers, small employers are not required to complete Section F of the form.

WHO SHOULD COMPLETE THIS FORM?

All designated employers that have to submit a report in terms of the Employment Equity Act, 55 of 1998. Employers who wish to voluntarily comply with the reporting requirements of the Act are also required to complete this form.

WHEN SHOULD EMPLOYERS REPORT?

Large employers must submit their first report within six months of being designated, and thereafter annually on the first working day of October; and small employers must submit their first report within twelve months of being designated, and thereafter on the first working day of October of every year that ends with an even number,

ESSENTIAL REQUIREMENTS

Large employers, i.e. employers with 150 and more employees, must complete the entire EEA2 reporting form. Small employers, i.e. employers with fewer than 150 employees, must only complete areas of the EEA2 form that apply to them.

Guidance to overcome difficulties in order to complete the form properly must be obtained from the Department prior to completing and submitting the report.

SEND TO:

Employment Equity Registry
The Department of Labour
Private Bag X117
Pretoria 0001

Online reporting:
www.labour.gov.za
Helpline: 0860101018

Postal code	
City/Town	
Province	
Physical address	
Postal code	
City/Town	
Province	
Details of CEO at the time of submitting this report	
Name and surname	
Telephone number	
Fax number	
Email address	
Details of Employment Equity Senior Manager at the time of submitting this report	
Name and Surname	
Telephone number	
Fax number	
Email address	
Business type	
<input type="checkbox"/> Private Sector	
<input type="checkbox"/> National Government	<input type="checkbox"/> Parastatal
<input type="checkbox"/> Local Government	<input type="checkbox"/> Provincial Government
<input type="checkbox"/> Non-profit Organization	<input type="checkbox"/> Educational Institution
Information about the organization at the time of submitting this report	
Number of employees in the organization	<input type="checkbox"/> 0 to 49
	<input type="checkbox"/> 50 to 149
	<input type="checkbox"/> 150 or more
Is your organization an organ of State?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is your organisation part of a group / holding company? If yes, please provide the name.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Date of submitting this report	_____ DD / MM / YYYY

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											
TOTAL PERMANENT											
Temporary employees											
GRAND TOTAL											

1.2 Please report the total number of **employees with disabilities only** in each of the following occupational levels: Note: A=Africans, C=Coloureds, I=Indians and W=Whites

Occupational Levels	Male				Female				Foreign Nationals		Total
	A	C	I	W	A	C	I	W	Male	Female	
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											
TOTAL PERMANENT											
Temporary employees											
GRAND TOTAL											

2. Core Operation Functions and Support Functions by Occupational Level

A job could either be a **Core operation** function or a **Support** function. **Core operation Function** positions are those that directly relate to the core business of an organization and may lead to revenue generation e.g. sales production etc. **Support Function** positions provide infrastructure and other enabling conditions for revenue generation e.g. human resources corporate services etc.

2.1 Please indicate the total number of employees (including people with disabilities), that are involved in **Core Operation Function** positions at each level in your organization only. Note: A=Africans, C=Coloureds, I=Indians and W=Whites

SECTION E: NUMERICAL GOALS & TARGETS

7. Numerical goals

7.1 Please indicate the numerical goals (i.e. the workforce profile) you project to achieve for the total number of employees, including people with disabilities, at the end of your current employment equity plan in terms of occupational levels. Note: A=Africans, C=Coloureds, I=Indians and W=Whites

Occupational Levels	Male				Female				Foreign Nationals		Total
	A	C	I	W	A	C	I	W	Male	Female	
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											
TOTAL PERMANENT											
Temporary employees											
GRAND TOTAL											

7.2 Please indicate the numerical goals (i.e. the workforce profile) you project to achieve for the total number of **employees with disabilities only** at the end of your current employment equity plan in terms of occupational levels.

Occupational Levels	Male				Female				Foreign Nationals		Total
	A	C	I	W	A	C	I	W	Male	Female	
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											

qualified workers, junior management, supervisors, foremen, and superintendents											
Semi-skilled and discretionary decision making											
Unskilled and defined decision making											
TOTAL PERMANENT											
Temporary employees											
GRAND TOTAL											

SECTION F: MONITORING & EVALUATION (*This section is not applicable to small employers*)

9. Disciplinary Action

9.1 Disciplinary action: (report the total number of disciplinary actions during the twelve months preceding this report). Report on formal outcomes only. Note: A=Africans, C=Coloureds, I=Indians and W=Whites

DISCIPLINARY ACTION	Male				Female				Foreign Nationals		Total
	A	C	I	W	A	C	I	W	Male	Female	

10. Awareness of Employment Equity

10.1 Please indicate which of the following awareness measures were implemented by your organization:

	Yes	No	No. of employees covered
Formal written communication			
Policy statement includes reference to employment equity			
Summary of the Act displayed			
Employment Equity training			
Diversity management programmes			
Discrimination awareness programmes			

11. Consultation

11.1 Please indicate which stakeholders were involved in the consultation process when developing and implementing your employment equity plan and when preparing this Employment Equity Report:

	Yes	No
Consultative body or employment equity forum		
Registered trade union(s)		
Employees		

12. Barriers and affirmative action measures

12.1 Please indicate in which categories of employment policy or practice barriers to employment equity were identified. If your answer is 'Yes' to barriers in any of the categories, please indicate whether you have developed affirmative action measures and the timeframes to overcome them.

Categories	BARRIERS		AFFIRMATIVE ACTION MEASURES		TIMEFRAME FOR IMPLEMENTATION OF AA MEASURES	
	YES	NO	YES	NO	START DATE	END DATE
(Editorial Note: Wording as per original <i>Government Gazette</i> . It is suggested that the word "IMPLEMENTION" is intended to be "IMPLEMENTATION".)						
Recruitment procedures						
Advertising positions						
Selection criteria						
Appointments						
Job classification and grading						
Remuneration and benefits						
Terms & conditions of employment						
Job assignments						
Work environment and facilities						
Training and development						
Performance and evaluation						
Promotions						
Transfers						
Succession & experience planning						
Disciplinary measures						
Dismissals						
Retention of designated groups						
Corporate culture						
Reasonable accommodation						
HIV & AIDS prevention and wellness programmes						
Appointed senior manage(s) to manage EE implementation						
(Editorial Note: Wording as per original <i>Government Gazette</i> . It is suggested that the word "manage(s)" is intended to be "manager(s)".)						
Budget allocation in support of employment equity goals						
Time off for						

employment equity consultative committee to meet					
--	--	--	--	--	--

13. Monitoring and evaluation of implementation

13.1 How regularly do you monitor progress on the implementation of the employment equity plan? Please choose one.

Weekly	Monthly	Quarterly	Yearly

13.2 Did you achieve the annual objectives as set out in your employment equity plan for this period?

Yes	No	Please explain

SECTION G: Signature of the Chief Executive Officer

Chief Executive Officer

I hereby declare that I have read, approved and authorized this report.

Signed on this day of year

At place:

Chief Executive Officer (Full Name)

Chief Executive Officer (Signature)

	labour
	Department: Labour REPUBLIC OF SOUTH AFRICA

PAGE 1 OF 4 EEA3

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

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

Purpose of the Act: Section 2

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

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

Application of the Act: Section 4

- (a) Chapter II (section 5-11) applies to all employers and employees.
- (b) Chapter III (section 12-27) applies to designated employers and people from designated groups.

- (c) A designate employer means an employer who employs 50 or more employees, or has a total annual turnover as reflected in Schedule 4 of the Act, municipalities and organs of State. Employers can also volunteer to become designated employers.

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the word "designate" is intended to be "designated".)

- (d) A designated group means black people, women and people with disabilities.
- (e) The South African National Defence Force, National Intelligence Agency, and South African Secrete Services are excluded from this Act.

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the word "Secrete" is intended to be "Secret".)

2. Chapter II - prohibition of unfair discrimination

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.

It is not unfair discrimination to promote affirmative action consistent with the Act or to prefer or exclude any person on the basis of an inherent job requirement.

Medical testing

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

Psychological testing: Section 8

Psychological testing and similar assessments are prohibited, unless the test is scientifically valid and reliable, can be applied fairly to all employees, and is not biased against any employee or group.

Disputes concerning this Chapter: Section 10

- (a) An employee, or applicant for employment, may refer a dispute concerning alleged unfair discrimination (or medical or psychological testing) to the CCMA for conciliation. This must be done within six months of the alleged discrimination (or testing).
- (b) If a dispute is not resolved at conciliation, a party may refer it to the Labour Court for adjudication. The parties to a dispute may also agree to refer the dispute to arbitration.
- (c) Unfair dismissal disputes in which unfair discrimination is alleged must be dealt with in terms of the Labour Relations Act. The dismissal must be referred to the CCMA within 30 days.

3. Chapter III - Affirmative Action

3.1 Duties of a designated employer

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

3.2 Affirmative action

- Affirmative action measures are measures intended to ensure that suitably qualified employees from designated groups have equal employment opportunity and are equitably represented in all occupational categories and levels of the workforce.
- (a) Such measures must include:
 - (i) Identification and elimination of barriers with an adverse impact on designated groups;
 - (ii) Measures which promote diversity;
 - (iii) Making reasonable accommodation for people from designated groups;
 - (iv) Retention, development and training of designated groups (including skills development); and
 - (v) Preferential treatment and numerical goals to ensure equitable representation, which exclude quotas.
 - (c) Designated employers are not required to take any decision regarding an employment policy or practice that would establish an absolute barrier to prospective or continued employment or advancement of people not from designated groups.

3.3 Consultation: Section 16 and 17

A designated employer must take reasonable steps to consult with representatives of employees representing the diverse interests of the workforce on the conducting of an analysis, preparation and implementation of a plan, and on reporting to the Director-General.

3.4 Disclosure of information: Section 18

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

3.5 Analysis: Section 19

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

3.6 Employment Equity Plan: Section 20

A designated employer must prepare and implement a plan to achieve employment equity, which must-

- (a) Have objectives for each year of the plan;
- (b) Include affirmative action measures;
- (c) Have numerical goals for achieving equitable representation;
- (d) Have a timetable for each year;
- (e) Have internal monitoring and evaluation procedures, including internal dispute resolution mechanisms; and
- (f) Identify persons, including senior managers, to monitor and implement the plan.

3.7 Report: Section 21

- (a) An employer who employs fewer than 150 employees must submit its first report to the Director-General within 12 months after commencement of the Act, and thereafter every two years on the first working day of October.
- (b) An employer who employs 150 or more employees must submit its first report six months after the commencement of the Act, and thereafter every year on the first working day of October.

3.8 Designated employer must assign a manager: Section 24

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

3.9 Income differentials: Section 27

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

Where there are disproportionate income differentials, a designated employer must take measures to reduce it progressively. Such measures may include collective bargaining, compliance with sectoral determinations (Section 51 of the Basic Conditions of Employment Act, 1997); the application of norms and benchmarks recommended by the ECC, relevant measures contained in skills development legislation and any other appropriate steps.

4. Chapter V - Monitoring, Enforcement and Legal Proceedings

(Editorial Note: Numbering as per original *Government Gazette*.)

4.1 Monitoring: Section 34

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

4.2 Powers of the Labour Inspector: Section 35

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

4.3 Undertaking to comply: Section 36

If the inspector has reasonable grounds to believe a designated employer has failed to comply with its obligations in terms of the Act, the inspector will obtain a written undertaking to comply within a specified period.

4.4 Compliance Order: Section 37

If the designate employer refuses to comply with the written undertaking, the inspector will issue a compliance order.

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the word "designate" is intended to be "designated".)

4.5 Review by Director-General: Section 43

The Director-General may conduct a review to determine whether an employer is complying with the Act. On completion of the review, the Director-General may make recommendations for compliance within certain frames.

4.6 Powers of the Labour Court: Section 50

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

4.7 Protection of employee Rights: Section 51

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

5. Chapter VI - General Provisions


5.1 State contracts: Section 53

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

5.2 Liability of Employers: Section 60

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

FORM EEA4


	<p>Labour</p> <hr/> <p>Department: Labour REPUBLIC OF SOUTH AFRICA</p>	<p>PAGE 1 OF 4</p> <p>EEA4</p>	<p>1 of 4</p> <p>EEA4</p>
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PLEASE READ THIS FIRST	SECTION A: EMPLOYER DETAILS & INSTRUCTIONS	
<p>PURPOSE OF THIS FORM</p> <p>This form enables employers to comply with Section 21 of the Employment Equity Act 55 of 1998.</p> <p>This form contains the format for employment equity reporting by employers to the Department of Labour. Both small employers (i.e. employers employing fewer than 150 employees) and large employers (i.e. employers employing 150 or more employees) are required to use this form.</p> <p>Those employers who are not designated, but wish to voluntarily comply, must also use this reporting form.</p> <p>Although all sections of this form apply to large employers, small employers are not required to complete Section F of the form.</p> <p>WHO SHOULD COMPLETE THIS FORM?</p> <p>All designated employers that have to submit a report in terms of the Employment Equity Act, 55 of 1998.</p>	Trade name	
	DTI registration name	
	DTI registration number	
	PAYE/SARS number	
	UIF reference number	
	EE reference number	
	Seta classification	
	Industry/Sector	
	Telephone number	
	Fax number	
	Email address	
	Postal address	
	Postal code	
	City/Town	
	Province	
	Physical address	
	Postal code	
	City/Town	
	Province	
	Details of CEO at the time of submitting this report	
Name and surname		
Telephone number		

<p>Employers who wish to voluntarily comply with the reporting requirements of the Act are also required to complete this form.</p> <p>WHEN SHOULD EMPLOYERS REPORT?</p> <p>Large employers must submit their first report within six months of being designated, and thereafter annually on the first working day of October; and small employers must submit their first report within twelve months of being designated, and thereafter on the first working day of October of every year that ends with an even number,</p> <p>ESSENTIAL REQUIREMENTS</p> <p>Large employers, i.e. employers with 150 and more employees, must complete the entire EEA2 reporting form. Small employers, i.e. employers with fewer than 150 employees, must only complete areas of the EEA2 form that apply to them.</p> <p>Guidance to overcome difficulties in order to complete the form properly must be obtained from the Department prior to completing and submitting the report.</p> <p>SEND TO:</p> <p>Employment Equity Registry The Department of Labour Private Bag X117 Pretoria 0001</p> <p>Online reporting: www.labour.gov.za Helpline: 0860101018</p>	Fax number	
	Email address	
	Details of Employment Equity Senior Manager at the time of submitting this report	
	Name and Surname	
	Telephone number	
	Fax number	
	Email address	
	Business type	
	<input type="checkbox"/> Private Sector	
	<input type="checkbox"/> National Government	<input type="checkbox"/> Parastatal
	<input type="checkbox"/> Local Government	<input type="checkbox"/> Provincial Government
	<input type="checkbox"/> Non-profit Organization	<input type="checkbox"/> Educational Institution
	Information about the organization at the time of submitting this report	
	Number of employees in the organization	<input type="checkbox"/> 0 to 49
<input type="checkbox"/> 50 to 149		
<input type="checkbox"/> 150 or more		
Is your organization an organ of State?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is your organisation part of a group / holding company? If yes, please provide the name.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Date of submitting this report	DD / MM / YYYY	


THE FOLLOWING MUST BE TAKEN INTO CONSIDERATION WHEN COMPLETING THE EEA4 FORMS

- Foreign nationals should be included when completing the EEA4 form in the appropriate space provided in the table below.
- Temporary employees mean workers who are employed to work for three consecutive months or less;
The calculation of remuneration must include twelve months of a financial year that is in line with the period covered by the EEA2 reporting form.
- Where a person has not worked for a full twelve month period, the total remuneration worked should be included.
All payment amounts to be reflected in the table below must be rounded to the nearest Rand (R) and included as total remuneration for each group in


 labour Department: Labour REPUBLIC OF SOUTH AFRICA	
PAGE 1 OF 1 EEA5	
PLEASE READ THIS FIRST WHAT IS THE PURPOSE OF THIS FORM? To record an Undertaking by the employer to comply with Section 36 of the Employment Equity Act, 55 of 1998. WHO FILLS IN THIS FORM? The employer, assisted by the inspector. WHERE DOES THIS FORM GO? This form goes to the inspector. INSTRUCTIONS An Undertaking may be secured when an inspector has reasonable grounds to believe that a designated employer has failed to comply with one or more paragraph(s) of Section 36 of the Act.	<div style="text-align: center;"> DEPARTMENT OF LABOUR WRITTEN UNDERTAKING </div> <p>Ref/Case No: Employer's Enquiries: Date of Undertaking:</p> <p>I/We _____ (Employer) : _____ (Registration No.)</p> <p>undertake to comply with the following provisions of the Act and its regulations below by: Date ____ :</p> <p>ISSUED ON DAY OF YEAR</p> <p>AT _____ (PLACE)</p> <p>SIGNED: EMPLOYER</p> <p>SIGNED: LABOUR INSPECTOR</p>
Failure to comply with this undertaking will result in a Compliance Order (EEA6) being issued.	

CONTACT DETAILS OF INSPECTOR:

- WITNESSES 1.
2.

 <p>labour</p> <p>Department: Labour REPUBLIC OF SOUTH AFRICA</p>	<p style="text-align: right;">PAGE 1 OF 2 EEA6</p>
<p>PLEASE READ THIS FIRST</p> <p style="text-align: center;">?</p>	<p style="text-align: center;">DEPARTMENT OF LABOUR</p> <p style="text-align: center;">COMPLIANCE ORDER</p>
<p>WHAT IS THE PURPOSE OF THIS FORM?</p>	<p>Ref/Case No:</p> <p>Enquiries:</p> <p>Date of Issue:</p>
<p>This form is issued in terms of Section 37 of the Employment Equity Act, 55 of 1998. The purpose of this form is to enforce compliance relating of Section 36 of the Act.</p>	<p>Provincial Office/Labour Centre: (Delete that which is not applicable)</p>
<p>(Editorial Note: Wording as per original <i>Government Gazette</i>. It is suggested that the words "relating of." is intended to be "relating to".)</p>	<p>1. Employer:</p> <p>1. Registration No:</p> <p>2. Workplace(s):</p>
<p>(Editorial Note: Numbering as per original <i>Government Gazette</i>.)</p> <p>WHO FILLS IN THIS FORM?</p> <p>An inspector fills this form</p>	<p>3. You have not complied with the following provisions of the Act and its regulations.</p> <p>Provisions:</p>
<p>WHERE DOES THIS FORM GO?</p>	<p>4. Details:</p>
<p>This form goes to the employer.</p>	
<p>INSTRUCTIONS</p> <p>The inspector may issue a Compliance Order to a designated employer if that employer has refused to give a Written Undertaking (EEA5) in terms of Section 36.</p> <p>?</p>	<p style="text-align: center;">AND / OR</p> <p>5. You have not complied with your written undertaking to the following extent:</p>
<p>The employer must display a copy of this order prominently at a place accessible to the affected employees at each workplace named in</p> <p>?</p>	<p style="text-align: center;">AND</p> <p>6. You are required to implement the following within days of receipt hereof.</p> <p>7.1</p> <p>7.2</p>

it.	
(Editorial Note: Numbering as per original <i>Government Gazette</i> .)	
? An employer must comply within the time period stated unless the employer objects in terms of Section 39.	AND / OR 7. Fines 7.1 The Director General may recommend to the Labour Court to impose a fine in accordance with Schedule 1 of the Act.
? Failure to comply could result in a referral to the Labour Court.	


	labour
	Department: Labour REPUBLIC OF SOUTH AFRICA
	PAGE 2 OF 2 EEA6

8. Objections

You may object to this compliance order by making representations to the Director General within 21 days of receipt of this order.

SECURED ON DAY OF
YEAR AT (PLACE)

LABOUR INSPECTOR

	labour
	Department: Labour REPUBLIC OF SOUTH AFRICA
	PAGE 1 OF 2 EEA7

<p>PLEASE READ THIS FIRST</p> <p>?</p>	<p>DEPARTMENT OF LABOUR</p> <p>OBJECTION AGAINST A COMPLIANCE ORDER IN TERMS OF SECTION 39 OF THE ACT</p> <p>NOTICE OF OBJECTION</p>
<p>WHAT IS THE PURPOSE OF THIS FORM?</p> <p>This form is issued in terms of Section 39 of the Employment Equity Act, 55 of 1998. A designated employer may lodge an objection to a compliance order by completing this form.</p>	<p>1. Employer: Registration No: Telephone No: Fax: Address: Postal Code</p>
<p>WHO FILLS IN THIS FORM?</p> <p>The employer must fill in this form.</p>	<p>2. Quote the reference number and date of the compliance order against which the objection is lodged.</p>

WHERE DOES THIS FORM GO?	Reference/Case No. _____ Date _____
To the Provincial Office of the Department from which the compliance order was issued.	3. To which portion of the compliance order do you object?
INSTRUCTIONS	
? This objection must be lodged to the office of the Provincial Director that issued the compliance order within 21 days of the date of receipt of the compliance order.	4. State your full reason for lodging the objection:
? The objection must include all relevant information.	
? A copy must be delivered to the employee(s) affected by it, or if this is impractical to a representative of the employee(s), including a registered trade union.	

Any documentary evidence (or certified copies thereof) that you wish to submit in support of your contention(s) as stated in paragraph 4 should be attached and listed below:


Number	Title or description of document

Place:

Date:

Signature of objector / employer


Full name of objector / employer

	<p>labour</p> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>	<p>Department: Labour REPUBLIC OF SOUTH AFRICA</p>	<p>PAGE 1 OF 1 EEA8</p>
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ANNEXURE 1

Demographic profile of the national and regional economically active population


<p>WHAT IS THE PURPOSE OF THE DEMOGRAPHIC PROFILOF THE NATIONAL AND REGIONAL ECONOMICALLY ACTIVE POPULATION AND WHERE TO FIND THEM?</p> <p>(Editorial Note: Wording as per original <i>Government Gazette</i>. It is suggested that the word "PROFILOF" is intended to be "PROFILE OF".)</p> <p>Statistics South Africa provides demographic data using Labour Force Surveys from time to time. The Labour Force Surveys (LFS) that is normally released quarterly provides statistics on the national and provincial Economically Active Population (EAP) in terms of race and gender. Employers can access this information directly from Statistics South Africa. This information must be used by employers when consulting with employees, conducting an analysis and when preparing and implementing Employment Equity Plans.</p>
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	<p>labour</p> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>	<p>Department: Labour REPUBLIC OF SOUTH AFRICA</p>	<p>PAGE 1 OF 1 EEA9</p>
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ANNEXURE 2: Occupational Levels

PLEASE READ THIS FIRST	Equivalent occupational levels					
?	Semantic Scale	Paterson		Peromnes	Hay	Castellion
WHAT IS THE PURPOSE OF THIS ANNEXURE?	Top management	F	F	1++ 1+		14
Job evaluation or grading systems are used by many organizations to measure jobs according to their content and establish comparative worth between jobs.	Senior management	E	E UPPER	1 2	1 2	13
This annexure provides a table of equivalent occupational levels that may be used by employers when			E LOWER	3		

completing the EEA2 and EEA4 forms.	Professionally qualified and experienced specialists and mid-management	D	D UPPER	4	3	12
INSTRUCTIONS The table indicates the occupational levels within organizations as developed through the use of different job evaluation or grading systems. The table provides equivalent levels from each of these job evaluation systems.		D LOWER		5	6	4
	Organizations that make use of neither one of the job evaluation systems in this table, nor a customized system linked to one of these, should use the Semantic Scale for guidance in determining occupational levels within the organization.	Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents	C	C UPPER	7	5
8					6	
			C LOWER	9	6A	8
				10	7	
	Semi-skilled and discretionary decision making	B	B UPPER	11	8	7
				12	9	
			B LOWER	13	10	6
				14	11	
	Unskilled and defined decision making	A	A	15	11	5
				16	12	
				17	13	3
				18	2	
				19	1	1



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Labour
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ANNEXURE 3: Summary of the employment equity progress report for public companies to include in their Annual Financial Report

Every designated employer that is a public company is required in terms of Section 22 of the Act to publish a summary of their employment equity report in that employer's annual financial report. Every employer who is required to comply with Section 22 must follow the format below. However, nothing should preclude an employer to narrate any additional information, e.g. on people with disabilities.

Occupational levels

Please report the total number of **employees** (including employees with disabilities) in each of the following **occupational levels**. Note: A=Africans, C=Coloureds, I=Indians and W=Whites

Occupational Levels	Male				Female				Foreign Nationals		Total
	A	C	I	W	A	C	I	W	Male	Female	
Top management											
Senior management											
Professionally qualified and experienced specialists and mid-management											

Employment Equity
Registry
(Application for EE
Report)
Department of Labour
Private Bag X117
Pretoria
0001

Section C: Report requested:
Employer
1.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Notices/ GNR.1394 of 23 November 1999: Code of Good Practice: Preparation, Implementation and Monitoring of Employment Equity Plans

GNR.1394 of 23 November 1999: Code of Good Practice: Preparation, Implementation and Monitoring of Employment Equity Plans

EMPLOYMENT EQUITY ACT, 1998 (ACT [NO. 55 OF 1998](#))

CODE OF GOOD PRACTICE: 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.

SCHEDULE

ARRANGEMENT OF REGULATIONS

- [1.](#) Objective
- [2.](#) Legal framework
- [3.](#) Scope
- [4.](#) Purpose and rationale for the plan
- [5.](#) Structure of the plan
- [6.](#) Process for constructing a plan
- [7.](#) Planning phase
- [8.](#) Developing the plan
- [9.](#) Monitoring and evaluating the plan

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Notices/ GNR.1394 of 23 November 1999: Code of Good Practice: Preparation, Implementation and Monitoring of Employment Equity Plans/ 1. Objective

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"*).

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Notices/ GNR.1394 of 23 November 1999: Code of Good Practice: Preparation, Implementation and Monitoring of Employment Equity Plans/ 2. Legal framework

2. Legal framework

2.1 This code is issued in terms of Section 54 of the Act, 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.¹

Footnotes

1 Section 3 (c) of the Act.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Notices/ GNR.1394 of 23 November 1999: Code of Good Practice: Preparation, Implementation and Monitoring of Employment Equity Plans/ 3. Scope

3. Scope

3.1 This code is relevant to all employers that are regarded as designated employers in the Act.²

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.

Footnotes

2 See the definition of "designated employer" in the Act.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Notices/ GNR.1394 of 23 November 1999: Code of Good Practice: Preparation, Implementation and Monitoring of Employment Equity Plans/ 4. Purpose and rationale for the plan

4. Purpose and rationale for the plan

4.1 The plan reflects a designated employer's employment equity implementation programme.

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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Notices/ GNR.1394 of 23 November 1999: Code of Good Practice: Preparation, Implementation and Monitoring of Employment Equity Plans/ 5. Structure of the plan

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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Notices/ GNR.1394 of 23 November 1999: Code of Good Practice: Preparation, Implementation and Monitoring of Employment Equity Plans/ 6. Process for constructing a plan

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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Notices/ GNR.1394 of 23 November 1999: Code of Good Practice: Preparation, Implementation and Monitoring of Employment Equity Plans/ 7. Planning phase

7. Planning phase

7.1 Assignment of senior manager 3

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 4

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.

7.2.4 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.

7.2.5 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.

7.2.6 Communication should also include employees from non-designated groups⁵ and focus on the contribution that can be made by them.

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

7.2.8 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.

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

7.2.10 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.

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

7.2.12 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.

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

7.2.14 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*⁶

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 stereotyping 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, [Z](#) 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.

Footnotes

- 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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Notices/ GNR.1394 of 23 November 1999: Code of Good Practice: Preparation, Implementation and Monitoring of Employment Equity Plans/ 8. Developing the plan

8. Developing the plan

8.1 *Duration of the plan*⁸

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;
- . take into account 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*⁹

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*¹⁰ *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 goals¹¹

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.

Footnotes

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) (c) of the Act.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Rules and Regulations/ Repealed Rules and Regulations/ Notices/ GNR.1394 of 23 November 1999: Code of Good Practice: Preparation, Implementation and Monitoring of Employment Equity Plans/ 9. Monitoring and evaluating the plan

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 Reporting¹²

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 EEA 2.

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 stakeholders.

Footnotes

- ¹² See section 21 of the Act.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections

**EMPLOYMENT EQUITY ACT,
NO. 55 OF 1998**

(Prior to amendment by Act No. 47 of 2013)

Section 1, definition-"designated employer", paragraph (d)

- (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

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 1, definition-"designated groups"

Section 1, definition-"designated groups"

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

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of

[Section 1, definition-"labour inspector"](#)

"labour inspector" means a person appointed in terms of [section 65](#) of the Basic Conditions of Employment Act;

[Section 1, definition-"serve" or "submit"](#)

"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;

[Section 2 \(b\)](#)

- (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.

[Section 6 \(1\)](#)

(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.

[Section 8 \(b\)](#)

- (b) can be applied fairly to employees; and

[Section 8 \(c\)](#)

- (c) is not biased against any employee or group.

[Section 10 \(6\) \(a\)](#)

- (a) any party to the dispute may refer it to the Labour Court for adjudication; or

[Section 10 \(6\) \(b\)](#)

(b) all the parties to the dispute may consent to arbitration of the dispute.

[Section 11](#)

11. Burden of proof.-Whenever unfair discrimination¹ is alleged in terms of this Act, the employer against whom the allegation is made must establish that it is fair.

Footnotes

1 [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".

[Section 15 \(1\)](#)

(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.

[Section 15 \(2\) \(d\) \(i\)](#)

(i) ensure the equitable representation of suitably qualified people from designated groups in all occupational categories and levels in the workforce; and

[Section 16 \(2\) \(a\)](#)

(a) employees from across all occupational categories and levels of the employer's workforce;

[Section 19 \(2\)](#)

(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.

Section 20 (2) (c)

- (c) where underrepresentation of people from designated groups has been identified by the analysis, the numerical goals² 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;

Footnotes

- 2 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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 21 (1)

Section 21 (1)

- (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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 21 (2)

Section 21 (2)

- (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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 21 (3)

Section 21 (3)

(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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 21 (4)

Section 21 (4)

(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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 21 (5)

Section 21 (5)

- (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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 27, heading

Section 27, heading

Income differentials

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 27 (1)

Section 27 (1)

(1) Every designated employer, when reporting in terms of [section 21 \(1\)](#) and [\(2\)](#), must submit a statement, as prescribed, to the Employment Conditions 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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 27 (2)

Section 27 (2)

(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 \(4\)](#).

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 36

Section 36

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](#).

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 37 (1)

Section 37 (1)

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

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 37 (3)

Section 37 (3)

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

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 37 (5)

Section 37 (5)

(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](#).

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 37 (6)

Section 37 (6)

(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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 39

Section 39

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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 40

Section 40

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-

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

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 42

Section 42

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:

- (a) 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-
 - (i) demographic profile of the national and regional economically active population;
 - (ii) pool of suitably qualified people from designated groups from which the employer may reasonably be expected to promote or appoint employees;
 - (iii) economic and financial factors relevant to the sector in which the employer operates;
 - (iv) present and anticipated economic and financial circumstances of the employer; and
 - (v) the number of present and planned vacancies that exist in the various categories and levels, and the employer's labour turn-over;
- (b) progress made in implementing employment equity by other designated employers operating under comparable circumstances and within the same sector;
- (c) reasonable efforts made by a designated employer to implement its employment equity plan;
- (d) the extent to which the designated employer has made progress in eliminating employment barriers that adversely affect people from designated groups; and
- (e) any other prescribed factor.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 45

Section 45

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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 48

Section 48

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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 50 (1) (h)

Section 50 (1) (h)

- (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;

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 55 (2)

Section 55 (2)

(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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 56 (1)

Section 56 (1)

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 \(4\)](#).

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 59 (3)

Section 59 (3)

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

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 59 (4)

Section 59 (4)

(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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 61 (3)

Section 61 (3)

(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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Section 61 (4)

Section 61 (4)

(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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Schedule 1

Schedule 1

Schedule 1

MAXIMUM PERMISSIBLE FINES THAT MAY BE IMPOSED FOR CONTRAVENING 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

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 47 of 2013)/ Schedule 4

Schedule 4

Schedule 4

TURNOVER THRESHOLD APPLICABLE TO DESIGNATED EMPLOYERS

<i>Sector or sub-sectors 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

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 52 of 2003)

(Prior to amendment by Act No. 52 of 2003)

Section 1, definition-"public service", paragraph (d)

(d) Comsec;

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 52 of 2003)/ Section 4 (3)

Section 4 (3)

(3) This Act does not apply to members of the National Defence Force, the National Intelligence Agency or the South African Secret Service or to the directors and staff of Comsec.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 68 of 2002)

(Prior to amendment by Act No. 68 of 2002)

Section 1, definition-"public service", paragraph (d)

(d) the South African National Academy of Intelligence;

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 68 of 2002)/ Section 4 (3)

Section 4 (3)

(3) This Act does not apply to members of the National Defence Force, the National Intelligence Agency, the South African Secret Service or the South African National Academy of Intelligence³.

Footnotes

³ 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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 65 of 2002)

(Prior to amendment by Act No. 65 of 2002)

Section 4 (3)

(3) This Act does not apply to members of the National Defence Force, the National Intelligence Agency, or the South African Secret Service⁴.

Footnotes

⁴ 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.

National Legislation/ Principal Acts and Regulations/ E/ Employment Equity Act, No. 55 of 1998/ Wording of Sections/ (Prior to amendment by Act No. 65 of 2002)/ Section 4 (3)

(Prior to amendment by Act No. 65 of 2002)

Section 4 (3)

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