

EMPLOYMENT EQUITY – COMPLIANCE AND PENALTIES

Employment Equity (EE) is by far one of the most challenging and underestimated elements of transformation that South African employers are faced with. It should be addressed as a high priority, however many organisations underestimate the process of introducing and implementing the EE guidelines and regulations into their internal policies, procedures and practices. Recently, a major airliner operating in South Africa was reportedly fined R900 000 for failing to comply with the Employment Equity Act (EEA). This highlights the seriousness with which the Department of Labour (DOL) takes non-compliance with the provisions of the Act and shows that they will not hesitate to bring the maximum penalty applicable against defaulters.

As stated in the EEA, designated employers are those that either have 50 or more employees or that have fewer than 50 employees, but have a turnover threshold that exceeds the threshold for their sectors as stipulated in Schedule 4 of the Act. These organisations are required to prepare and implement an EE plan that is valid from 1 year to 5 years, and submit EEA2 & EEA4 reports to the DOL. The aim is to “redress disparities in employment, eliminate unfair discrimination and promote equality”.

Whilst some employers take EE lightly, employers should be aware that submitting their EE Reports on time is crucial, and that this is not enough to ensure full compliance with the requirements of the legislation. Employers are bound to ensure that the contents of the report is accurate and true with an illustration that they have made sufficient efforts with the progression of affirmative action in the staffing of their organisation as required by the EEA.

The planning and implementation of EE is about the fair and equitable representation of the workforce across the various occupational levels from Top

Management through to unskilled level, race and gender as well as about identifying workforce profiles that are aligned with the regional or national Economically Active population as stated in the *Commission for Employment Equity Annual Report*.

Through consultation with the EE committee, this can be achieved through the shared vision of what makes business sense through the commitment and implementation of goals and targets as set out in the Employment Equity plan. As well as by conducting a detailed EE analysis and setting affirmative action targets that are achievable, but substantial enough to satisfy the Director-general of Labour. More importantly, developing a strategy for recruiting, retaining and developing members of designated groups.

Whilst these requirements are not impossible, it is important to consider that having a EE system set up, based on the internal resources and circumstances makes the task of EE compliance much easier.

If an organisation is found guilty of contravening the EEA, maximum fines imposed will be from R500 000 for a first offender and up to R1 500 000 or 10% of the turnover for multiple offenders. In instances, where an organisation has reported an EE plan, but do not communicate it or apply it, there will be possible imprisonment. In recent media events, it has also been warned that the DOL would proclaim Section 53 of the EEA to block non-compliant companies from doing business with the state.

With the above said, the Director-General is tasked with policing employers that do not comply and to prosecute those that do not heed the process to implement affirmative action meaningfully. Unfortunately, the EEA does not take into account the current economic climate relating to the scarcity in available jobs and this makes it difficult for businesses to increase their number of employees from designated groups. However, as long as the business can prove that they are doing everything possible to “normalise” the demographics of their

organisation and that they have been completing the compulsory analyses, reports and plans, the DOL is unlikely to take action against the organisation.

It is clear that prosecutions in the Labour Court and potentially bankrupting fines, can result if employers fail to comply.

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