

# EMPLOYMENT EQUITY IN THE WORKPLACE



## WHY THE EMPLOYMENT EQUITY ACT?

South Africa has a legacy of discrimination in relation to race, gender and disability that has resulted in the denial of access to opportunities for education, employment, promotion and wealth creation for the majority of South Africans. The Employment Equity Act (the EEA) was passed to address this legacy and has two main objectives, namely —

- ◆ to ensure that South African workplaces are free of discrimination (this applies to all workplaces); and
- ◆ to ensure that affirmative action measures are implemented so 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 (generally, this refers to employers employing more than 50 employees, employer with a turnover in excess of a specified amount, municipalities or an organ of state).

## WHY IS EMPLOYMENT EQUITY IMPORTANT?

South Africa is a country founded on constitutional values of human dignity, equality and human rights and freedoms. The EEA gives effect to the Constitution and it prohibits 'unfair discrimination' on a number of listed grounds such as race, sex, belief and disability, and any other arbitrary ground.

Employment equity is a key factor in achieving sound human resources practices. This includes eliminating the historical barriers that prevent the advancement of the designated groups (Black people, including African, Coloured and Indian people, women and people with disabilities) and applying positive affirmative action measures.

In terms of the Constitution and the EEA, it is not unfair discrimination to take affirmative action measures consistent with the purpose of the EEA (or to distinguish, exclude or prefer

any person on the basis of an inherent requirement of a job). For a measure to be justified as a valid "affirmative action measure", it must target categories of persons disadvantaged by unfair discrimination, be designed to protect them and the measure should promote the achievement of equality and be rationally implemented.

## THE EEA AMENDMENTS AND THE CCMA

The CCMA has jurisdiction to conciliate all unfair discrimination disputes. In terms of the amendments to the EEA, the CCMA is able to arbitrate unfair discrimination disputes as follows:

### Unfair discrimination based on grounds of sexual harassment

All applicants have the right to refer their disputes to either arbitration or the Labour Court for adjudication.

### Unfair discrimination based on grounds other than sexual harassment, including equal pay for work of equal value

Applicants earning below the BCEA threshold of R205 433.30 may elect to refer their dispute to either the CCMA or the Labour Court.

Applicants earning above the threshold may refer their disputes to the Labour Court or by written agreement, to the CCMA for arbitration.

Commissioners have the power to make any appropriate arbitration award that gives effect to the EEA, including an award ordering payment of compensation, payment of damages or 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.

## COMMISSION FOR EMPLOYMENT EQUITY

The Commission for Employment Equity is responsible for advising the Minister of Labour on the implementation of the EEA and monitoring and ensuring compliance.

Designated employers, for example those that employ 50 or more employees, municipalities, most public service departments and employers bound by collective agreements, are required to submit an Employment Equity Plan to the Commission for Employment Equity. The plan should identify barriers to equity in the workplace and set targets for the achievement of employment equity.

The designated employers are required to consult with unions and employees to ensure that the plan is accepted by everyone; review all employment policies, practices and procedures that may act as a barrier to designated groups; prepare a profile of their workforce in order to identify any problems relating to employment equity; and prepare and implement an employment equity plan setting out the affirmative actions measures they intend taking to achieve employment equity goals. They must also display a summary of the provisions of the Act in all languages relevant to the workforce.

During 2014, new Regulations were made relating to work of equal value, the duties of a designated employer and enforcement mechanisms. The Minister has also issued various Codes of Good Practice to assist employers in developing their plans. These codes may be found on the Department of Labour or the CCMA website.

## RELEVANT LEGISLATION

Employment Equity Act, No 55 of 1998.