

Punitive sections of the Employment Equity Act

Sections 16, 19, 20, 21, 22 and 23 are the punitive sections of the EE Act. Schedule 1 of the Act provides for penalties for any breach of the sections below. The maximum fine for the first contravention is R500,000.

The Act is also quite clear as to how a company's non-compliance can be brought to the attention of the Department of Labour (any concerned person can bring it to their attention). The Department will send an inspector around to investigate and will give you 60 days in which to comply. The Department tends to check up on:

- Failure to submit Employment Equity plans and reports
- Absence of Equity Plan in the workplace
- No display of summary of the Act
- No consultation with employees
- No acknowledgement of receipt of report from EE registry

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 171--

- a. with a representative trade union representing members at the workplace and its employees or representatives nominated by them; or
- b. if no representative trade union represents members at the workplace, with its employees or representatives nominated by them.

(2) The employees or their nominated representatives with whom an employer consults in terms of subsection (1) (a) and (b), taken as a whole, must reflect the interests of--

- a. employees from across all occupational categories and levels of the employer's workforce;
- b. employees from designated groups; and
- c. employees who are not from designated groups.

(3) This section does not affect the obligation of any designated employer in terms of section 86 of the Labour Relations Act to consult and reach consensus with a workplace forum on any of the matters referred to in section 17 of this Act.

¹ **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 19¹;
- b. the preparation and implementation of the employment equity plan referred to in section 20; and
- c. a report referred to in section 21.

19. Analysis.--(1) A designated employer must collect information and conduct an analysis, as prescribed, of its employment policies, practices, procedures and the working environment, in order to identify employment barriers which adversely affect people from designated groups.

(2) An analysis conducted in terms of subsection (1) must include a profile, as prescribed, of the designated employer's workforce within each occupational category and level in order to determine the degree of underrepresentation of people from designated groups in various occupational categories and levels in that employer's workforce.

20. Employment equity plan.--(1) A designated employer must prepare and implement an employment equity plan which will achieve reasonable progress towards employment equity in that employer's workforce.

(2) An employment equity plan prepared in terms of subsection (1) must state--

- a. the objectives to be achieved for each year of the plan;
- b. the affirmative action measures to be implemented as required by section 15 (2);
- c. where underrepresentation of people from designated groups has been identified by the analysis, the numerical goals to achieve the equitable representation of suitably qualified people from designated groups within each occupational category and level in the workforce, the timetable within which this is to be achieved, and the strategies intended to achieve those goals;
- d. the timetable for each year of the plan for the achievement of goals and objectives other than numerical goals;
- e. the duration of the plan, which may not be shorter than one year or longer than five years;
- f. the procedures that will be used to monitor and evaluate the implementation of the plan and whether reasonable progress is being made towards implementing employment equity;
- g. the internal procedures to resolve any dispute about the interpretation or implementation of the plan;
- h. the persons in the workforce, including senior managers, responsible for monitoring and implementing the plan; and
- i. any other prescribed matter.

(3) For purposes of this Act, a person may be suitably qualified for a job as a result of any one of, or any combination of that person's--

- a. formal qualifications;
- b. prior learning;
- c. relevant experience; or
- d. capacity to acquire, within a reasonable time, the ability to do the job.

(4) When determining whether a person is suitably qualified for a job, an employer must--

- a. review all the factors listed in subsection (3); and
- b. determine whether that person has the ability to do the job in terms of any one of, or any combination of those factors.

(5) In making a determination under subsection (4), an employer may not unfairly discriminate against a person solely on the grounds of that person's lack of relevant experience.

(6) An employment equity plan may contain any other measures that are consistent with the purposes of this Act.

21. Report.--(1) A designated employer that employs fewer than 150 employees must--

- a. submit its first report to the Director-General within 12 months after the commencement of this Act or, if later, within 12 months after the date on which that employer became a designated employer; and
- b. thereafter, submit a report to the Director-General once every two years, on the first working day of October.

(2) A designated employer that employs 150 or more employees must--

- a. submit its first report to the Director-General within six months after the commencement of this Act or, if later, within six months after the date on which that employer became a designated employer; and
- b. thereafter, submit a report to the Director-General once every year on the first working day of October.

(3) Despite subsections (1) and (2), a designated employer that submits its first report in the 12-month period preceding the first working day of October, should only submit its second report on the first working day of October in the following year.

(4) The reports referred to in subsections (1) and (2) must contain the prescribed information and must be signed by the chief executive officer of the designated employer.

(5) An employer who becomes a designated employer in terms of the Act must--

- a. report as contemplated in this section for the duration of its current employment equity plan; and
- b. notify the Director-General in writing if it is unable to report as contemplated in this section, and give reasons therefor.

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

22. Publication of report.--(1) Every designated employer that is a public company must publish a summary of a report required by section 21 in that employer's annual financial report.

(2) When a designated employer within any organ of state has produced a report in terms of section 21, the Minister responsible for that employer must table that report in Parliament.

23. Successive employment equity plans.--Before the end of the term of its current employment equity plan, a designated employer must prepare a subsequent employment equity plan.