

What employers should know about the new employment equity laws

By [Lauren Salt](#) and [Amy Pawson](#)

5 Sep 2022

In a media release on 31 August 2022, the Department of Employment and Labour (Department) confirmed that the signing into law of the Employment Equity Amendment Bill, 2020 (the Bill) is imminent. The President is expected to assent to the Bill between now and the end of the year. The amendments are due to come into effect on 1 September 2023.



Image source: Getty Images

The Bill will introduce various amendments to the affirmative action provisions of the Employment Equity Act, 1998 (the Act). These new provisions aim to achieve more rapid transformation in the workplaces of designated employers. This is against the background of the slow progress of transformation since the introduction of the Act in 1998.

The most significant of the amendments in the Bill relate to the Minister of Employment and Labour's power to set sector-specific employment equity targets to which designated employers will be held to account.

Setting of sectoral targets by the minister

The Bill empowers the Minister of Labour to identify national economic sectors for the purposes of the administration of the Act and to determine numerical targets for such sectors. These sectoral targets may differentiate between occupational levels, sub-sectors, regions or any other relevant factor. Before determining the targets, the Minister will be required to consult relevant stakeholders and the Employment Equity Commission on the proposed sectors and sectoral targets and publish any proposals for public comment.

In its media release, the Department stated that engagements on the setting of sector-specific equity targets started in June 2019 and will be completed by the end of September 2022. Some of the sectors consulted include:

- education;
- water supply, sewerage management & remediation;
- accommodation and food services;
- human health & social work;
- agriculture, forestry & fishing;
- wholesale and retail trade;
- repair of motor vehicles and motorcycles;
- administrative and support;
- professional, scientific & technical;
- electricity, gas steam & air conditioning supply; and
- financial & insurance activities.



Newly amended Employment Equity Act to come into effect in 2023

1 Sep 2022



The remaining sectors that are to be consulted between now and end of September 2022 include:

- mining and quarrying;
- public administration and defence;
- manufacturing, information & communication;
- construction; and
- real estate.

This means that it is likely that, fairly quickly after the Bill becomes law, the sector-specific targets will be circulated for public comment and thereafter, amended if deemed necessary, and implemented. Employers concerned about the targets should keep an eye out for the circulation of the proposed targets and make any submissions they deem necessary prior to the finalisation thereof.

Issuance of compliance certificates

In order to “incentivise” employers to meet targets, the Bill states that certificates will be issued by the Minister if:

- the employer has complied with any applicable sectoral targets or has raised a reasonable ground for non-compliance;
- the employer has submitted its most recent employment equity report; and
- within the previous 12 months, the employer has not been found to have breached the prohibition on unfair discrimination, or paid wages below the level of the minimum wage.

The importance of obtaining this certificate is that state contracts may only be offered and issued to employers who have

been certified as being compliant with their obligations under the Act. Furthermore, a failure to comply with these requirements is a sufficient ground for cancellation of any state contract (should no reasonable ground exist to justify such non-compliance).



Employers warned against Employment Equity Act non-compliance

27 Sep 2021



In the recent media statement, the Department stated that a new online assessment system will be created to monitor the implementation of sector targets. The first year in which the sector-specific targets will apply is 2024. At the end of that reporting year, the system will be able to tell whether employers have achieved their target, and where employers are not meeting their target, they will need to have justifiable reasons for not achieving their set targets.

The system will accept, in good faith, all the information supplied but the Departmental inspectorate may visit workplaces to verify if information submitted is genuine. In its statement, the Department seems to suggest that the system will automatically generate a compliance certificate for those who comply with the above. However, it goes further to expressly state that if the information supplied is not genuine, then the certificate will be withdrawn.

Definition of designed employer

In addition to the above, the Bill seeks to amend the definition of a “designated employer” by deleting the paragraph which classifies employers with fewer than 50 employees, and who meet the required turnover threshold, as “designated employers.” Consequently, employers who employ fewer than 50 employees, regardless of their turnover, will no longer fall within the definition of a “designated employer” and will therefore not be required to comply with Chapter III of the Act (which deals with affirmative action).

These employers will no longer be required to take certain measures, such as preparing and implementing an employment equity plan, consulting with employees and/or representative trade unions on matters and submitting an employment equity report on an annual basis. According to the memorandum on the objects of the Bill, this is intended to reduce the regulatory burden on small employers.

With the possibility that the President could assent to this Bill as early as September 2022, employers should analyse their existing transformation measures and implement the necessary preparations. Compliance with the amendments, as soon as they are enforced, will be vital for businesses, since fines of between R1.5-million and R2.7-million may be imposed for a contravention of the Act.

ABOUT THE AUTHOR

Lauren Salt is a Director in ENSafrica's employment practice and Amy Pawson is a Candidate Legal Practitioner at the firm.

For more, visit: <https://www.bizcommunity.com>