

A decorative graphic in the top left corner consisting of several overlapping, stylized arrow shapes pointing to the right. The arrows are in shades of grey and red.

Legal update

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Employment Equity Amendment Act 47 of 2013

The Employment Equity Amendment Act (the Act) was passed by the National Assembly on 24 October 2013 and signed by the President on 14 January 2014. The Act is effective from 1 August 2014.

The Act amends the Employee Equity Act so as to prohibit unfair discrimination in the workplace and strengthens enforcement mechanisms. It recognises that there are disparities in employment, occupation and income within the labour market. It aims to promote equality, eliminate unfair discrimination, ensure the implementation of employment equity and achieve a diverse representative workforce.

The changes

- The definition of “designated groups” is amended to restrict affirmative action to citizens of South Africa (either by birth, descent or naturalisation).
- Discrimination will not be permitted on any listed ground, or any other arbitrary ground.
- A difference in the terms and conditions of employment of employees doing the same or similar work or work of equal value based on any listed ground is seen as unfair discrimination. The employer would have to show that any differences are based on fair criteria such as experience, skill and responsibility.
- The Minister may publish a code of good practice for assessing work of equal value.
- Only psychometric tests that have been certified by the Health Professions Council of South Africa, or another authorised body, may be used.
- In the following instances disputes may be referred to the CCMA and appealed in the Labour Court:
 - unfair discrimination due to sexual harassment;
 - employees earning below the threshold amount, currently R205,433.30;
 - by consent of the parties involved.
- Burden of proof:
 - If unfair discrimination is alleged on a listed ground, the employer will have to prove that the discrimination:
 - did not take place as alleged, or
 - was rational and not unfair, or was justifiable.
 - If unfair discrimination is alleged on an arbitrary ground, the complainant must prove that:
 - the conduct was not rational;
 - the conduct amounts to discrimination, and
 - the discrimination is unfair.
- Fines can be imposed if:
 - reports are not submitted;
 - no valid reasons are provided;
 - an employment equity plan is not prepared, and
 - an employment equity plan is not implemented.

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- Should the employer not have submitted a report he can give sufficient notice to the Director General explaining the reasons for failure to submit. Reasons must be credible and only if found not be credible will a fine then be imposed.
- Compliance orders by labour inspectors may now be made an order of court.
- In assessing compliance, the reasonable steps taken by a designated employer to train suitably qualified people from the designated groups will be taken into account.
- The Minister may issue regulations which are to be taken into account in determining if an employer is implementing employment equity.
- The Director General may apply for an order directing an employer to comply with a request, failing which, a fine may be imposed.
- An award by a Commissioner of the CCMA may include an order or an award.
- Fines have been increased and should be paid into the National Revenue Fund.
- The Minister may publish a code of good practice to assess an employer's compliance.

Turnover thresholds applicable to designated employers have been increased as indicated below:

Sector or subsectors in accordance with the Standard Industrial Classification	Total annual turnover	
	Previous	New
Agriculture	R2m	R6m
Catering, Accommodation and other Trade	R5m	R15m
Community, Special and Personal Services	R5m	R15m
Construction	R5m	R15m
Electricity, Gas and Water	R10m	R30m
Finance and Business Services	R10m	R30m
Manufacturing	R10m	R30m
Mining and Quarrying	R7,5m	R22,5m
Retail and Motor Trade and Repair Services	R15m	R45m
Transport, Storage and Communications	R10m	R30m
Wholesale Trade, Commercial Agents and Allied Services	R25m	R75m

Designated employers are required to submit employment equity plans and reports to the Department of Labour and will receive an assessment of compliance report following a labour inspection.

The Act serves to further prohibit unfair discrimination in the workplace and strengthen the enforcement mechanisms of the Employment Equity Act.

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