

EMPLOYMENT

Consequences of late/non-filing of employment equity reports

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In terms of the EEA, designated employers are obliged to submit an Employment Equity Report ("EER") to the Director-General of the Department of Labour once every year on the first working day of October, or if an electronic report is submitted, on the 15th of January of the following year.

The EEA defines a "designated employer" as:

1. An employer who employs 50 or more employees;
2. An employer who employs fewer than 50 employees, but has a total annual turnover equal to or above a certain threshold in terms of the Act;
3. A municipality;
4. An organ of state (subject to certain organs of state being excluded); and
5. An employer bound by a collective agreement which appoints it as a designated employer.

An employer who 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 the following year on the first working day of October, or if an electronic report is submitted, on the 15th of January of the following year.

Submitting the EER

The Employment Equity Amendment Act ("amendment [act](#)") has introduced a provision for employers who will not be able to submit the report on time. In terms of this provision, the employer must notify the Director-General by the first working day of October that it will be unable to submit the EER on time and give reasons why it is unable to do so.

If an employer fails to submit a report, fails to notify and give reasons for being unable to submit the report or such reasons are false or invalid, the Director-General may apply to the Labour Court to impose a fine.

The amendment act has increased the scope of the fines that may be imposed on an employer who fails to comply with its reporting obligations. The fines applicable are as follows:

Previous contravention	Amount
No previous contravention	The greater of R1 500 000 or 2% of turnover
One previous contravention	The greater of R1 800 000 or 4% of turnover
A previous contravention within the previous 12 months or two previous contraventions within three years	The greater of R2 100 000 or 6% of turnover

Three previous contraventions within three years	The greater of R2 400 000 or 8% of turnover
Four previous contraventions within three years	The greater of R2 700 000 or 10% of turnover

Interpretation or application of the EEA

The Labour Court has exclusive jurisdiction to determine any dispute about the interpretation or application of the EEA. It also has the power to make any order and impose a fine if an employer fails to submit an EER on time. If an employer fails to comply with its reporting obligations, a fine can be imposed by the Labour Court on application by the Director-General.

The fines above are, however, the maximum fines that may be imposed by the court. The EEA gives the Labour Court the power to make "any appropriate order".

In *Christian v Colliers Properties* [2005] 5 BLLR 479 (LC) the court held that "the determination of appropriate relief requires that the court duly consider various interests, including the need to redress the wrong caused by the infringement, the deterrence of future violations, the dispensation of justice which is fair to all those who might be affected, and the necessity of ensuring that the order can be complied with".

This would suggest that the Court may exercise its discretion (in the appropriate circumstances) to reduce fines (or not impose any fines).

It must be noted that the EEA does not contain any provision allowing the Director-General or the Labour Court to condone the non-filing of EERs. As a consequence, an employer who is obliged to submit an EER but fails to do so on time may be subject to a fine, the extent of which will be determined by the Labour Court and the EEA.

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