

# 10<sup>th</sup> CEE Annual Report



2009-2010



# labour

Department:  
Labour  
**REPUBLIC OF SOUTH AFRICA**

# 10th CEE Annual Report

## 2009-2010

### **Publisher**

Department of Labour  
Chief Directorate of Communication  
Private Bag X117  
Pretoria  
0001

### **Text**

Commission for Employment Equity

### **Editing, photography and distribution**

Media Production Unit, Chief Directorate of Communication

### **Layout and Design**

Design Studio, Chief Directorate of Communication, Department of Labour

### **Printer**

Government Printers

### **RP**

58/2010

### **ISBN No.**

978-0-621-39323-1

### **Website**

[www.labour.gov.za](http://www.labour.gov.za)

# Contents



<b>Glossary</b> .....	iii
<b>Foreword</b> .....	iv
<b>Members of the Commission for Employment Equity</b> .....	v
<b>1. Introduction</b> .....	1
<b>2. Highlights for the period</b> .....	2
2.1 DG Reviews .....	2
2.2 Amendment proposals to the Employment Equity Act .....	2
2.3 Road shows .....	3
2.4 Collaboration with Chapter 9 Institutions and other stakeholders .....	3
<b>3. Workforce distribution</b> .....	4
<b>4. Analysis of employment equity reports received in 2009</b> .....	5
4.1 Extent of reporting on employment equity by employers .....	5
4.2 Workforce profile .....	5
4.3 Workforce movement .....	16
4.4 Promotions .....	19
4.5 Terminations .....	21
4.6 Analysis of workforce movements .....	23
4.7 Skills development .....	25
<b>5. Trends from 2001 to 2009</b> .....	28
5.1 Number of employment equity reports received for 2001, 2003, 2005, 2007 and 2009 .....	28
5.2 Race and gender trends for the Top and Senior Management and Professionally Qualified levels from 2001 to 2009 .....	29
<b>6. General observations, concluding remarks and recommendations</b> .....	31
<b>References</b> .....	33
<b>Appendix A</b> .....	34

# Glossary

<b>Commission</b>	Commission for Employment Equity (CEE)
<b>Department</b>	Department of Labour
<b>DG</b>	Director-General of the Department of Labour
<b>Designated groups</b>	Black people (i.e. Africans, Coloureds and Indians), women and people with disabilities.
<b>Small employers</b>	Those designated employers who employ less than 150 employees
<b>Large employers</b>	Those designated employers who employ 150 or more employees
<b>EAP</b>	The Economically Active Population (EAP) which includes people from 15 to 64 years of age who are either employed or unemployed and seeking employment
<b>NEDLAC</b>	National Economic Development and Labour Council



# Foreword

## From the Chairperson of the CEE

This is the tenth Commission for Employment Equity Annual Report, making it imperative to pause and reflect on the progress made a decade later and to evaluate the effectiveness of the Employment Equity Act.

The Employment Equity Act (EEA), enacted more than 10 years ago, is meant to drive equality in the work place through equitable representation of employees from designated groups to broadly reflect the national demographics of the Economically Active Population (EAP) of South Africa. Whilst it stands to eliminate unfair discrimination at the workplace, it provides for fair discrimination to ensure that Africans, Coloureds, Indians, women and people with disabilities are equitably represented at all occupational levels.

This Commission for Employment Equity (CEE) Annual Report clearly indicates that White males still dominate the top echelons of our workplace, yet they are in the minority. This is exacerbated by the fact that the majority of recruitment and promotions into these levels are of White males. The picture on training and development is no different, where White males continue to benefit the most. This report is discouraging because it indicates a very slow progress on transformation and potential to erode the insignificant achievement made to-date.

The labour market attributes the slow pace of transformation to lack of Black skills, however our tertiary institutions show an increased output of Black graduates, which has tripled over the past 10 years. The employers' employment equity (EE) reports indicate that the majority of professionals are Black people, which is contradictory to their excuse of lack of Black skills. On this basis, there should have been an evident progression of transformation than indicated in this report. I refuse to believe that South Africa is devoid of Black talent and that Black people, including women

and people with disabilities are genetically engineered not to succeed. I am left with no choice but to believe there is resistance to change and that the work environment is not conducive for Black people, particularly those with exceptional talent.

There was a demand for the sunset clause to transformation in the workplace by certain groups. Given the slow rate of transformation, this is premature. Apartheid had more than 10 laws and regulations which entrenched unfair discrimination of Black people and women in this country. As a result, Black people in particular had limited access to quality education, freedom of association and movement, the country's wealth, natural resources and many others. To undo such travesty, laws have to be promulgated which

also include the EEA. Legislated discrimination has engrained racism in our society, and the EEA is one such means to rid our workplace of racial prejudice. The CEE therefore, reiterates that it is too early to discuss the sunset clause. Racism in South Africa, and indeed in the workplace, has not been seriously dealt with and sticking our heads in the sand will not make it go away.

Transformation has been topical long before the EEA was enacted. It is disappointing that 20 years after the release of former President Nelson Mandela, progress in the workplace is at the minimal level. I therefore beg to ask the question, how committed is the labour market to transformation? My greatest concern is, the contents of this report do not differ from those in the past and could contribute to polarising our society and potentially create a volatile situation, where the unemployed educated youth revolt against the slow pace of transformation.

However, the CEE is pleased with the positive effect of the Director-General (DG) Reviews and we believe increased capacity in the monitoring unit will go a long way to improving the pace of transformation. Employment equity is the worst performing pillar of the BBBEE and requires extra effort by the Department of Labour and the labour market to make it work. One of the remedies available is giving EE a distinct measure during the tender process. The newly formed President's BEE Council will be engaged, amongst other things, to highlight the poor progress in the implementation of the EEA.

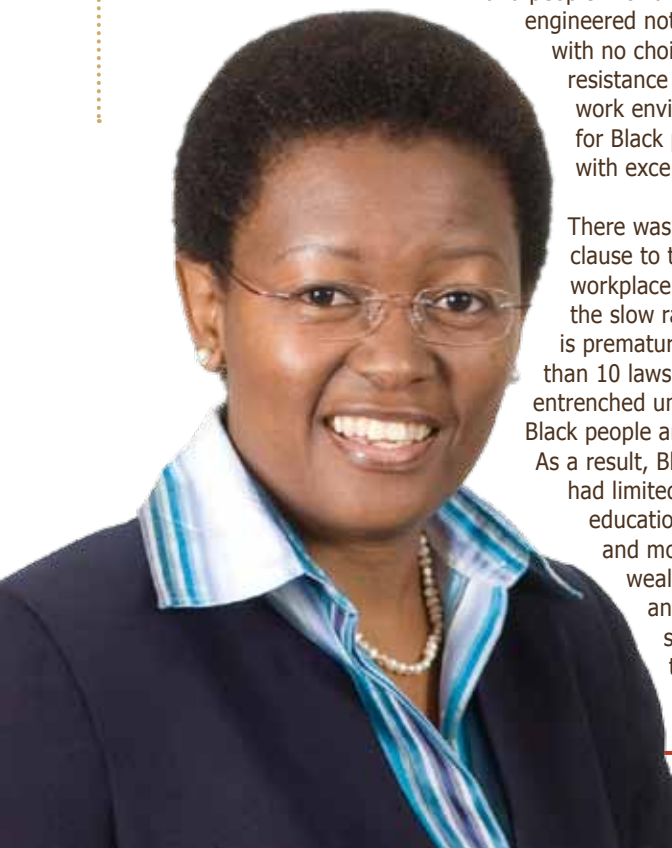
The recommended changes to the EEA will drive better compliance and introduce severe consequences for companies that flaunt the law. The CEE has also re-defined the name and shame and praise process which will come into effect in 2011. It is a great pity that the country has to resort to tougher measures to drive transformation.

The labour market has the ability to innovate and be creative in the way they do business, I urge them to use the same innovation and energy to make meaningful transformation a reality in South Africa, because where there is a will, there is a way.

We cannot continue doing the same things and expect different results. This is the time for the labour market to invest differently in transformation to make it more meaningful, for all our sakes.

In conclusion, I express my gratitude to all my fellow Commissioners and the Secretariat for their commitment and dedication. On behalf of the CEE, I thank the Minister for his unwavering support towards reaching the objectives of the EEA. I would also like to thank Jimmy Manyi, the former Chairperson of the CEE, for his leadership and wish him success in his new role as the Director-General of the Department of Labour.

**Mpho Nkeli**  
**Acting Chairperson**  
**Commission for Employment Equity**



# Members of the Commission for Employment Equity

Section 28 of the Act established the Commission for Employment Equity (CEE). According to section 29 (1) of the Act, the CEE consists of a Chairperson appointed by the Minister and the following eight members nominated by NEDLAC, i.e. two representatives of each of the following constituencies: State; organised business; organised labour; and community.

A bitter-sweet dilemma was faced by the Commission in 2009 when the former Chairperson was appointed as the Director-General of the Department of Labour in September, Mrs Nkeli, a member representing Business on the Commission, was appointed in his place as Acting Chairperson. Two Business representatives are in the process of being appointed to replace the Acting Chairperson and Mr Lebogang Montjane who resigned in March 2010.

Efforts are also in the pipeline to replace Ms Nomvula Makgothlo who also resigned. At the same time, the Commission is pleased to welcome Mr Malesela Maleka who replaced Mr Khulu Mbongo from the Community constituency. The current structure of the CEE is as follows:



**Rhulani Makhubela**  
State representative



**Mpho Nkeli**  
Acting Chairperson



**Nimla Pillay**  
Labour representative



**Thembeka Gwagwa**  
Labour representative



**Malesela Meleka**  
Community representative



**Mzolisi Ka-Toni**  
Community representative



# Introduction

# 1. Introduction

The CEE is required to submit an annual report to the Minister of Labour on the implementation of employment equity in terms of section 33 of the Act.

This report covers the period from 1 April 2009 to 31 March 2010. It provides highlights for the period, the workforce distribution and an analysis of Employment Equity (EE) Reports received from employers in October 2009. It also reflects on representation trends of the designated groups, and concludes with observations and remarks by the Commission.

Employers with 150 or more employees (i.e. large employers) are required to submit reports on an annual basis and employers with less than 150 employees (i.e. small employers) are expected to submit reports every two years to the Department of Labour.

Therefore, the trends analysis will reflect on 2001, 2003, 2005, 2007 and 2009 because this is when only large employers were expected to report. Trends on the representivity levels is centred around the first three occupational levels, i.e. Top Management, Senior Management and Professionally Qualified levels, as this is where the designated groups are mostly under-represented.

An exciting development is that for the first time, the workforce profile data will be provided separately for 11 industry sectors as defined in Schedule 4 of the Act. The analysis is also provided to reflect representation for government and private sector employers.







● ————— **Highlights for the period**

## 2. Highlights for the period

The past year was challenging but the CEE is happy to report that a number of strategic initiatives were achieved in this reporting period, and most of them will contribute to improved implementation and monitoring of the Act. Below the most significant of such activities are detailed.

### 2.1 DG reviews

Seventy four companies were reviewed in the 2009 financial year in terms of sections 43, 44 and 45. Sections 43, 44 and 45 of the Employment Equity Act empower the Director-General to assess whether an employer is complying with the Act and make recommendations. According to these sections, failure to comply with these recommendations may result in an employer being referred to the Labour Court.

Observations made indicated that none of these companies were fully complying with the Employment Equity Act when submitting reports to the Department of Labour. A number of companies were found not to be assigning one or more senior managers, not to consult with employees, not to conduct an analysis of their workplaces, not to prepare and implement an employment equity plan in line with their annual objectives as prescribed in Section 20 of the Act.

Twenty years since the release of former President, Nelson Mandela from prison, and more than 10 years since the promulgation of the Employment Equity Act, the Department's officials were astonished to find that salaries based on race and gender still exist in a number of workplaces. In fact, several employers admitted to this discriminatory practice and were willing to investigate and correct this practice immediately. Agreement has been reached with these employers to assess the situation and to incorporate remedial actions into their EE Plans to ensure that individuals are paid in terms of the 'equal pay for work of equal value' principle.



### 2.2 Amendment proposals to the EEA

The Act is in the process of being reviewed and amended in order to address certain shortcomings and to strengthen its implementation. The following are some of the key areas that require the Act to be amended:

#### Equal pay for work of equal value

A new section is required in the Act to deal explicitly with unfair discrimination by an employer with regards to the terms and conditions of employment for employees doing the same work, similar work or work of equal value. A differentiation will amount to unfair discrimination unless the employer can show that differences in wages or other conditions of employment is in fact based on fair criteria such as experience, skill, responsibility, etc.

The lack of a provision to deal expressly with wage discrimination on the basis of race and gender in the Employment Equity Act has been criticised by the International Labour Organisation. The enactment of a section in the Act will provide an explicit basis for equal pay claims to give effect to the Constitutional protection of equality and achieve compliance with core international labour standards binding on South Africa.

#### Enforcement of affirmative action provisions

The enforcement provisions of the Act have to be simplified in order to eliminate unnecessary mandatory steps and mandatory criteria that must be taken into account in assessing compliance. This will promote effective enforcement and prevent the

tactical use of reviews as a mechanism for delaying the enforcement process. It will not prevent employers who are aggrieved by decisions from challenging these decisions at an appropriate juncture. The Director-General may apply to the Labour Court to impose a fine on an employer who does not comply.

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## **2.3 Road shows**

Employment equity road shows took place in all nine provinces in July and August of 2009. The primary focus of these road shows was to share with employers and other interest groups the reviewed Employment Equity Regulations gazetted on 14 July 2009. The attendance and participation by employers at these road shows proved to be very successful. Evidence of this success was clearly shown by the increase in the number of employers who fully and accurately completed their employment equity reports before submitting to the Department.

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## **2.4 Collaboration with Chapter 9 Institutions and other stakeholders**

The Commission for Employment Equity has embarked on initiatives to meet with, among others, the Commission on Gender Equality (CGE), South African Human Rights Commission, National Youth Development Agency, Labour, etc. These meetings are aimed at strengthening collaborations in order to promote the implementation of the Employment Equity Act.

The CEE met with the CGE and Labour during the 2009 reporting period. Agreement has been reached with the CGE that continuous collaboration will take place to improve the general conditions of females and to increase their representation levels in the workplace, particularly in the middle-to-upper occupational levels. Labour has agreed to call upon its members to monitor the implementation of the Employment Equity Act from the beginning of the process, including the preparation and implementation of employment equity plans.