



# Employment Equity

Introducing the Employment Equity Amendment Act, 2020 (Gazette 14 April 2023) and EE Sectoral targets open for public comments (Gazette 12 May 2023)

Facilitated by



EECMS

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

## Background

- The Employment Equity Act, 2020 was introduced and Gazette 14 April 2023 and has the purpose of-
  1. Allowing the Minister of Employment and Labour to establish sectoral numerical targets for the purpose of ensuring the equitable representation of suitably qualified people from designated groups (blacks, women and persons with a disability) at all occupation levels in the workforce; and
  2. Enhancing the administration of the Act, including the implementation of section 53 concerning state contracts.

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

## **Amendment of section 1 (definitions) of Act 55 of 1998**

The following changes made to the definitions:

- The definition of a designated employer is amended by repealing paragraph (b) which classified employers with fewer than 50 employees who meet a turnover threshold as designated employers. Repealing Schedule 4.
- A definition of the National Minimum Wage Commission is introduced (and it means the Commission established in terms of the National Minimum Wage Act, 2017 (Act No of 2017)).
- A definition of sector is included (sector means an industry or service or part of any industry or service) – EEA17

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

## Amendment of section 1 (definitions) of Act 55 of 1998...continued

- People with disabilities includes people who have a long term or recurring physical, mental, **intellectual or sensory** impairment which, **in interaction with various barriers**, may substantially limit their prospects of entry into, or advancement in, employment, **and “persons with disabilities” has a corresponding meaning.**

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

## **Amendment of section 1 (definitions) of Act 55 of 1998...continued**

- A definition of “the State” is included to ensure certainty concerning the application of section 53 dealing with State contracts.
- “the State” means-
  - (a) A national or provincial department as defined in the Public Finance Management Act, 1999 (Act 1 of 1999);
  - (b) A municipality or municipal entity as defined in the Local Government Municipal Systems Act of 2000 (Act 32 of 2000);
  - (c) A constitutional institution as defined in the Public Finance Management 1999 (Act, 1999 (Act 1 of 1999);
  - (d) Parliament;
  - (e) A provincial legislature;
  - (f) any entity listed in Schedule 2 and 3 of the Public Finance Management Act of 1999 (Act 1 of 1999).

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

## Amendment of section 8 of Act 55 of 1998

- Psychological testing and other similar assessments of an employee are prohibited unless the test or assessment being used—
  - (a) has been scientifically shown to be valid and reliable;
  - (b) can be applied fairly to all employees; and
  - (c) is not biased against any employer or group **and will now include**
  - (d) has been certified by the Health Professions Council of South Africa established by section 2 of the Health Professions Act, 1974 (Act 56 of 1974), or any other body which may be authorised by law to certify those tests or assessments.

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

## **Insertion of section 15A of Act 55 of 1998**

- A new section, 15A, is inserted allowing the Minister to –
  - identify national economic sectors for the purposes of the administration of the Employment Equity Act;
  - establish numerical targets for these sectors.
  - The sectoral targets set may differentiate between occupational levels, sub-sectors, regions or other relevant factors.
  - The Minister may publish regulations listing the criteria to be applied in setting sectoral targets.

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

## **Amendment of section 16 of Act 55 of 1998**

- Section 16 is hereby amended with a representative trade union representing Members at the workplace (and deleting ‘and its employees or Representatives nominated by them’).
- How we interpret it – Companies being majority Unionised will need to consult with representative trade union Member (Shop Stewart(s) and will not have a formally appointed EEC anymore.
- Points of discussions – Draft, implementation and monitoring of the EAP Analysis, Sectoral Targets, EE Plan, Employment Barriers and EEA2 reporting.
- If not majority Unionised, normal process of EEC meeting at least quarterly to discuss the above mentioned – Need to comply with the Constituency.

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

## Section 20 of Act 55 of 1998 is amended

- Amendment of section 20 of Act 55 of 1998 provision to link the sectoral EE targets to the numerical targets set by designated employers in the EE Plan of their workplaces.
- **Question: What is the possible impact on our company?**
  - We were told that all current employment equity plans will fall away on 1 August 2023. All designated employers to draft, implement and monitor a 5-year EE Plan, starting 1 September 2023 ending 31 August 2028, indicating achievement towards sectoral targets by year 5
  - Employers will need to set EE targets aligned to the sectoral targets.
  - EE targets to be monitored against sectoral targets every year as part of the compliance certification process by various Stakeholders (Board, Top Management, EE Manager(s), Unions and DEL when reporting).

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

## **Amendment of section 21 of Act 55 of 1998**

Section 21 is amended to permit the Minister to prescribe by regulation the manner and period in which employers are required to submit employment equity reports.

## **Amendment of section 27 of Act 55 of 1998**

Section 27 is amended to transfer the functions of the Employment Conditions Commission in respect of reporting and monitoring of disproportionate income differentials to the National Minimum Wage Commission.

## **Amendment of section 37 of Act 55 of 1998**

Section 37 is amended to permit the Minister to prescribe by regulation the manner of service of compliance orders on employers.

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

## **Amendment of section 53 of Act 55 of 1998**

- Section 53 provided that State contracts may only be issued to employers that have been certified as being in compliance with their obligations under the Employment Equity Act.
- Subsection (1) is amended to require that an employer attaches a certificate when concluding a contract with the State in terms of Subsection (2) as conclusive evidence that the employer complies with the relevant Chapters of the Act.
- A new section 53(6) is inserted to clarify that the Minister of Employment and Labour may only issue a certificate to an employer if the employer—
  - has achieved any applicable sectoral targets or has raised a reasonable ground for non-compliance;
  - has submitted its most recent employment equity report; and
  - has not been found within the previous twelve months to have breached the prohibition on unfair discrimination or to have paid wages below the level of the national minimum wage.



# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

## **DRAFT EMPLOYMENT EQUITY REGULATIONS, 2018 and 2020**

**Additional EEA forms include:**

- EEA15 – Request for an EE Compliance Certificate
- EEA16A – EE Compliance Certificate for designated employers
- EEA16B - EE Compliance Certificate for non-designated employers
- EEA17 – Economic Sectors and Sub-Sectors

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

## Proposed changes to sectors

SECTORS	SUB-SECTORS (DIVISIONS)
AGRICULTURE, FORESTRY & FISHING	Crop and animal production, hunting and related services activities
	Forestry and logging
	Fishing and aquaculture
MINING AND QUARRYING	Mining of coal and lignite
	Extraction of crude petroleum and natural gas
	Mining of metal ores
	Other mining and quarrying
	Mining support service activities

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

SECTORS	SUB-SECTORS (DIVISIONS)
MANUFACTURING	Manufacturing of food products; beverages and tobacco products
	Manufacturing of textile; wearing apparel; leather and related products
	Manufacturing of wood and product of wood; furniture; cork; articles of straw; plaiting materials; paper and paper products
	Manufacture of printing; reproduction of recorded media; computer; electronic and optical product

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

SECTORS	SUB-SECTORS (DIVISIONS)
MANUFACTURING	Manufacture of coke; refined petroleum products; chemicals; chemical products; pharmaceuticals; medicinal chemical; botanical products; rubber; tyres and tubes; plastic products and non-metallic mineral products
	Manufacture of basic metals; fabricated metal products; except machinery and equipment
	Manufacture of electrical equipment; machinery; equipment; motor vehicles; trailers; semi-trailers; transport equipment; installation of machinery and equipment

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

<b>SECTORS</b>	<b>SUB-SECTORS (DIVISIONS)</b>
CONSTRUCTION	Construction of buildings
	Civil Engineering
	Specialised construction activities
FINANCIAL AND INSURANCE ACTIVITIES	Financial service activities, except insurance and pension funding
	Insurance, reinsurance and pension funding, except compulsory social security
	Activities auxiliary to financial service and insurance activities

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

<b>SECTORS</b>	<b>SUB-SECTORS (DIVISIONS)</b>
TRANSPORTATION AND STORAGE	Land transport and transport via pipeline
	Water transport
	Air transport
	Warehousing and support activities for transportation
	Postal and courier activities

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

<b>SECTORS</b>	<b>SUB-SECTORS (DIVISIONS)</b>
INFORMATION AND COMMUNICATION	Publishing activities
	Motion picture, video and television programme production, sound recording and music publishing activities
	Programme and broadcasting services
	Telecommunication
	Computer programming, consultancy and related activities
	Information services activities
	Publishing activities

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

<b>SECTORS</b>	<b>SUB-SECTORS (DIVISIONS)</b>
WATER SUPPLY, SEWERAGE, WASTE MANAGEMENT AND REMEDICATION ACTIVITIES	Water collection, treatment and supply
	Sewerage
	Waste collection, treatment and disposal activities; materials recovery
	Remediation activities and other waste management services
	Water collection, treatment and supply
ELECTRICITY, GAS, STEAM AND AIR CONDITIONING SUPPLY	Electricity, gas, steam and air conditioning supply

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

SECTORS	SUB-SECTORS (DIVISIONS)
HUMAN HEALTH AND SOCIAL WORK ACTIVITIES	Human health activities
	Residential care activities
	Social work activities without accommodation
ARTS, ENTERTAINMENT AND RECREATION	Human health activities
	Creative, arts and entertainment activities
	Libraries, archives, museums and other cultural activities
	Gambling and betting activities
	Sports activities and amusement and recreation activities
	Other amusement and recreation activities

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

<b>SECTORS</b>	<b>SUB-SECTORS (DIVISIONS)</b>
REAL ESTATE ACTIVITIES	Real estate activities with own or leased property
	Real estate activities on a fee or Contract basis
PROFESSIONAL, SCIENTIFIC AND TECHNICAL ACTIVITIES	Legal and accounting, bookkeeping and auditing activities, tax consultancy
	Activities of head office; management consultancy activities
	Architectural and engineering activities; technical testing and analysis
	Scientific Research and experimental development on natural science and engineering; and social sciences and humanities

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

<b>SECTORS</b>	<b>SUB-SECTORS (DIVISIONS)</b>
PROFESSIONAL, SCIENTIFIC AND TECHNICAL ACTIVITIES	Advertising and market research and public opinion
	Specialised design and Photographic activities
	Veterinary activities
WHOLESALE AND RETAIL TRADE; REPAIR OF MOTOR VEHICLES AND MOTORCYCLES	Wholesale and retail trade and; repair of motor vehicles and motorcycles, including sales of motor vehicles; wholesale of motor vehicles; retail of new and used motor vehicles; sale and maintenance of repair of motor vehicles and motorcycles and related parts and accessories; retail of automotive fuel in specialised stores

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

SECTORS	SUB-SECTORS (DIVISIONS)
WHOLESALE AND RETAIL TRADE; REPAIR OF MOTOR VEHICLES AND MOTORCYCLES	Wholesale trade of motor vehicles and motorcycles, including wholesale of agricultural raw materials and live animals, food, beverages, tobacco, household goods, machinery, equipment and supplies and other specialised wholesale such as solid, liquid and gaseous fuels, metals and metal ore, construction materials, hardware, plumbing and heating equipment and supplies, waste and scrap, trade in diamonds, pearls and other precious and semi-precious stones

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

SECTORS	SUB-SECTORS (DIVISIONS)
WHOLESALE AND RETAIL TRADE; REPAIR OF MOTOR VEHICLES AND MOTORCYCLES	Retail trade of motor vehicle and motorcycles, including retail sale in non-specialised stores with food, beverages, retail sale of food, beverages, tobacco information and communications equipment, cultural and recreation goods, and other goods such as clothing, footwear and leather, pharmaceutical and medical goods, cosmetics and toilet articles and jewellery in specialised stores.

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

SECTORS	SUB-SECTORS (DIVISIONS)
ACCOMMODATION AND FOOD SERVICE ACTIVITIES	Accommodation, Short term accommodation activities
	Camping grounds, recreational vehicle parks and trailer parks
	Food and beverage service activities; Restaurants and mobile food service; Event catering another food service activities
PUBLIC ADMINISTRATION AND DEFENCE; COMPULSORY SOCIAL SECURITY	Administration of the state and the economic and social policy of the community and provision of services to the community as a whole at National; Provincial and Local government levels
	Compulsory social security activities

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

SECTORS	SUB-SECTORS (DIVISIONS)
EDUCATION	Pre – primary and primary education and activities of after-school centres; Primary education
	Secondary; Technical and vocational education
	Higher education
	Other education
	Educational support activities
ADMINISTRATIVE AND SUPPORT ACTIVITIES	Renting and leasing of motor vehicles (with or without driver)
	Renting and leasing of personal and household goods
	Renting and leasing of other machinery, equipment and tangible goods

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

<b>SECTORS</b>	<b>SUB-SECTORS (DIVISIONS)</b>
<b>ADMINISTRATIVE AND SUPPORT ACTIVITIES</b>	Activities of employment placement agencies
	Temporary employment agency activities; and other human resources provision
	Travel agency, tour operator, reservation service and related activities
	Security and investigation related to private security activities; security systems service activities
	Services to buildings such as cleaning, landscape care and maintenance service activities

# PUBLICATION OF THE EMPLOYMENT EQUITY AMENDMENT ACT, 2020

<b>SECTORS</b>	<b>SUB-SECTORS (DIVISIONS)</b>
ADMINISTRATIVE AND SUPPORT ACTIVITIES	Office administrative, office support and other business support activities such as photocopying, document preparation
	Activities of call centres

# Sectoral targets open for public comments

- Ministerial sectoral targets across the 18 sectors were published on 12 May 2023, indicating the proposed targets for the next 5 years.
- In summary, the following is what you need to know:
  - Sectoral targets across the 18 sectors are now open for public comments, for a period of 30 calendar days, from the date of the Gazette
  - Click on the link below to view the [Sectoral targets open for public comments](#)  
[Sectoral Targets 12 May 2023 Open for Public comments](#)
  - The sectoral targets are therefore not final yet.
  - As proposed, Designated Employers will need to implement a 5-year EE Plan, starting 1 September 2023.
  - As proposed, Reporting dates for the EEA2 and EEA4 will change to a start date of 1 September (yearly, starting 1 September 2023).
  - Designated Employers will need to comply with the final Sectoral targets (yet to be set) by end of year 5 of your EEP (from Top Management to Junior Management).

# Sectoral targets open for public comments

- EAP targets will be applicable for Semi-Skilled and Unskilled levels.
- Designated Employers will be able to select National or Provincial targets.
- Non-designated employers are employers employing less than 50 employees, irrelevant of annual turnover.
- Non-designated employers will still need to comply with submitting a Section 16B certificate if they need a BEE certificate and / or if they provide products and / or services to the State as defined.
- To obtain a Section 16B certificate the Non-designated employers will need to prove that:
  - They are not paying below minimum wages and
  - Have not been found guilty of discrimination in the preceding 12 months.
- It seems as if Non-designated employers (employing less than 50 employees) that do not need a BEE certificate and / or provide products and / or services to the State as defined will be able to deregister from the DEL from 1 July 2023.

# Sectoral targets open for public comments

STAATSKOERANT, 12 MEI 2023

No. 48589 19

## DEPARTMENT OF EMPLOYMENT AND LABOUR

NO. 3407

12 May 2023

### EMPLOYMENT EQUITY ACT, 1998 (ACT 55 OF 1998 AS AMENDED)

#### DRAFT EMPLOYMENT EQUITY REGULATIONS 2023 FOR PUBLIC COMMENT

I, Thembelani Waltermade Nxesi, Minister of Employment and Labour in terms of Section 55(1) of the Employment Equity Act, 1998 (Act No 55 of 1998 as amended), and on the advice of the Commission for Employment Equity, hereby publish this notice on the proposed sector EE targets made in terms of Section 15A of the Employment Equity Amendment Act, Act No. 04 of 2022, for public comment for 30 days. This notice will be effective from the date of publication.



MR. T. NXESI, MP  
MINISTER OF EMPLOYMENT AND LABOUR  
DATE: 02/05/2023

Written comments on the draft notice are invited and should be submitted within 30 days of publication of the notice in the *Gazette* to:

#### By e-mail:

[innocent.makwarela@labour.gov.za](mailto:innocent.makwarela@labour.gov.za)  
[christina.lehlokoa@labour.gov.za](mailto:christina.lehlokoa@labour.gov.za)  
[julian.mohale@labour.gov.za](mailto:julian.mohale@labour.gov.za)

or

#### Hand delivered at:

Laboris House  
215 Francis Baard Street  
Employment Equity Directorate  
Pretoria

# Sectoral targets open for public comments

Public comments to be send to:

- [innocent.makwarela@labour.gov.za](mailto:innocent.makwarela@labour.gov.za)
- [christina.lehlokoa@labour.gov.za](mailto:christina.lehlokoa@labour.gov.za)
- [jullian.mohale@labour.gov.za](mailto:jullian.mohale@labour.gov.za)

OR

Hand delivered at:

Laboria House

215 Francis Baard Street

Employment Equity Directorate

Pretoria

# POSSIBLE IMPACT FOR NON-COMPLIANCE

- Possible impact on company's BBBEE scorecard:
  - May forfeit Management Control and EE element score, resulting in drop of level or be non-compliant.
- How will BBBEE verification Agencies score non-designated employers?
  - We believe by requesting your section 16B certificate, score based on current EE workforce profile.
- What EE Chapters will apply to non-designated employers to obtain compliance certificate?
  - Compliance with Chapter 2 of the EE Act, indicating that non-designated employer has not been found (within the previous twelve months) to have breached the prohibition on unfair discrimination and
  - Has not paid wages (within the previous twelve months) below the level of the national minimum wage.
- Loss of State (as defined) contracts.
- **Proposed penalties – up to 10% of annual turnover.**

|

# THE WAY FORWARD

- Involvement from the Board, Top Management (C-Suite), HR Managers, EE Manager(s), Line Managers and Unions.
- Additional meeting with Top Management - Preparation of new EEP.
- Additional meeting with EEC - Preparation of new EEP.
- Possible changes to online reporting – EEA2.
- EEA2 report to be amended, finalised and approved by CEO.
- Amended EEA2 report to be discussed with EEC, substantiated by agenda's, meeting minutes and signed registers.
- Monitoring of barriers, EVIDENCE for compliance and non-achievement will be crucial.
- Justifiable reasons for non-achievement to be investigated by a DEL Inspector.

## THE WAY FORWARD (Continued)

- Justifiable reasons to be considered for failure to comply with annual EE targets
  - Insufficient recruitment opportunities.
  - Insufficient promotion opportunities.
  - Insufficient target individuals from designated groups with the relevant qualifications, skills and experience.
  - CCMA / Court order.
  - Transfer of business.
  - Merger / Acquisition.
  - Impact on business economic circumstances (will need to elaborate, example due to impact of COVID-19 pandemic on business operations, loss of contract, etc.).

# THE WAY FORWARD – OUR PROFESSIONAL SUGGESTION

- Determine the category your Company falls into
  - Designated Employer, employ 50+ employees (including temporary staff).
    - Start to plan as soon as the Sectoral Targets are finalised and Gazetted.
    - New 5 year EE Plan must be in place starting 1 September 2023.
    - Start building a file containing evidence for deviation of the Sectoral Targets yet to be set.
    - Ensure timely submissions of your EE reports and EE Plan.
  - Non-Designated Employer (employing less than 50 employees, including temporary staff) dealing with the State as defined, or need a BBBEE certificate annually.
    - Obtain a Section 16B certificate when reporting season opens.

# THE WAY FORWARD – OUR PROFESSIONAL SUGGESTION

- Non-Designated Employer (employing less than 50 employees, including temporary staff) not dealing with the State as defined, nor need a BBEE certificate annually.
  - Determine whether you may possibly become Designated in the next 5 years.
  - Deregister from the DEL online portal.
  
- IMPORTANT NOTE:
  - Should any Non-Designated Employers become a Designated Employer between 1 September 2023 and 31 August 2028, that Designated Employer must register with the DEL. The sectoral targets to be achieved will be as at the specific reporting year the Company became Designated.
  
  - In other words, if the Company becomes Designated in year 5 (2028), that Company will be evaluated on the sectoral targets set for year 5, and NOT the starting targets.

# THE END

EECMS would hereby like to thank you for your time.

Feel free to contact us for further queries.

CP du Toit (Pieter)

BComm. Fin. Acc.

Bcomm. (HONS) Internal Audit

079 847 1750

[www.eecms.co.za](http://www.eecms.co.za)

SCAN QR CODE TO VISIT US

