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EMPLOYMENT

Employment equity: The importance of regional demographics

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Employment Equity Act 55 of 1998

In terms of the **Employment Equity Act 55 of 1998** as amended ("EEA") designated employers must implement an **Employment Equity Plan** ("EEP") in order to facilitate reasonable progress towards employment equity in that employer's workplace.[1] Part of the EEP entails determining the degree of representation of designated groups of people at all occupational levels in the workplace. In order to do this, the employer must take population statistics (demographics) into account. Both national and regional demographics will have to be considered.

Unfair discrimination from their employer

In the recent case of *Solidarity and 5 others v Department of Correctional Services and 3 others* (C368/2012 & C968/2012) the applicant employees argued that they had faced unfair discrimination from their employer, the Department of Correctional Services ("Employer").

They had been denied the posts for which they had applied owing to the selection process in terms of the Employer's EEP. Though the employees were employed in the Western Cape, the EEP only made reference to national demographics for the purpose of equity objectives. The Employer argued that owing to it being a national department in terms of the Public Services Act[2] it was only entitled to use national targets for affirmative action purposes.

The Labour Court evaluated the approach taken by our courts regarding equality and affirmative action. It noted that the EEA and Constitution[3] require affirmative action that provides substantive equality. This notion of equality goes further than providing equal opportunities of employment for individuals. Rather, restitutionary measures must also be taken to benefit designated groups.

The Labour Court then assessed the EEA and related legislation in which reference is made to the use of regional as well as national demographics.

It was emphasised that national demographics must factor into all EEPs so as to recognise past injustices suffered by the African majority in South Africa. However, the Court held that regional demographics must also be considered so as to assert the right of Coloureds, Africans and Indians to substantive equality. It was held that the employees had been unfairly discriminated against and the Employer was to take immediate steps to rectify its EEP in terms of the judgment.

Employment equity perspective

This case is a milestone from an employment equity perspective in that it gives clear indications on what must be taken into consideration when formulating EEPs. Although the judgement relates to the State as employer, it will certainly have relevance in the private sector. Thus, when an EEP is drawn up by an employer then both national and regional demographics ought to be taken into account when setting employment equity targets.

If this is not done then employees may have legitimate grounds on which to allege unfair discrimination if they have been denied job opportunities during the implementation of a defective EEP.

[1] Section 20(1) Employment Equity Act 55 of 1998 (as amended).

[2] Act 103 of 1994.

[3] The Constitution of South Africa, 1996.



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