

What the amended employment equity laws mean for diversity and transformation

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Global businesses are increasingly investing in the resources needed take action on diversity, equity, inclusion, and belonging, both in the workplace and the ownership of business assets. Equal representation and a focus on real diversity and inclusion has become essential for the implementation of sustainable business practices.



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In South Africa, a significant legal step towards addressing equality has come in the form of the newly enacted Employment Equity Amendment Act 2020 (EEA Act), signed into law by President Cyril Ramaphosa on 12 April 2023. The EEA Act amends the Employment Equity Act 1998, with the effective date of operation yet to be proclaimed but anticipated to be around September 2023. The amendments include numerous changes to the legislation governing workplace transformation and will impose stricter compliance measures on designated employers – those businesses with more than 50 employees.

Amendments to the EEA Act

A significant change in the EEA Act is the introduction of sector and sub-sector targets for economic sectors and geographical regions, requiring employers in these sectors to meet specific transformation goals. This is a departure from the previous approach that allowed employers to set their own targets in their employment equity plans. The sectoral targets will be published in the Government Gazette by the Minister of Employment and Labour after consultation with the affected sectors. Employers must align the numerical targets in their employment equity plans with the applicable sectoral targets set by the Minister. The Act requires designated employers to comply with these sectoral targets and assess and report against them.



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The definition of designated employers has also been narrowed in the EEA Act, now excluding small businesses with less than fifty employees, regardless of their annual financial turnover. These employers are not subject to the affirmative action provisions in the EEA, including the duties to submit equity plans or reports. All other employers with more than 50 employees are still mandated to draft, implement, and monitor a five-year employment equity plan, indicating their progress towards achieving targets by year five. These targets must be aligned with the sectoral targets that will be set by the Minister. Employers are also required to monitor their progress against sectoral targets every year as part of the compliance process.

Additionally, companies seeking to do business with the state must obtain a certificate from the Department of Employment and Labour confirming compliance with the Act and its objectives, as well as adherence to the national minimum wage. The Department of Employment and Labour has also committed to an increase in the number of inspectors that will enforce compliance with the implementation of the EEA Act's objectives.

The EEA Act and the B-BBEE Act

Since the EEA Act will give the Minister the power to establish sectoral targets and will oblige designated employers to prepare employment equity plans that demonstrate their plan to achieve the sectoral targets over a five-year period, it will be essential for designated employers to align their plans to achieve the targets for employment of black people under the broad-based black economic empowerment (B-BBEE) codes of good practice with their employment equity plans. The B-BBEE Act targets a narrower group of employees than the EE Act, but both acts share similar objectives in that they seek to advance greater equity and diversity in the workplace. Therefore, it ought not to be challenging for employers to align their employment equity plans with their B-BBEE employment targets.



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While both Acts have been criticised for imposing onerous compliance measures on already struggling businesses in South Africa, fostering diversity, inclusion and equality in the workplace has been proven to be good business practice. According to Forbes, inclusive teams make better decisions up to 87% of the time, teams that follow an inclusive process make decisions two times faster with half of the meetings, and decisions made and executed by diverse teams deliver 60% better results.

Statistics from Gartner are similar: workers in highly diverse and inclusive organisations result in a 26% increase in team collaboration and an 18% increase in team commitment. Further, Baker McKenzie's research has shown that 51% of diversity leaders globally identify recruiting diverse talent as a priority, but recruitment initiatives alone are not enough to balance the workforce population, and 45% of organisations are also prioritising the retention of underrepresented groups.

Generally speaking, investors are well prepared for employment equity and B-BBEE requirements when investing in South Africa. In fact, equal representation in the workforce is seen as a positive by investors who prioritise sustainability.

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