

Employment Equity Amendment Act No. 4 of 2022

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INTRODUCTION

The Employment Equity Amendment Act No. 4 of 2022 (the “Amendment Act”) has introduced various amendments to the Employment Equity Act No. 55 of 1998 (the “EEA”). The Amendment Act came into effect on **1 January 2025** and has introduced new obligations for employers, redefined critical terms, and has established stringent compliance measures for businesses in South Africa, particularly larger designated employers or designated and non-designated employers who wish to do business with the state.

AMENDMENTS TO DEFINITIONS

The definition “**designated employer**” has been amended by the deletion of “an employer who employs fewer than 50 employees but has a total annual turnover that is equal to or above the applicable annual turnover of a small business in terms of Schedule 4”. As a result of this deletion, employers with fewer than 50 employees are not required to comply with the obligations of designated employers in respect of affirmative action irrespective of their annual turnover.

Section 64A of the EEA, which provided for the amendment of annual turnover thresholds in Schedule 4, has been deleted (there are no longer any applicable turnover thresholds).

The definition of “**people with disabilities**” has been amended to align with the United Nations Convention on the Rights of Persons with Disabilities and is now defined as “people who have a long-term or recurring physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may substantially limit their prospects of entry into, or advancement in, employment”.

HPCSA CERTIFICATION IN RELATION TO PSYCHOLOGICAL TESTING

The EEA was amended in 2014 to make it a requirement that psychological testing and similar assessments be certified by the Health Professions Council of South Africa (“HPCSA”) to address concerns that, without the

relevant and formal certification, such testing was partial to the employer.

Subsequently, the capacity of the HPCSA to fulfil the requirement was legally challenged.

The Amendment Act removes the requirement for HPCSA certification of psychological testing and similar assessments used for assessing employees.

SECTORAL NUMERICAL TARGETS

Section 15A of the Amendment Act is an entirely new section which introduces sectoral numerical targets to ensure there is equitable representation of people from designated groups at all occupational levels within the workplace.

Section 15A empowers the Minister of Employment and Labour (the “**Minister**”) to identify and set employment equity numerical targets for each economic sector. An employer who operates in more than one sector must use the sectoral numerical targets of the economic sector where the majority of its employees are present. Sectoral numerical targets have been published in draft form and the publication of final sectoral numerical targets is awaited.

Once the final sectoral targets are published, designated employers will be required to prepare either a new or amended employment equity plan to set annual numerical targets in line with the applicable sectoral targets set by the Minister. Designated employers will be measured against the annual targets which are set to achieve the relevant five-year sectoral numerical targets.

The draft regulations indicate that if there are justifiable reasons for non-compliance by a designated employer with their annual numerical targets or the five-year sectoral numerical targets, the designated employer will not incur penalties.

Where a designated employer fails to justify its non-compliance with sectoral numerical targets, the fines listed in Schedule 1 of the EEA will apply on a sliding

scale depending on previous contraventions by the same designated employer.

THE IMPACT OF SECTORAL NUMERICAL TARGETS ON AN EMPLOYER'S ELIGIBILITY FOR THE AWARDING OF STATE CONTRACTS

The Amendment Act has amended section 53 of the EEA, which deals with state contracts, by inserting subsection (6) which provides that the Minister may only issue a compliance certificate if the Minister is satisfied that:

- a. the employer has complied with a numerical target set in terms of section 15A that applies to that employer;
- b. in respect of any target with which the employer has not complied, the employer has raised a reasonable ground to justify its failure to comply as contemplated in section 42(4);
- c. the employer has submitted a report in terms of section 21;
- d. there has been no finding by the CCMA or a court within the previous 12 months that the employer breached the prohibition on unfair discrimination in Chapter 2; and
- e. the CCMA has not issued an award against the employer in the previous 12 months for failing to pay the minimum wage in terms of the National Minimum Wage Act No. 9 of 2018.

SUBMISSION OF EMPLOYMENT EQUITY REPORTS

The Amendment Act removes the specific date for annual submissions of employment equity reports by designated employers and empowers the Minister to make regulations in respect of the requirements of designated employers in submitting their employment equity reports and the timing of the submission.

DESIGNATED EMPLOYER'S OBLIGATION TO CONSULT WITH A TRADE UNION

Section 16 of the EEA has been amended by the Amendment Act to provide where there is a representative trade union, the designated employer need only consult with the representative trade union and not with its employees.

POWERS GRANTED TO LABOUR INSPECTORS

The Amendment Act revives the powers of a labour inspector to request and obtain an undertaking from a designated employer, within a specified period, to comply with sections 36 (a), (b), (c), (f), (h), (i) or (j) (i.e. consult with employees, conduct an analysis, prepare an employment equity plan, publish its employment equity report and assign responsibility to one or more senior managers).

CONCLUSION

The amendments introduced by the Amendment Act aim to create a fairer and more representative workforce, ensuring that employment equity remains a fundamental pillar of South Africa's economic and social transformation. By refining key definitions, implementing sectoral numerical targets, and enhancing compliance measures, the Amendment Act creates a more structured approach to employment equity.

Employers, particularly those engaging in business with the state, must take proactive steps to align with these changes, ensuring compliance with sector-specific targets and revised reporting obligations.

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