



▪ MKHABELA HUNTLEY ATTORNEYS INC ▪

## EMPLOYMENT LAW REVIEW

### COMMENCEMENT OF AMENDMENTS TO THE EMPLOYMENT EQUITY ACT

JANUARY 2025

Dear clients

#### INTRODUCTION

1. President Ramaphosa proclaimed 1 January 2025 for the commencement of the Employment Equity Amendment Act, 2022. Of significance is that the Minister of Employment and Labour has powers to identify national economic sectors and the percentage of designated groups to be represented at different organisational levels at the workplace.
2. Satisfying these targets will be a consideration in circumstances in which the Minister issues certificates enabling employers to contract for goods and services with the State.

#### SECTORAL NUMERICAL TARGETS

3. Section 15A of the Employment Equity Act now reads as follows:

*“(1) The Minister may, by notice in the Gazette, identify national economic sectors for the purposes of this Act, having regard to any relevant code contained in the Standard Industrial Classification of all Economic Activities published by Statistics South Africa.*

*(2) The Minister may, after consulting the relevant sectors and with the advice of the Commission, for the purpose of ensuring the equitable representation of suitably qualified people from designated groups at all occupational levels in the workforce, by notice in the Gazette set numerical targets for any national economic sector identified in terms of subsection (1).*

*(3) A notice issued in terms of subsection (2) may set different numerical targets for different occupational levels, sub-sectors or regions within a sector or on the basis of any other relevant factor.*

*(4) A draft of any notice that the Minister proposes to issue in terms of subsection (1) or subsection (2) must be published in the Gazette, allowing interested parties at least 30 days to comment thereon.”.*
4. In February last year the Minister published draft sector numerical targets for public comment. (They are not law but indicate the Minister’s overall intentions). We include some examples below:

DESCRIPTION	CONSTRUCTION	
	Gender	Designated Groups
TOP MANAGEMENT	Male	33%
	Female	17%
	<b>Total</b>	<b>50%</b>

DESCRIPTION	FINANCIAL AND INSURANCE ACTIVITIES	
<b>TOP MANAGEMENT</b>	<b>Gender</b>	<b>Designated Groups</b>
	Male	26%
	Female	20%
	<b>Total</b>	<b>46%</b>

DESCRIPTION	ACCOMMODATION AND FOOD SERVICE ACTIVITIES	
<b>TOP MANAGEMENT</b>	<b>Gender</b>	<b>Designated Groups</b>
	Male	22.5%
	Female	22.5%
	<b>Total</b>	<b>45%</b>

**STATE CONTRACTS**

- 5. The section dealing with state contracts (section 53) has yet to come into effect. That section constitutes a “carrot” / incentive for employers to comply with and promote affirmative action in the workplace.
- 6. The Minister may issue a certificate to an employer confirming their compliance. There is a new amendment setting out the variables the Minister will consider. They are:
  - 6.1. Whether the employer has met the numerical target that applies to that employer, or can justify his / her reason for failing to do so;
  - 6.2. Whether the employer has submitted an employment equity report;
  - 6.3. Whether there has been no adverse CCMA finding that the employer has breached the prohibition on unfair discrimination; and
  - 6.4. Whether the employer has paid (at least) the minimum wage to workers.

**SMALL EMPLOYERS**

- 7. The amendments include a change to the definition of “designated employer”. Now employers who employ less than 50 employees will no longer be considered to be designated employers, regardless of the employer’s turnover (previously employers who employed less than 50 employees but whose annual turnover exceeded a specific threshold set out in schedule 4 to the EEA, were considered to be designated employers).
- 8. As a result, non-designated employers are not required to comply with the obligations of designated employers relating for example to the preparation of employment equity plans and submitting employment equity reports to the Department. This will significantly relieve the administrative burden on small employers.
- 9. Non-designated employers will not though be deprived of the ability to secure a certificate to bid for state contracts provided they do not unfairly discriminate against employees and promote equal opportunities in the workplace.

**CONTACTS**

*Kindly note that this Employment Review sets out general principles and does not constitute legal advice.*

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