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CONTENTS • INHOUD

No.

*Page
No. Gazette
 No.*

GOVERNMENT NOTICE

Labour, Department of

Government Notice

R. 1306 Employment Equity Act (55/1998): Amendments: Employment Equity Regulations 3 31668

GOVERNMENT NOTICE

DEPARTMENT OF LABOUR**No. R. 1306****8 December 2008****EMPLOYMENT EQUITY ACT, 1998 (ACT 55 OF 1998)****AMENDMENTS TO THE EMPLOYMENT EQUITY REGULATIONS**

I Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, under section 55 (1) of the Employment Equity Act, 1998 (Act No 55 of 1998), and on the advice of the Commission for Employment Equity, give notice of the commencement and invitation for written representations from members of the public to proposed amendments to the regulations made in terms of the Employment Equity Act, Act 55 of 1998, regulations published in notice R 841 in Government Gazette 29130 of 18 August 2006. This notice will be effective from the date of publication.

Interested persons are hereby given the opportunity to make representations to the Commission for Employment Equity. Representations should reach the Executive Manager, Employment Equity, Department of Labour, Private Bag X117, Pretoria, 0001 within 30 days after publication of the notice.



M M S MDLADLANA, MP
MINISTER OF LABOUR

CONTENTS

GENERAL ADMINISTRATIVE REGULATIONS

1. Definitions
2. Assigning a Senior Manager(s)
3. Consultations
4. Collecting information and conducting an analysis (Section 19 of the Act)
5. Duty to prepare and implement an Employment equity plan (Section 20 of the Act)
6. Duty to report (Section 21 of the Act)
7. Duty to inform (Section 25 of the Act)
8. Income differentials statement (Section 27 of the Act)
9. Proof of submission and authenticity
10. Enforcement

FORMS AND ANNEXURES

1. EEA1 Employee declaration in terms of Section 19 (1) of the Act
2. EEA2 Report to Director-General in terms of Section 21 of the Act
3. EEA3 Summary of the Act in terms of Section 25(1) of the Act
4. EEA4 Statement of income differentials in terms of Section 27 of the Act
5. EEA5 Securing an Undertaking in terms of Section 36 of the Act
6. EEA6 Compliance order in terms of Section 37(1) of the Act
7. EEA7 Objection against Compliance Order in terms of Section 39 (1) of the Act
8. EEA8 Annexure1: Demographic Data
9. EEA9 Annexure 2: Occupational Levels
10. EEA10 Annexure 3: Summary of the employment equity progress report
11. EEA11 Annexure 4: Request for employer's employment equity report

1. Definitions

In these regulations any expression that is defined in the Employment Equity Act, 1998, has that meaning and unless the context otherwise indicates:

- 1.1 **“Director-General”** means the Director-General of the Department of Labour, which also includes the highest authority of the Department of Labour in the:
- (i) Kwa-Zulu/Natal Province;
 - (ii) Northern Cape Province;
 - (iii) Limpopo Province;
 - (iv) North West Province;
 - (v) Eastern Cape Province;
 - (vi) Mpumalanga Province;
 - (vii) Free State Province;
 - (viii) Gauteng Province; and
 - (ix) Western Cape Province.
- 1.2 **“The Act”** means the Employment Equity Act, 1998 (Act No.55 of 1998).
- 1.3 **“Workplace”** means the place or places where the employees of an employer work. If an employer carries on or conducts two or more operations that are independent of one another by reason of their size, function, or organization, the place or places where employees operate.
- 1.4 **Non-permanent workers** refer to those workers who are employed to work for less than 24 hours per month.
- 1.5 **“Designated groups”** means Black people (i.e. Africans, Coloureds and Indians), women and people with disabilities who are natural persons and:
- 1.5.1 are citizens of the Republic of South Africa by birth or descent; or
 - 1.5.2 are citizens of the Republic of South Africa by naturalisation before the commencement date (i.e. 27 April 1994) of the interim Constitution of the Republic of South Africa Act of 1993; or
 - 1.5.3 became citizens of the Republic of South Africa from the commencement date of the interim Constitution of the Republic of South Africa Act of 1993, but who, not for Apartheid policy that had been in place prior to that date, would have been entitled to acquire citizenship by naturalisation prior to that date.
- 1.6 **Foreign Nationals** are those people who are not citizens, or are those who received their citizenship after 26 April 1994 and their descendents.
- 1.7 **Psychological testing and other similar assessments** are prohibited by law unless they comply with Section 8 read with its sub-sections 8(a), (b) and (c) and certified by a competent statutory body (i.e. the Health Professionals Council of South Africa (HPCSA) as amended or a structure with equivalent status).

2. Assigning a Senior Manager(s)

Assigned senior manager(s) for employment equity must be:

- 2.1 Permanent and report directly to the Chief Executive Officer on employment equity matters. This person must have key employment equity outcomes incorporated into their performance contracts;
- 2.2 Given the necessary executive authority and mandate; and
- 2.3 Provided with an appropriate budget and access to other required resources.

3. Consultations

- 3.1 All employees must be informed of the content and application of the Act, employment equity and anti-discrimination issues, the process to be followed by the employer, and the need for the involvement of all stakeholders, as preparation for their participation and consultation.
- 3.2 A consultative forum must be established or an existing forum utilised. The forum must include employee representatives reflecting the interests of employees from all occupational categories and levels and both designated and non-designated groups.
- 3.3 Consultation must include:
 - a) Regular meetings and feedback to employees and management; and
 - b) Access to relevant information by employees.
- 3.4 Where a representative body or trade union refuses to take part in the consultation process, the employer must record the circumstances in writing. A copy of this document must be provided to the representative body or trade union concerned.

4. Collecting information and conducting an analysis (Section 19 of the Act)

- 4.1 When a designated employer collects information about individual employees for the purpose of compiling a workforce profile to determine the degree to which employees from designated groups might be underrepresented, the employer must request each employee in the workforce to complete a declaration using the EEA1 form.
- 4.2 Employees must at any time be able to add information to the EEA1 form.
- 4.3 Where an employee refuses to complete the EEA1 form or provides inaccurate information, the employer may establish the designation of an employee by using reliable historical and existing data.
- 4.4 A designated employer must use section B of the EEA2 form to develop the workforce profile of employees as required by section 19(2) of the Act.
- 4.5 When a designated employer conducts the analysis required by section 19(1) of the Act, the employer may refer to:
 - a) Annexure 1, for demographic data; and
 - b) Annexure 2, which contains the definitions of occupational levels.
- 4.6 A designated employer must refer to the relevant **Codes of Good Practice** as a guide when collecting information and conducting the analysis required by section 19 of the Act.
- 4.7 The analysis must involve reviewing of all policies, procedures, practices and the work environment in order to eliminate unfair discrimination and promote employment equity in the workplace.

5. Duty to prepare and implement an employment equity plan (Section 20 of the Act)

- 5.1 A designated employer must refer to the relevant **Codes of Good Practice** when preparing the employment equity plan required by section 20 of the Act.
- 5.2 A designated employer must retain the employment equity plan for a period of three years after the expiry of the plan, unless the employer employs fewer than 150 employees, in which case the plan must be retained for two years.
- 5.3 The employment equity plan must contain a description of the measures taken by the designated employer to eliminate unfair discrimination in that employer's workplace.

6. Duty to report (Section 21 of the Act)

- 6.1 Each designated employer must submit a report in terms of Section 21 of the Act using the EEA2 form together with the EEA4 form to: Employment Equity Registry, Department of Labour, Private BagX117, Pretoria, 0001.
- 6.2 Large employers must submit their first report within six months of being designated, and thereafter annually on the first working day of October; and small employers must submit their first report within twelve months of being designated, and thereafter on the first working day of October of every year that ends with an even number.
- 6.3 Large employers, i.e. employers with 150 and more employees, must complete the entire EEA2 reporting form. Small employers, i.e. employers with fewer than 150 employees, must only complete areas of the EEA2 form that apply to them. Areas that only apply to small employers shall be made available by the Department in a separate form as well. All relevant areas of the form must be fully and accurately completed by employers. Blank spaces in the forms will not be accepted. Employers who fail to observe this provision will be deemed not to have reported.
- 6.4 A designated employer whose operations extend across different geographical areas or workplaces may choose to submit a separate report for each registered entity or submit a consolidated report. The method of reporting should remain for the period of the plan, and must be consistent from year-to-year and from reporting period to reporting period. Employers who submit consolidated reports must have a consolidated plan with individual employment equity (EE) plans and relevant information for each entity or workplace that have been included in the consolidated report. The consolidated report and the individual EE plans and relevant information must be made available at each entity or workplace. Any change to the reporting status must be immediately reported to the Department by the employer.
- 6.5 Only newly designated employers are allowed to notify the Director General if they are not able to report on the first working day of October. The notification must be done in writing together with valid reasons. This notification must reach the Director General by no later than the last working day of August in the same year. The Director General will examine the reasons that were provided by the employer and shall decide on whether to accept or reject them. The Director General's decision shall be final.
- 6.6 A designated employer must retain a copy of the report for a period of three years after it has been submitted to the Director-General, unless the employer has fewer than 150 employees, in which case the report must be retained for two years.

7. Duty to inform (Section 25 of the Act)

- 7.1 Each employer must display the notice required by Section 25(1) of the Act (i.e. the summary of the Act annexed as EEA3 in the regulations) in their workplace.
- 7.2 If there are employees in the workplace who are unable to read this notice, the employer must inform those employees about the provisions of the Act.

8. Income differentials (section 27 of the Act)

- 8.1 Each designated employer must submit a statement of income differentials required by section 27 of the Act using the EEA4 form.
- 8.2 When completing the EEA4 form, designated employers must refer to the EEA9 for guidance.
- 8.3 Designated employers must submit the EEA4 statement together with the EEA 2 Forms to: Employment Equity Registry, Department of Labour, Private BagX117, Pretoria, 0001.
- 8.4 Designated employers must retain a copy of the statement for a period of three years after it has been submitted to the Employment Conditions Commission, unless the employer has fewer than 150 employees, in which case the statement must be retained for two years.

9. Proof of submission and authenticity

- 9.1 Whenever a person is required to satisfy any other person that a copy of any document required or prescribed by the Act or its regulations has been submitted to the other party, that person may do so by providing:
 - a) A copy of the proof of mailing the document by registered post to the other party;
 - b) A copy of the telefax or e-mail, including proof of transmission of the document to the other party;
 - c) A copy of a receipt signed by the other party or on that party's behalf if the document was delivered by hand;
 - d) A statement confirming delivery signed by the person who delivered the document; or
 - e) A letter generated from the Department of Labour's Online Reporting system.
- 9.2 A copy of any document submitted to a Labour Inspector or any official of the Department of Labour must be signed by an authorised person as proof of authenticity.

10. Enforcement (Chapter5 of the Act)**10.1 Securing an undertaking (Section 36 of the Act):**

A labour inspector must request and obtain a written undertaking using the EEA5 form.

10.2 Compliance order (Section 37 of the Act):

A labour inspector may issue a compliance order to a designated employer using the EEA6 form.

10.3 Objections to compliance order (Section 39 of the Act):

- (a) A designated employer may object to a compliance order by making a representation to the Director-General using the EEA7 form.
- (b) The objection must be lodged with the highest authority at the Provincial level of the Department of Labour.



DEPARTMENT OF LABOUR

(Confidential)
Declaration by employee

PLEASE READ THIS FIRST

Purpose of this form

This form is used to obtain information from employees for the purpose of assisting employers with conducting an analysis on the workforce profile. Employers should use this form to ascertain which employees are from designated groups in terms of the Employment Equity Act, 55 of 1998.

Who fills in this form

Employees should fill in this form.

Instructions

Employers must ensure that the contents of this form remain confidential, and that it is only used to comply with the Employment Equity Act, 55 of 1998.

1. Name of employee: _____

2. Employee workplace No: _____
(This is the number that an employer/company/organization uses to identify an employee in the workplace.)

3. Please indicate to which categories you belong:

Male Female
African Coloured Indian White

Foreign National:

If you are not a citizen by birth, please indicate the date you acquired your citizenship:

Person with a disability:

Specify nature of disability:

4. I verify that the above information is true and correct.

Signed: _____
Employee

Date: _____



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Department:
Labour
REPUBLIC OF SOUTH AFRICA

PAGE 1 OF 12

EEA2

1 of 12 EEA2

PLEASE READ THIS FIRST	SECTION A: EMPLOYER DETAILS & INSTRUCTIONS	
<p>PURPOSE OF THIS FORM This form enables employers to comply with Section 21 of the Employment Equity Act 55 of 1998.</p> <p>This form contains the format for employment equity reporting by employers to the Department of Labour. Both small employers (i.e. employers employing fewer than 150 employees) and large employers (i.e. employers employing 150 or more employees) are required to use this form. Those employers who are not designated, but wish to voluntarily comply, must also use this reporting form.</p> <p>Although all sections of this form apply to large employers, only certain sections of this form should be completed by small employers. Employers who report for the first time are not required to complete the progress report of this form.</p> <p>WHO SHOULD COMPLETE THIS FORM? All designated employers that have to submit a report in terms of the Employment Equity Act, 55 of 1998. Employers who wish to voluntarily comply with the reporting requirements of the Act are also required to complete this form.</p> <p>WHEN SHOULD EMPLOYERS REPORT? Large employers must submit their first report within six months of being designated, and thereafter annually on the first working day of October; and Small employers must submit their first report within twelve months of being designated, and thereafter on the first working day of October of every year that ends with an even number.</p> <p>ESSENTIAL REQUIREMENTS Large employers, i.e. employers with 150 and more employees, must complete the entire EEA2 reporting form. Small employers, i.e. employers with fewer than 150 employees, must only complete areas of the EEA2 form that apply to them. Large employers, i.e. employers with 150 and more employees, must complete the entire EEA2 reporting form. Small employers, i.e. employers with fewer than 150 employees, must only complete areas of the EEA2 form that apply to them. Guidance to overcome difficulties on how to complete the form properly must be obtained from the Department prior to completing and submitting the report.</p> <p>SEND TO: Employment Equity Registry The Department of Labour Private Bag X117 Pretoria 0001</p> <p>Online reporting: www.labour.gov.za Helpline: 0860101018</p>	Trade name	
	DTI registration name	
	DTI registration number	
	PAYE/SARS number	
	UIF reference number	
	EE reference number	
	Industry/Sector	
	Seta classification	
	Telephone number	
	Fax number	
	Email address	
	Postal address	
	Postal code	
	City/Town	
	Province	
	Physical address	
	Postal code	
	City/Town	
	Province	

Please indicate below the period the report covers (in the case of large employers the preceding twelve months and for small employers twenty-four months, except for first time reporting where the period may be shorter):

From (date): _____ **To (date):** _____

Please indicate below the duration of your current employment equity plan:

From (date): _____ **To (date):** _____

Please read this first

- a. The method of reporting should remain for the period of the plan, and must be consistent from year-to-year and from reporting period to reporting period.
- b. **Blank spaces in tables and check boxes will be interpreted by the Department of Labour to mean the number 'Zero' or the word 'No'.**
- c. All relevant areas of the form must be fully and accurately completed by employers. **Designated employers who fail to observe this provision will be deemed not to have reported.** Non-permanent workers refer to those workers who are employed to work for less than 24 hours per month.
- d. Employers must complete Section H that deals with **numerical goals and numerical targets**. **Numerical goals** are the workforce profile the employer is striving to achieve in the workplace at the end of the duration of the employer's current employment equity plan. The numerical goals of the employer must be the same for the entire duration of the employment equity plan. **Numerical targets** are the workforce profile the employer is striving to achieve at the end of the period following the period covered by the current report of the employer.
- e. Large employers, i.e. employers with 150 and more employees, must complete the entire EEA2 reporting form. Small employers, i.e. employers with fewer than 150 employees, must only complete areas of the EEA2 form that apply to them. Areas that only apply to small employers shall be made available by the Department in a separate form as well. All relevant areas of the form must be fully and accurately completed by employers.
- f. The alphabets "A", "C", "I" and "W" used in the tables have the following corresponding meanings and must be interpreted as "Africans", "Coloureds", "Indians" and "Whites" respectively.
- g. **"Designated groups"** means Black people (i.e. Africans, Coloureds and Indians), women and people with disabilities who are natural persons and are citizens of the Republic of South Africa by birth or descent; or are citizens of the Republic of South Africa by naturalization before the commencement date (i.e. 27 April 1994) of the Constitution of the Republic of South Africa Act of 1993; or became citizens of the Republic of South Africa from the commencement date of the Constitution of the Republic of South Africa Act of 1993, but who, not for Apartheid policy that had been in place prior to that date, would have been entitled to acquire citizenship by naturalization prior to that date.
- h. All population groupings who are not part of the Black group, but in substance fall within the definition described in paragraph (j) in terms of citizenship or descent, must be counted and included in the column of each table in the form that require data on the White group.
- i. Foreign nationals and South African citizens that fall outside the definition described in paragraphs (j) or (k) must be counted and included in the column of each table in the form that require data on foreign nationals.

SECTION C

WORKFORCE MOVEMENT

3. Recruitment

3.1 Please report the total number of new recruits, including people with disabilities. Note: A=Africans, C=Coloureds, I=Indians and W=Whites

Occupational Levels	Male				Female				Foreign Nationals		Total
	A	C	I	W	A	C	I	W	Male	Female	
Top management											
Senior management											
Professionally qualified and experienced specialists and mid-management											
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents											
Semi-skilled and discretionary decision making											
Unskilled and defined decision making											
TOTAL PERMANENT											
Non – permanent employees											
GRAND TOTAL											

4. Promotion

4.1 Please report the total number of promotions into each occupational level, including people with disabilities. Note: A=Africans, C=Coloureds, I=Indians and W=Whites

Occupational Levels	Male				Female				Foreign Nationals		Total
	A	C	I	W	A	C	I	W	Male	Female	
Top management											
Senior management											
Professionally qualified and experienced specialists and mid-management											
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents											
Semi-skilled and discretionary decision making											
Unskilled and defined decision making											
TOTAL PERMANENT											
Non – permanent employees											
GRAND TOTAL											

5. Termination

5.1 Please report the total number of terminations in each occupational level, including people with disabilities. Note: A=Africans, C=Coloureds, I=Indians and W=Whites

Occupational Levels	Male				Female				Foreign Nationals		Total
	A	C	I	W	A	C	I	W	Male	Female	
Top management											
Senior management											
Professionally qualified and experienced specialists and mid-management											
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents											
Semi-skilled and discretionary decision making											
Unskilled and defined decision making											
TOTAL PERMANENT											
Non – permanent employees											
GRAND TOTAL											

5.2 Please report the total number of terminations in each **termination category** below. Note: A=Africans, C=Coloureds, I=Indians and W=Whites

Occupational Levels	Male				Female				Foreign Nationals		Total
	A	C	I	W	A	C	I	W	Male	Female	
Top management											
Senior management											
Professionally qualified and experienced specialists and mid-management											
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents											
Semi-skilled and discretionary decision making											
Unskilled and defined decision making											
TOTAL PERMANENT											
Non – permanent employees											
GRAND TOTAL											

Section D

7. Skills Development

7.1 Please report the total number of people from the designated groups who received training, including for people with disabilities, and not the number of training courses attended, in each **occupational level** solely for the purpose of achieving the numerical goals. Note: A=Africans, C=Coloureds, I=Indians and W=Whites

Occupational Levels	Male				Female				Foreign Nationals		Total
	A	C	I	W	A	C	I	W	Male	Female	
Top management											
Senior management											
Professionally qualified and experienced specialists and mid-management											
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents											
Semi-skilled and discretionary decision making											
Unskilled and defined decision making											
TOTAL PERMANENT											
Non – permanent employees											
GRAND TOTAL											

7.2 Please report the total number for people with disabilities only, and not the number of training courses attended, in each **occupational level** solely for the purpose of achieving the numerical goals. Note: A=Africans, C=Coloureds, I=Indians and W=Whites

Occupational Levels	Male				Female				Foreign Nationals		Total
	A	C	I	W	A	C	I	W	Male	Female	
Top management											
Senior management											
Professionally qualified and experienced specialists and mid-management											
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents											
Semi-skilled and discretionary decision making											
Unskilled and defined decision making											
TOTAL PERMANENT											
Non – permanent employees											
GRAND TOTAL											