

THE ROAD TO EE COMPLIANCE IS PAVED WITH DUBIOUS INTENTIONS

Is the failure by 72 JSE-listed companies to comply with the provisions laid out in the Employment Equity Act a blatant lack of respect, as Deputy Minister of Labour Nkosi Phathekile Holomisa posits, or is it more complex than that?

Legislation focuses on two requirements when establishing whether a business is required to report on employment equity or not: the first is the number of heads in the business (50 employees or more) and the second is annual turnover thresholds, which differ from one sector to the next and are stipulated in Schedule 4 of the EE Act.

Our experience suggests that many companies simply comply with the EE Act to avoid being fined – up to 10% of annual turnover – rather than out of any heartfelt belief in the process.

This is evidenced by the greatest areas of non-compliance identified by the department of labour after inspecting approximately 227 000 businesses. They include:

- Lack of communication strategies to inform employees of the EE Act and failure to keep records as required;
- Assigned EE managers are junior staff, who do not have the necessary authority or resources to execute their mandate;
- Lack of properly constituted consultative forums at workplaces;
- Employers preparing EE plans that are not informed by a proper audit and analysis; and
- Employment equity plans prepared do not comply with requirements of the legislation.

To conduct a successful employment equity exercise, consultative forums need to be properly constituted. Ideally, employers should involve a representative from each designated group (based on race, gender, disability and occupational level) in the consultative process. However, this doesn't often happen because employers don't want to disrupt the business operationally. In these instances, the role of representative from designated groups is often doubled-up.

Practically speaking, what does this mean? Perhaps a senior manager is nominated to represent both his or her occupational level as well as racial demographic. This can lead to situations where decisions are made in favour of certain designated groups, with some taking preference over others.

Notably, businesses do not invest enough importance – and therefore resources and time – in the process. So, they will set aside an hour to communicate an entire piece of legislation to every level of employee. They want a complex process over as quickly as possible.

Another issue that hinders transformation in companies is the lack of top management's involvement in the employment equity consultative process. If the people who are ultimately tasked with implementing the business strategy are not present during the consultative process, how can the employment equity committee make any short- or long-term commitments around the appointment, promotion or upliftment of staff?

In addition, as pointed out by the department of labour, businesses tend to appoint junior staff as employment equity managers (section 24 managers), who do not necessarily have the authority or resources to execute their mandate. Some do not understand the role properly and think the exercise ends once a report has been submitted, which is not the point of the exercise at all.

The reason for appointing an employment equity manager is to ensure that the entire organisation is aware of the plan and educated about the process of implementing the plan. So, if the senior people responsible for appointing staff are not made aware of the plan and its objectives, they will appoint whomever they see fit, instead of appointing people from a specific designated group and ultimately ignoring the affirmative action measures put in place by the employment equity committee.

In many instances, employment equity managers, who do not have a deep understanding of the legislation, hire fly-by-night consultants who don't understand the legislation or proper reporting processes either. This lack of understanding – or even interest perhaps – on all fronts, combined with the idea that employment equity is just an exercise that needs to be conducted superficially, will not result in lasting and meaningful change for South Africa's economy.

There definitely seems to be deep-seated resentment towards employment equity and transformation. This, I believe, can be attributed to it being a time-consuming

and expensive exercise that goes against the belief systems of many entrepreneurs and business owners.

Ultimately, businesses want to generate income and make a profit and the transformation process hits them directly on the bottom line. In addition to spending up to 4% of their nett profit after tax on donations and then meeting up to a 6% payroll target for skills development, the successful implementation of employment equity requirements becomes a sometimes-insurmountable burden to shoulder.

This is especially true for businesses at JSE level, which have a responsibility to generate profit for the shareholders and are under pressure to meet various need of other stakeholders. And, it seems like a certain echelon of businesses feel they are above the law and, obviously, government is not taking kindly to it.

This is troubling, especially given that many medium-sized businesses in the country try hard to comply. Sadly, many of them are receiving terrible advice and they need to do their homework before enlisting the services of consultants. A true transformation or employment equity specialist will not only understand the legislation, but will know how to practically apply the legislation, whether from an employment equity or a skills development perspective.

In companies' defence, some elements of the legislation are vague. Government needs to do more than embark on roadshows and conduct workshops to provide clarity. A more proactive approach and direct impact will be more helpful than allowing certain decisions to be made by the employer without guidance.

Transformation has become so slow, it's almost stagnant. What could have been history in the making and the formation of a true democracy seems to have run out of steam.

There does need to be repercussions for the companies that ignore South Africa's legislation. Yes, they must meet the needs of various stakeholders and they need to stick to what they are good at. However, ignorance about employment equity will not fly as an excuse not to do it. Companies need to commit to the process. If they are under-resourced or lack the pertinent knowledge, they need to outsource to reputable experts.

Implemented correctly, there are benefits to complying with the legislation. In the past six months alone, six of our clients have received R10m in skills development funding, thanks to its financial initiative and compliance exercises.

Ultimately, companies should not be complying because they are compelled to by government or because they want to make money out of the process. They should do it for the benefits to the business, for being obliged to look at the organisation as a whole and to leave no man behind.

• *Roxanne Da Mata Goncalves is a director at Strata-G Labour Solutions*