

Employment Equity Act: Draft Regulations on Proposed Sectoral Numerical Targets

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On 1 February 2024, the Minister of Employment and Labour, Thembelani Waltermade Nxesi, ("**Minister**") published, by way of Government Gazette, the draft regulations on proposed sectoral numerical targets ("**2024 Draft Regulations**").

The amendments made to the Employment Equity Act, 1998 ("**EEA**") enacted in 2023 were accompanied with two sets of draft regulations, published in 2018 and 2023 respectively.

The Regulations in Brief

The Draft Regulations have been published for public comment in preparation for the commencement of Section 15A of the Employment Equity Amendment Act No 4 of 2022 ("**EE Amendment Act**"). Section 15A of the EE Amendment Act provides that –

(1) The Minister may, by notice in the Gazette, identify national economic sectors for the purposes of this Act, having regard to any relevant code contained in the Standard Industrial Classification of all Economic Activities published by Statistics South Africa.

(2) The Minister may, after consulting the relevant sectors and with the advice of the Commission, for the purpose of ensuring the equitable representation of suitably qualified people from designated groups at all occupational levels in the workforce, by notice in the Gazette set numerical targets for any national economic sector identified in terms of subsection (1).

(3) A notice issued in terms of subsection (2) may set different numerical targets for different occupational levels, sub-sectors or regions within a sector or on the basis of any other relevant factor.

(4) A draft of any notice that the Minister proposes to issue in terms of subsection (1) or subsection (2) must be published in the Gazette, allowing interested parties at least 30 days to comment thereon.

The draft regulations include further information regarding the following: a) legislative requirements for the setting of sectoral numerical targets; b) a list of Economic Sectors; c) setting of 5-year sectoral numerical targets and (d) the implementation of affirmative action measures.

Some important points to note about the 2024 Regulations

(a) Sectoral targets

Designated employers will be measured against annual targets set in reaching the five year sectoral numerical targets. The targets are to be set for all population groups in the four occupational levels where there is an under representation in relation to the economically active population ("**EAP**").

The targets are combined for designated groups per sector (i.e., they do not specify for African, Coloured, Indian and White), while providing specific targets for each gender.

This does not mean, however, that designated employers are not still required to set targets in other occupational levels as required by the applicable provisions of the EEA.

The national EAP shall apply to designated employers conducting their business / operations nationally and the respective provincial EAP shall apply to designated employers conducting their business / operations provincially. While a designated employer can choose whether to use a national EAP or a provincial EAP, the designated employer cannot use national and provincial EAP at the same time.

A designated employer who operates in more than one province and chooses to use the provincial EAP may choose the province with the majority of employees. A designated employer who operates in more than one sector may choose the sector in which the majority of employees.

The proposed sectoral numerical targets are not meant to equal 100% as they exclude, for instance, sectoral targets.

(b) Affirmative action measures

The 2024 Draft Regulations emphasize that no absolute barrier may be placed on any employment practices. In addition, no employer will incur penalties or any form of disadvantage if in the compliance analysis of affirmative action in any workplace there are justifiable / reasonable grounds for non-compliance. Furthermore, an employee's employment cannot be affected as a consequence of affirmative action.

The 2024 Draft Regulations provide a non-exhaustive list of factors that may constitute justifiable / reasonable grounds for non-compliance.

Deadlines

The public has 90 days, from the date of publication, to comment. All public comments must be in writing and forwarded to:

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The Government Gazette containing the draft regulations on the proposed sectoral numerical targets may be accessed at: [Draft regulations on proposed sectoral numerical targets](#).



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