

Employment Equity Act 55 of 1998 (EEA)

Topic: BBBEE and Labour/Employment Equity

IN A CALABASH

Introduction

The Employment Equity Act (EEA) has been put in place in order to address certain imbalances in the workplace due to past discriminatory practices in South Africa.

Objectives of the Act

The EEA is aimed at achieving equality in the workplace by promoting equal opportunity and fair treatment throughout all employment practices and by eliminating unfair discrimination.

The EEA also allows for the implementation of affirmative action measures to redress the disadvantages in employment experienced by designated groups in order to ensure their equitable representation in all occupational categories and levels in the workforce.

Application of the Act and its implication to Tourism

The EEA will apply to all employees and employers in South Africa, who are obliged to ensure that they take steps to–

- promote equal opportunity in the workplace; and
- eliminate unfair discrimination in the workplace.

In relation to the Tourism Industry, all stakeholders and all persons who operate within this industry need to be mindful of the various rights which are set out under this Act and, in particular, those pertaining to unfair discrimination.

Summary of the provisions of the Act

Equal opportunity and no discrimination

Every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice.

Notwithstanding the above, when an employer takes affirmative action measures consistent with the purpose of the EEA or the BEE laws or when an employer distinguishes, excludes or prefers any person on the basis of an inherent requirement of a job, this does not amount to unfair discrimination.

The EEA requires that every employer must implement affirmative action measures in its workplace in order to redress any disadvantages in the workforce experienced by designated groups. In doing so, employers must ensure that these designated groups are equally represented in all occupational categories comprising the workforce.

Medical testing

Medical testing of an employee is prohibited unless legislation permits or requires the testing or it is justifiable in the light of medical facts, employment conditions, social policy, the fair distribution of employee benefits or the inherent requirements of a job.

HIV testing

Testing of an employee to determine that employee's HIV status is prohibited unless such testing is determined to be justifiable by the Labour Court.

Psychological testing

Psychological testing and other similar assessments of an employee are prohibited unless

- the test or assessment being used has been scientifically shown to be valid and reliable;
- can be applied fairly to all employees; and
- is not biased against any employee or group.

Designated employer

An employer who employs more than 50 employees in the workplace or an employer who employs less than 50 employees but has a turnover higher than the threshold set out below, must prepare an annual employment equity plan setting out its proposed affirmative action measures and its objectives in achieving employment equity in the workplace.

TURNOVER THRESHOLD APPLICABLE TO DESIGNATED EMPLOYERS

| Sector or subsectors in accordance with the Standard Industrial Classification | Total annual turnover |
|---|------------------------------|
| Agriculture | R2,00 m |
| Mining and Quarrying | R7,50 m |
| Manufacturing | R10,00 m |
| Electricity, Gas and Water | R10,00 m |
| Construction | R5,00 m |
| Retail and Motor Trade and Repair Services | R15,00 m |
| Wholesale Trade, Commercial Agents and Allied Services | R25,00 m |
| Catering, Accommodation and other Trade | R5,00 m |
| Transport, Storage and Communications | R10,00 m |
| Finance and Business Services | R10,00 m |
| Community, Special and Personal Services | R5,00 m |

Employment equity committee and employment equity plan

Before it implements any affirmative action measures, a designated employer has a duty to consult with its employees and conduct an analysis of whom it has employed within its workplace. Once such consultation has taken place, every designated employer must appoint an employment equity committee comprising representatives from management and the workforce.

Once the designated employer has prepared an employment equity plan which will achieve reasonable progress towards employment equity in the workforce, he or she must implement it. Progress reports on implementing the employment equity plan must be submitted by the designated employer to the Director-General in the Department of Labour each year. A summary of the report must be published in the entity's annual financial report.

Before the end of the term of its current employment equity plan, a designated employer must prepare a subsequent employment equity plan.

Earnings

Every designated employer must submit, as part of its annual report, a statement on the remuneration and benefits received in each occupational category and level of that employer's workforce. Where disproportionate income differentials are reflected in the statement, a designated employer must take measures to progressively reduce this. The Minister may give such differentials as guidance from time to time.

Manager assigned to employment equity initiatives

Every designated employer must assign one or more senior managers to take responsibility for monitoring and implementing an employment equity plan. The employer must also provide the managers with the authority and means to perform their functions and must take reasonable steps to ensure that the managers perform their functions.

Inform employees

At the workplace, an employer must display a notice informing employees about the provisions of the EEA where it can be read. A designated employer must, in each of its workplaces, place in prominent places that are accessible to all employees the most recent report submitted by that employer to the Director-General along with any compliance order, arbitration award or order of the Labour Court concerning the provisions of the EEA in relation to that employer.

An employer must make a copy of the employment equity plan available to its employees for copying and consultation.

Records

All employers must, for a period of seven years, maintain all records relating to its efforts to comply with the Act, especially those records in respect of its workforce and its employment equity plan.

Codes of Good Practice

A number of Codes of Good Practice in terms of the EEA have been developed and published. They provide a guideline on how certain aspects of the EEA should be complied with. These Codes of Good Practice include: guides on how to prepare, implement and monitor employment equity plans, how to deal with HIV/Aids in the workplace, how to handle employees with disabilities, how to handle and deal with sexual harassment cases in the workplace and how to integrate employment equity into human resource policies and practices.



WHAT HAPPENS IF YOU DO NOT COMPLY?

In the event of any non-compliance, the Labour Court has the right to impose a fine not to exceed the amounts set out in the table below.

| Previous Contravention | Contravention of any Provision of sections 16, 19, 20, 21, 22 and 23 |
|---|---|
| No previous contravention | R500 000 |
| A previous contravention in respect of the same provision | R600 000 |
| A previous contravention within the previous 12 months or two previous contraventions in respect of the same provision within three years | R700 000 |
| Three previous contraventions in respect of the same provision within three years | R800 000 |
| Four previous contraventions in respect of the same provision within three years | R900 000 |



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

- Non -discrimination in the workplace;
- Employment equity and affirmative action programmes and initiatives;
- Consultation with employees with employment equity initiatives;
- Compilation of employment equity plan and submission to the Department of Labour;
- Appointment of a designated employment equity manager; and
- The Act displayed in the workplace.

FURTHER INFORMATION

Regulators

The EEA provides for the establishment of a commission for employment equity and monitoring by labour inspectors.

The EEA is administered and overseen by the Department of Labour.

Websites

www.labour.gov.za

Forms

www.labour.gov.za/documents/forms/employment-equity/forms-and-documents

www.labour.gov.za/documents/forms/employment-equity/ee-regulations-2009/