WERKSMANS
ATTORNEYS

EMPLOYMENT

The Employment Equity Amendment Bill, 2018

9 October 2018 *5 min read*

By Jacques van Wyk, Director and Yusha Davidson, Candidate Attorney

The Employment Equity Amendment Bill, 2018 ("Bill") amends specific provisions of the Employment Equity Act 55 of 1998 ("EEA"). The purpose of the Bill is to –

1. provide for the Minister of Labour to establish sectoral numerical targets to ensure the equitable representation of suitably qualified people from designated groups (blacks, women and persons with a disability) at all occupational levels in the workforce;
2. enhance the administration of the EEA; and
3. regulate the provision of state contracts.

In order to give effect to the purpose of the Bill, certain definitions are introduced and amended. The definition of a designated employer is limited by deleting the inclusion of employers with fewer than 50 employees who meet the prescribed turnover threshold. The National Minimum Wage Commission is introduced in order to align the EEA with the National Minimum Wage Act, 2018. The definition of sector is included and defined to mean an industry or service or part of any industry or service. The definition of state is included to ensure certainty when regulating the provision of state contracts. The "State" is defined to mean a national or provincial department, a municipality or municipal entity, a constitutional institution, Parliament, a provincial legislature, and any entity listed in schedule 2 and 3 of the Public Finance Management Act 1 of 1999.

Section 8 of the EEA, which provides for the psychological testing and other similar assessments of an employee, is amended to no longer require such testing or assessment to be certified by the Health Professions Council of South Africa.

The Bill repeals section 14 of the EEA, which allows for an employer that is not a designated employer to notify the Department of Labour that it intends to comply with the affirmative action provisions of the EEA as if it were a designated employer.

The Bill introduces section 15A to afford the Minister the power to identify national economic sectors for the purposes of the administration of the EEA and set numerical targets for any sector or part thereof for purposes of ensuring the equitable representation of suitably qualified people from designated groups at all occupational levels in the workforce. A notice, which allows for interested parties to comment, must be issued where the Minister sets different numerical targets for different occupational levels, or regions within a sector or on the basis of any other relevant factor. The Minister may further publish regulations that list the criteria to be applied in setting sectoral targets.

The Bill links the introduction of section 15A to section 20 of the EEA, which provides for the preparation and implementation of a designated employer's employment equity plan. In this regard, the Bill introduces section 20(2A) to ensure that the numerical goals set by the designated employer in its employment equity plan complies with any sectoral target established in terms of section 15A. The Bill amends the requirements of a designated employer to submit its employment equity report by permitting the Minister to regulate the manner in which such submission is required.

The Bill transfers the functions of the Employment Conditions Commission in relation to the reporting and monitoring of disproportionate income differentials to the newly established national Minimum Wage Commission.

The Bill grants the labour inspector the additional power, in terms of section 36 of the EEA, to request and obtain a written undertaking from a designated employer to comply with the preparation of an employment equity plan as required by section 20 of the EEA if the inspector has reasonable grounds to believe that the employer has failed to prepare such employment equity plan. Further, the Bill now affords a labour inspector, or any person acting on behalf of a labour inspector to serve a compliance order on a designated employer in accordance with the regulations prescribed by the Minister.

Section 42 of the EEA, which regulates the determination of whether a designated employer has implemented employment equity in compliance with the EEA is amended by the Bill. The amendment clarifies that a designated employer's compliance with its obligations to implement affirmative action may be assessed in light of the demographic profile of either the national or regional economically active population and the sectoral targets set by the Minister in terms of the novel section 15A.

The Bill amends the regulation of state contracts in terms of section 53 of the EEA. The Bill introduces section 53(6) to the EEA to clarify that the Minister of Labour may only issue a certificate to an employer if the employer has –

- achieved any applicably sectoral targets or has provided a reasonable ground for non-compliance thereof;
- submitted its most recent employment equity report; and
- not been found, within the preceding twelve months, to have breached the prohibition of unfair discrimination or to have paid wages below the national minimum wage.

Section 64A, which allowed for the setting of annual turnover thresholds for the purposes of defining employer's with less than 50 employees as designated employees, as well as schedule 4 that reflects the turnover thresholds referred to in section 64A, is repealed.

Employers should follow the development of the Bill closely, as the Bill proposes notable changes to an employer's employment equity requirements.

Jacques van Wyk

Director

View Profile