

What employers and workers need to know about employment equity

If it's growth you want, it's employment equity you need



labour

Department:
Labour
REPUBLIC OF SOUTH AFRICA



This booklet explains the Employment Equity Act. It tells you what protection you have from discrimination in the workplace and also what remedies are available to you if you are unfairly discriminated against. It also explains the steps a designated employer must take to achieve affirmative action in the workplace.



Get Employment Equity working for you

Employment Equity Act

What is the purpose of the Act?

The purpose of the Act is to remove unfair discrimination and to promote equity in the workplace.

How will it help workers and managers?

As a worker, the law will help remove discriminatory barriers of the apartheid past. It should give you access to training, new opportunities and promotion.



As a manager it will give you a more productive workforce. Better trained and better motivated, to help make your company more competitive in South Africa and in the world economy.

Who will be affected by the law?

All employers and all workers, with the exception of those workers and employers from the National Intelligence Agency, the South African National Defence Force and the South African Secret Service.

How can the law prevent discrimination at work?

The law says that nobody must be discriminated against at work, or when applying for a job.

Employers may not discriminate on the grounds of race, gender, sexual orientation, pregnancy, marital status, family responsibility, ethnic or social origin, colour, age, disability, religious belief, political opinion, language or HIV status.

The law also says all employment policies and practices, such as recruitment procedures, advertising and selection criteria, job classification and grading, training and development, promotion, transfer and disciplinary measures must not be discriminatory.

What are some examples of unfair discrimination which the law prevents?

It is illegal for Black and White workers doing the same job to get paid different wages.

It is illegal for women not to get the same medical aid as men, or for a woman who is doing the same job as a man, not to get the same pay. People with disabilities can't be refused a job interview just because they have a disability.

Somebody who is HIV positive can't be refused a job, or training opportunities, just because he/she is HIV positive.





What about women doing a “man’s” job?

A woman who is competent to do a job traditionally done by a man may not be barred from doing the job just because she is a woman.

Likewise, a man is entitled to be considered for jobs traditionally done by a woman.

What are examples of unfair discrimination in job adverts?

It is illegal to advertise for someone to be between a certain age, “applicants must be 25-35”, or indeed, insist that applicants must include their age, or marital status when applying for a job.

Is there such a thing as fair discrimination?

Yes. The Act does acknowledge a place for fair discrimination. It says that you can discriminate if it is part of an affirmative action programme, in line with the Act, or is an inherent requirement of the job.

An example of fair discrimination is a training programme designed to advance Black women in the workplace.

How can the law protect people with HIV?

Voluntary counselling and testing (VCT) is a legal requirement. HIV testing by the employer is illegal, unless the employer goes to the Labour Court and is granted permission.

What about medical and psychometric tests?

Medical and psychometric tests have been used in the past to discriminate unfairly. The law says that medical tests can only be done under certain conditions and psychometric tests must not be biased.

What about sexual harassment in the workplace?

Harassment is a form of unfair discrimination, and is therefore illegal. Here are some examples of sexual harassment:

- persistent and unwelcome flirting



- telephone calls, notes, or e-mails of a sexual nature
- implied, or overt threats, that unless sexual favours are given, a job promotion, or wage increase will not be given.

Remedies

What happens if you are unfairly discriminated against in the workplace?

You should first declare a “dispute” against your employer. You can seek assistance from your union or fellow workers. The person in your company who deals with human resources should be able to tell you what are the policy or procedures of declaring a dispute in your company. You should first use the internal processes set down in your company’s grievance procedure.

If you don’t get satisfaction from the grievance procedure, or if there is no proper procedure in your workplace, then you should contact the Commission for Conciliation Mediation and Arbitration – commonly known as the CCMA.

What will the CCMA do?

The CCMA will try to resolve the dispute on your behalf through conciliation. If the conciliation fails, and if both you and your employer (or possible employer) agree, you can ask that the matter be arbitrated by the CCMA. The CCMA will set your case down for a further date for arbitration. If you, your employer (or possible employer) does not want the matter arbitrated, then you can take the matter to the Labour Court, where a Judge will hear your case and will decide upon the result.

Affirmative Action

The Employment Equity Act goes further than just ending unfair discrimination, it also promotes affirmative action.

Larger employers are obliged by law to take steps to improve the situation of Black people, women and people with disabilities in the workplace. This may mean that more Black people need to be employed in higher positions.



It may mean that a company's housing policy may have to change if it does not allow for allowances to Black people or married women.

The Employment Equity Act says that certain employers, usually employers who employ 50 workers or more, have to:

- make sure that a **manager is responsible** for promoting affirmative action
- **consult all workers** on the steps that they want to take to improve the position of Black people, women and people with disabilities
- **work out if any problems** exists in the workplace which prevents Black people, women and people with disabilities getting jobs or advancing in the company
- **prepare a plan** to solve the problems and make sure that the company is representative of all the people in South Africa
- **report to the Department of Labour** on how representative their company is and what steps they are taking to improve the situation.

All workers have a right to ask what their company is doing to promote affirmative action. If you think your company may be discriminating against Black people, women and people with disabilities or not doing enough to improve their situation, you can contact the Department of Labour.

How to develop an Employment Equity Plan

Who is responsible for developing the employment equity plan?

The development of the employment equity plan is the responsibility of a designated employer as provided for in section 5, section 13 and section 20 of the Employment Equity Act, No. 55 of 1998. This, the employer does in consultation with its workers.

Section 5: Elimination of unfair discrimination

Every employer must take steps to promote equal opportunities in the workplace by eliminating unfair discrimination in any employment policy or practice.

Section 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:

- Consult with its workers
- Conduct and analysis
- Prepare an employment equity plan
- Report to the Director-General on progress made in implementing its employment equity plan.

Section 20: Employment equity plan

This section outlines what the contents of an employment equity plan should be and, except where otherwise provided, it applies only to designated employers and their workers, particularly those workers from designated groups

Designated employers include:

- Employers who employ 50 or more workers.
- Employers who employ less than 50 workers, but has a total annual turnover that is equal to or above the applicable annual turnover of a small business in terms of Schedule 4 of the Employment Equity Act
- An employer bound by a collective agreement, appointed as a designated employer in terms of the Employment Equity Act
- Municipalities
- Organs of State.

Consultation with workers

A designated employer must consult with workers as follows:

- With a representative trade union representing members at the workplace and its workers or representatives nominated by them; or
- If no representative trade union represents members at the workplace, with its workers or representatives nominated by them; and
- These workers must reflect the interests of :
 - Workers from across all occupational categories and levels of the employer's workforce
 - workers from designated groups
 - workers who are not from designated groups.

A designated employer consults with its workers, through a consultation



structure that may be established in accordance with the guide provided above, when conducting an analysis, preparing and implementing the employment equity plan and reporting to the Director-General of Labour.

Employment equity plan

The employment equity plan of a designated employer must state the following aspects in order to achieve reasonable progress in the employer's workforce:

- The objectives to be achieved for each year of the plan
- The affirmative action measures to be implemented as prescribed in the Act (**See Affirmative Action definitions**)
- 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
- The timetable for each year of the plan for the achievement of goals and objectives other than numerical goals
- The duration of the plan, which may not be shorter than one year or longer than five years
- 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



- The internal procedures to resolve any dispute about the interpretation or implementation of the plan
- The people in the workforce, including senior managers, responsible for monitoring and implementing the plan
- Any other prescribed matter.

An employment equity plan may contain any other measures that are consistent with the purpose of the Employment Equity Act.

Remember:

An Employment Equity Plan of a designated employer must be made available to workers once agreed upon through the consultation process.

Definitions

Designated groups

Black people, women and people with disabilities are designated groups. 'Black people' is a generic term which means, Africans, Coloureds and Indians.

Affirmative action

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.

Affirmative action measures must include:

- Measures to identify and eliminate employment barriers, including unfair discrimination, which adversely affect people from designated groups
- Measures designed to promote diversity in the workplace based on equal dignity and respect of all people
- 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
- Ensure equitable representation of suitably qualified people from designated groups in all occupational categories and levels in the workforce. These measures include preferential treatment and



numerical goals but exclude quotas

- Retain and develop people from designated groups and implement appropriate training measures, including measures in terms of the Skills Development Act, No 97 of 1998.

Reasonable accommodation

This means that ‘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’.

Suitably qualified person

This means that ‘a person may be suitably qualified for a job as a result of one, or any combination of that person’s :

- Formal qualifications
- Prior learning
- Relevant experience
- Capacity to acquire, within a reasonable time, the ability to do the job.

When determining whether a person is suitably qualified for a job, an employer must:

- Review all the factors listed above
- Determine whether that person has the ability to do the job in terms of any one of, or any combination of these factors.

In making such a determination, an employer may not unfairly discriminate against a person solely on the grounds of that person’s lack of relevant experience.

How to report on Employment Equity

When should designated employers report?

Designated employers are required to report by the legislative reporting deadline, which is the first working day of October.

Who are designated employers?

Designated employers include the following:

- Employers who employ 50 or more workers.



- Employers who employ less than 50 workers, but has a total annual turnover that is equal to or above the applicable annual turnover of a small business in terms of Schedule 4 of the Employment Equity Act
- An employer bound by a collective agreement, appointed as a designated employer in terms of the Employment Equity Act
- Municipalities
- Organs of State.

Who must report?

- Employers that employ 150 or more workers
- Employers who have become newly designated employers that is, either reaching the 50 workers mark or meeting the requirements of the income threshold.

What if workers' numbers vary from time to time and only occasionally reach the 150 mark?

Employers who are designated and have been reporting, or should report, must continue to submit their reports until advised otherwise by the Department.



Should employers avoid reporting requirements by manipulating workers' numbers around these dates, they may be subjected to a Director-General's review.

Which forms to use?

Designated employers must complete and submit the Employment Equity Report on:

Form EEA 2

Form EEA 4 – all sections

Form EEA 2 sections

Form EEA 4 sections

Copies of all the forms can be accessed from our website www.labour.gov.za and at the Department's provincial offices and labour centres.

NB. Do not submit Employment Equity Plans, but Employment Equity Reports.

Where to submit reports?

Reports should be posted to:

Employment Equity Registry
Department of Labour
Private Bag X117
Pretoria
0001

Tel: (012) 309 4043/4330/4423/4898/4738

Fax: (012) 309 4737/4188/4739

Alternatively reports should be handed in at the Department's Provincial Office or Labour Centre in an envelope **clearly marked "Employment Equity Registry"**.



Frequently asked questions

Do foreign nationals qualify as members of designated groups?

Foreign nationals do not qualify as members of designated groups. Although foreign nationals may be included in the various reports submitted by employers, it would be unacceptable to use these workers as members of designated groups or as the basis of setting numerical goals.

What about workers from temporary employment services?

Temporary workers who have worked for three continuous months or more must be included in all reports to the Department of Labour even where they have been procured through an employment agency.

Temporary employment services who employ 50 or more workers or whose turnover exceeds the threshold specified in Schedule 4 of the Act are required to report to the Department of Labour, and must therefore submit a report.

What should public companies publish?

A summary of their report (Form EEA 2) to the Department of Labour, excluding the income differentials statement. It is recommended that companies include at least section B of Form EEA2 in the summary.

Organs of State and other related entities

Any State organ and related entities, statutory bodies and/or any other constitutional entities, must also submit, annually, their employment equity reports on the first working day of October.

Remember:

You are also required to display a copy of your most recent report in all workplaces.



Employ people with disabilities



It's time to give people with disabilities an equal opportunity.

Many barriers such as widespread ignorance, fear and stereotypes have caused people with disabilities to be unfairly discriminated against in society and in employment. For these reasons they are a designated group in terms of the Employment Equity Act, 1998.

The Minister of Labour has therefore approved a Code of Good Practice on the Employment of People with Disabilities in terms of the Employment Equity Act, 1998.

Aim of the Code

The Code is a guide for employers and workers to encourage equal opportunities and fair treatment of people with disabilities as required by the Act.

The Code is intended to educate and inform employers and workers to understand their rights and obligations, to promote certainty and to reduce disputes so that people with disabilities can effectively enjoy and exercise



their rights at work.

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 people.

Definition of “People with Disabilities”

In terms of the Act the focus is 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 “People with Disabilities” who satisfy all the criteria in the definition:

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

Reasonably accommodate the needs of people with disabilities

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. Reasonable accommodation applies to applicants and staff members with disabilities who are suitably qualified for the job and may be required:

- during the recruitment and selection processes
- in the working environment
- in the way work is usually done, evaluated and rewarded
- in the benefits and privileges of employment.

Recruitment and selection of people with disabilities

Employers should make job advertisements accessible to people with disabilities by identifying the inherent requirements of the post, clearly describing the skills and capabilities required and setting reasonable criteria for selection.

Medical and psychological testing

Tests should comply with the requirements of the Act and must be relevant



and appropriate to the work for which the person is being tested.

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

Testing to determine the health status of a person should only be carried out after the 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.

Training and career advancement

People with disabilities should be consulted on their career advancement and possible needs, and so facilities and materials for training should be accessible to them. Evaluation of work performance should clearly identify and fairly measure and reward performance of the essential functions of the job.

Retaining people with disabilities

Workers who became disabled during employment should, where reasonably possible, be re-integrated into the work force. If reasonable, employers should explore the possibility of offering alternative work, reduced work or flexible work placement, so that workers are not compelled or encouraged to terminate their employment.

Compensation for people with disabilities

When workers become disabled because of work related illnesses or accidents, the employer should assist that worker to receive the relevant assistance in terms of the Compensation for Occupational Injuries and Diseases Act from the Compensation Fund and to receive the appropriate benefits in terms of the Unemployment Insurance Act.

Confidentiality

Employers must protect the confidentiality of information that has been disclosed by a worker or job applicant with a disability. They must take care to keep records of private information relating to the disability



confidential and separate from general personnel records.

Employers may not disclose any information relating to a person's disability without the written consent of the person concerned, unless required to do so by law.

Benefits for staff members

Employers who provide or arrange for occupational insurance or other benefit plans for workers, must ensure that the benefits do not unfairly discriminate, either directly or indirectly against people with disabilities.

Employment equity planning

If people with disabilities are under-represented in all occupational levels and categories in the workplace, the employer should seek guidance from organisations that represent people with disabilities or relevant experts, for example in vocational rehabilitation and occupational therapy to bring those vacancies to the attention of possible work seekers with disabilities.

Education and awareness

Employers, employer organisations and trade unions should include the Code in orientation, education and training programmes of workers.

Information

For more information consult the Employment Equity Act, 1998 and the Code of Good Practice on the Employment of People with Disabilities on the Website of the Department of Labour at www.labour.gov.za or contact the CCMA helpline at **086 161616** or the nearest office of the Department of Labour.



Contact details

Provincial Offices of the Department of Labour

Eastern Cape

East London Tel: (043) 701 3000

Limpopo

Polokwane Tel: (015) 290 1744

Free State

Bloemfontein Tel: (051) 505 6200

Mpumalanga

Witbank Tel: (013) 655 8700

Gauteng North

Pretoria Tel: (012) 309 5000

North West

Mmabatho Tel: (018) 387 8100

Gauteng South

Johannesburg Tel: (011) 497 3222

Northern Cape

Kimberley Tel: (053) 838 1500

KwaZulu-Natal

Durban Tel: (031) 366 2000

Western Cape

Cape Town Tel: (021) 441 8000

Labour Centres of the Department of Labour

Eastern Cape

Aliwal North Tel: (051) 633 2633

Butterworth Tel: (047) 491 0656

Cradock Tel: (048) 881 3010

East London Tel: (043) 702 7500

Fort Beaufort Tel: (046) 645 4686

Graaf-Reinet Tel: (049) 892 2142

Grahamstown Tel: (046) 622 2104

King William's
Town Tel: (043) 643 4756

Lusikisiki Tel: (039) 253 1996

Maclear Tel: (045) 932 1424

Mdantsane Tel: (043) 761 3151

Mount Ayliff Tel: (039) 254 0282

Mthatha Tel: (047) 501 5600

Port Elizabeth Tel: (041) 506 5000

Queenstown Tel: (045) 807 5400

Uitenhage Tel: (041) 992 4627

Kroonstad Tel: (056) 215 1812

Petrusburg Tel: (053) 574 0932

Phuthaditjhaba Tel: (058) 713 0373

Sasolburg Tel: (016) 970 3200

Welkom Tel: (057) 391 0200

Zastron Tel: (051) 673 1471

Gauteng North

Atteridgeville Tel: (012) 386 5116

Bronkhorstspuit Tel: (013) 932 0197

Garankuwa Tel: (012) 702 4525

Krugersdorp Tel: (011) 955 4420

Mamelodi Tel: (012) 805 5090

Pretoria Tel: (012) 309 5050

Randfontein Tel: (011) 693 3618

Soshanguve Tel: (012) 799 7400

Temba Tel: (012) 717 9500

Gauteng South

Alberton Tel: (011) 861 6130

Benoni Tel: (011) 747 9601

Boksburg Tel: (011) 898 3340

Brakpan Tel: (011) 744 9000

Carletonville Tel: (018) 788 3281

Germiston Tel: (011) 345 6300

Free State

Bethlehem Tel: (058) 303 5293

Bloemfontein Tel: (051) 505 6215

Botshabelo Tel: (051) 534 3789

Ficksburg Tel: (051) 933 2299

Harrismith Tel: (058) 623 2977



Johannesburg Tel: (011) 497 3000
Kempton Park Tel: (011) 975 9301
Nigel Tel: (011) 814 7095
Randburg Tel: (011) 781 8144
Roodepoort Tel: (011) 766 2000
Sandton Tel: (011) 444 7631
Sebokeng Tel: (016) 988 2626
Soweto Tel: (011) 939 1200
Springs Tel: (011) 365 3700
Vanderbijlpark Tel: (016) 981 0280
Vereeniging Tel: (016) 430 0000

KwaZulu-Natal

Dundee Tel: (034) 212 3147
Durban Tel: (031) 336 1500
Estcourt Tel: (036) 352 2161
Kokstad Tel: (039) 727 2140
Ladysmith Tel: (036) 638 1900
Newcastle Tel: (034) 312 6038
Pietermaritzburg Tel: (033) 341 5300
Pinetown Tel: (031) 701 7740
Port Shepstone Tel: (039) 682 2406
Prospecton Tel: (031) 913 9700
Richards Bay Tel: (035) 780 8700
Richmond Tel: (033) 212 2768
Stanger Tel: (032) 551 4291
Ulundi Tel: (035) 879 1439
Verulam Tel: (032) 533 5050
Vryheid Tel: (034) 980 8820

Limpopo

Giyani Tel: (015) 812 9041
Jane Furse Tel: (013) 265 7210
Lebowakgomo Tel: (015) 633 9360
Lephalale Tel: (014) 763 2162
Makhado Tel: (015) 516 0207
Modimolle Tel: (014) 717 1046
Mokopani Tel: (015) 491 5973
Phalaborwa Tel: (015) 781 5114
Polokwane Tel: (015) 299 5000
Seshego Tel: (015) 223 7020
Thohoyandou Tel: (015) 960 1300
Tzaneen Tel: (015) 306 2600

Mpumalanga

Baberton Tel: (013) 712 3066

Bethal Tel: (017) 647 5212
Carolina Tel: (017) 843 1077
Eerstehoek Tel: (017) 883 2414
eMalaheni / Witbank Tel: (013) 653 3800
Ermelo Tel: (017) 819 7632
Groblersdal Tel: (013) 262 3150
Kwamhlanga Tel: (013) 947 3173
KaMhlushwa Tel: (013) 785 0010
Lydenburg Tel: (013) 235 2368
Middelburg Tel: (013) 283 3600
Nelspruit Tel: (013) 753 2844
Piet Retief Tel: (017) 826 1883
Sabie Tel: (013) 764 2105
Secunda Tel: (017) 631 2594
Standerton Tel: (017) 712 1351
Volksrust Tel: (017) 735 2994

Northern Cape

Calvinia Tel: (027) 341 1280
De Aar Tel: (053) 631 0952
Kimberley Tel: (053) 838 1500
Kuruman Tel: (053) 712 3952
Postmasburg Tel: (053) 313 0641
Springbok Tel: (027) 718 1058
Upington Tel: (054) 331 1752

North West

Brits Tel: (012) 252 368
Christiana Tel: (053) 441 2120
Klerksdorp Tel: (018) 464 8700
Lichtenburg Tel: (018) 632 4323
Mafikeng Tel: (018) 381 1010
Mogwase Tel: (014) 555 5693
Potchefstroom Tel: (018) 297 5100
Rustenburg Tel: (014) 592 8214
Taung Tel: (053) 994 1710
Vryburg Tel: (053) 927 5221

Western Cape

Beaufort West Tel: (023) 414 3427
Bellville Tel: (021) 941 7000
Cape Town Tel: (021) 468 5500
George Tel: (044) 801 1201
Knysna Tel: (044) 382 3150
Mitchell's Plain Tel: (021) 376 1771



Mossel Bay
Oudtshoorn
Paarl

Tel: (044) 691 1140
Tel: (044) 272 4370
Tel: (021) 872 2020

Somerset West
Vredenburg
Worcester

Tel: (021) 852 2535
Tel: (022) 715 1627
Tel: (023) 347 0152