

GOVERNMENT NOTICE

DEPARTMENT OF LABOUR

No. R. 1394

23 November 1999

EMPLOYMENT EQUITY ACT, 1998 (ACT NO. 55 of 1998)

Code of good practice: Preparation, implementation and monitoring of employment equity plans

Notice is hereby given under Section 54 of the Employment Equity Act, 1998, that the Minister of Labour, having been advised by the Commission for Employment Equity, has issued a Code of Good Practice on the preparation, implementation and monitoring of an Employment Equity Plan, as set out in this schedule.

SCHEDULE

CODE OF GOOD PRACTICE:

PREPARATION, IMPLEMENTATION, AND MONITORING OF EMPLOYMENT EQUITY PLANS

Notice is hereby given under Section 54 of the Employment Equity Act, 1998, that the Minister of Labour, having been advised by the Commission for Employment Equity, has issued a Code of Good Practice on the preparation, implementation and monitoring of an Employment Equity Plan, as set out in this schedule.

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1. OBJECTIVE

The objective of this code is to provide guidelines of good practice, in terms of the requirements of the Employment Equity Act, 1998 (Act No 55 of 1998) (*hereafter referred to as "the Act"*), for the preparation and implementation of an employment equity plan (*hereafter referred to as "the plan"*).

2. LEGAL FRAMEWORK

2.1 This code is issued in terms of Section 54 of the Employment Equity Act, No. 55 of 1998 and relates to Section 20.

2.2 This code does not impose any legal obligations in addition to those in the Act and the failure to observe it does not, by itself, render a designated employer liable in any proceedings, except where the code refers to obligations that are required by the Act

2.3 When interpreting the Act, any relevant code of good practice must be taken into account.¹

3. SCOPE

3.1 This code is relevant to all employers that are regarded as designated employers in the Act.²

3.2 Designated employers and the employees of designated employers should apply the guidelines set out in this code to develop their employment equity plans, taking into account the specific circumstances of their own organisations.

3.3 This code may be read in conjunction with other codes of good practice that may be issued by the Minister of Labour.

4. PURPOSE AND RATIONALE FOR THE PLAN

4.1 The plan reflects a designated employer's employment equity implementation programme.

4.2 The plan represents the critical link between the current workforce profile and possible barriers in employment policies and procedures, and the implementation of remedial steps to ultimately result in employment equity in the workplace.

5. STRUCTURE OF THE PLAN

5.1 The plan may be a separate document or a component of a broader document such as a business plan.

5.2 In terms of the manner in which it is set out, the plan may closely follow the sections of the Act and the relevant items of the Code, or may be organised differently, as long as the statutory requirements in Section 20 of the Act are reflected in the plan.

5.3 The plan should be accessible and structured in such a way that it is easy to understand.

6. PROCESS FOR CONSTRUCTING A PLAN

6.1 The development of a plan should be undertaken as an inclusive process that will result in a documented plan.

6.2 The process of developing a plan has three sequential phases: planning, development, and implementation and monitoring.

6.3 The planning phase of the process should include –

- assignment of responsibility and accountability to one or more senior managers;
- a communication, awareness and training programme;
- consultation with relevant stakeholders;
- an analysis of existing employment policies, procedures, and practices;
- an analysis of the existing workforce profile;
- an analysis of relevant demographic information such as that contained in form EEA 8, and
- an appropriate benchmarking exercise, such as comparing the organisation's workforce profile with those of other organisations within the same sector, or the development of other meaningful comparisons.

6.4 In the development phase, in consultation with the identified role players, should include –

- objectives set;
- corrective measures formulated;
- time frames established;
- the plan drawn up;
- resources identified and allocated for the implementation of the plan, and
- the plan communicated.

6.5 Implementation and monitoring is an ongoing process and should continue to include components of the earlier phases, such as consultation, communication, awareness and training. This phase should include –

- implementation
- monitoring and evaluating progress;
- reviewing the plan, and
- reporting on progress.

7. PLANNING PHASE

7.1 Assignment of senior manager ³

7.1.1 The planning phase should commence with the assignment of one or more senior managers who should have the responsibility for the development, implementation and monitoring of the plan. They should –

- be permanent employees, and
- report directly to the Chief Executive Officer.

7.1.2 The assignment of one or more senior managers implies that –

- the employer should also provide the assigned managers with the necessary authority and means, such as an appropriate budget, to perform their allocated functions;
- the employer is not relieved of any duty imposed by this Act or any other law, and
- the employer should take reasonable steps to ensure that these managers perform their allocated functions. This could be done through the incorporation of key employment equity outcomes in performance contracts of the responsible managers as well as line managers throughout the organisation.

7.2 Communication, Awareness and Consultation ⁴

7.2.1 All employees should be made aware and informed of –

- the content and application of the Act as preparation for their participation and consultation;

- employment equity and anti-discrimination issues;
- the proposed process to be followed by the employer;
- the advantages to employees of participation in the process, and
- the need for the involvement of all stakeholders in order to promote positive outcomes.

7.2.2 Employers are required to consult with regard to conducting an analysis, the preparation and implementation of the plan, and the submission of employment equity reports to the Department of Labour.

7.2.3 To ensure the successful implementation of a plan, employers should make every effort to include employee representatives in all aspects of the plan, especially the planning and development phases.

7.2.4 Managers should be informed of their obligations in terms of the Act, and training should be provided to them where particular skills do not exist. Examples of required training could include diversity management, coaching and mentoring programmes.

7.2.5 The communication of an employment equity strategy should focus on positive outcomes, such as the better utilisation of all of the employer's human resources and the creation of a diverse and more productive workforce.

7.2.6 Communication should also include employees from non-designated groups⁵ and focus on the contribution that can be made by them.

7.2.7 Consultation with employees should commence as early as possible in the process.

7.2.8 A consultative forum should be established or an existing forum utilised. The forum should include employee representatives reflecting the interests of employees from both designated and non-designated groups and across all occupational categories and levels of the workforce. Representative trade unions, where these exist, or representatives nominated by such trade unions must be included in the consultation process.

7.2.9 The employer should be represented by one or more members of senior management.

7.2.10 Consultation would include –

- the opportunity to meet and report back to employees and management;
- reasonable opportunity for employee representatives to meet with the employer;
- the request, receipt and consideration of relevant information, and
- adequate time allowed for each of these steps.

7.2.11 To ensure an informed and constructive consultation process, structured and regular meetings of the consultative forum or forums should be held.

7.2.12 The disclosure of relevant information by designated employers is vital for the successful implementation of the plan. Such information could include –

- the particular business environment and circumstances of the employer;
- information relating to the relevant economic sector or industry;
- relevant local, regional, and national demographic information relating to the economically active population;
- the anticipated growth or reduction of the employer's workforce;
- the turnover of employees in the employer's workforce;
- the internal and external availability for appointment or promotion of suitably qualified people from the designated groups;
- the degree of representation of designated employees in each occupational category and level in the employer's workforce, and
- employment policies and practices of the employer.

7.2.13 All parties should, in all good faith, keep an open mind throughout the process and seriously consider proposals put forward.

7.2.14 Where a representative body or trade union refuses to take part in the consultation process, the employer should record the circumstances, in writing, including those steps that the employer has taken to communicate and initiate the consultation process. A copy of this document should be provided to the representative body or trade union concerned.

7.3 Conducting an analysis ⁶

The purpose of the analysis is –

- a. to assess all employment policies, practices, procedures, and the working environment so as to –
 - identify any barriers that may contribute to the under-representation or under-utilisation of employees from the designated groups;
 - identify any barriers or factors that may contribute to the lack of affirmation of diversity in the workplace;
 - identify other employment conditions that may adversely affect designated groups;
 - identify practices or factors that positively promote employment equity and diversity in the workplace; and
- b. to determine the extent of under-representation of employees from the designated groups in the different occupational categories and levels of the employer's workforce.

While the first type of analysis is of a more qualitative and legal nature, the second is mainly a statistical and data processing exercise.

7.3.1 Review of employment policies, practices, procedures, and working environment

A review of all employment policies, practices, procedures, and of the working environment should be undertaken in order to identify any barriers that may be responsible for the under-representation or under-utilisation of employees from designated groups.

- a. The review should include a critical examination of all established policies, practices, procedures and working environment. These would include –
 - employment policy or practices, such as recruitment, selection, pre-employment testing, and induction that could be biased, inappropriate, or unaffirming;
 - practices related to succession and experience planning, and related promotions and transfers to establish whether designated groups are excluded or adversely impacted;
 - utilisation and job assignments to establish whether designated groups are able to meaningfully participate and contribute;
 - current training and development methodologies and strategies, including access to training for designated groups;
 - remuneration structures and practices such as equal remuneration for work of equal value;
 - employee benefits related to retirement, risk, and medical aid to establish whether designated groups have equal access;
 - disciplinary practices that may have a disproportionately adverse effect on designated groups and that may not be justified;
 - working conditions that may not accommodate cultural or religious differences, such as the use of

- traditional healers and observance of religious holidays;
 - the number and nature of dismissals, voluntary terminations and retrenchments of employees from designated groups that may indicate internal or external equity-related factors contributing to such terminations;
 - corporate culture, which may be characterised by exclusionary social and other practices;
 - practices relating to the management of HIV/AIDS in the workplace, to ensure that people living with HIV/AIDS are not discriminated against, and
 - any other practices or conditions that are tabled arising out of the consultative process.
- b. All practices should be assessed in terms of cross-cultural and gender fairness.
- c. The review should take into account more subtle or indirect forms of discrimination and stereo-typing which could result in certain groups of people not being employed in particular jobs, or which could preclude people from being promoted. Examples would include pregnancy, family responsibility², exclusionary social practices, sexual harassment, and religious or cultural beliefs and practices.

7.3.2 Workforce profile

- a. The first step in conducting an analysis of the workforce profile is to establish which employees are members of designated groups. This information should be obtained from employees themselves, either from a declaration as provided for in Regulation 2(1) or from existing and dependable sources. An example of an existing and dependable source would be an employer's database that contains the information required on employment application forms. If such existing records are

utilised for this purpose, each employee should have the opportunity to verify or request changes to this information.

- b. An analysis of the workforce profile should provide a comparison of designated groups by occupational categories and levels to relevant demographic data. Form EEA 8 contains some demographic data for this purpose, but there are many other sources of information that could be utilised and might be more relevant.
- c. In addition to the demographics, both the availability of suitably qualified people from designated groups in the relevant recruitment area, as well as the internal skills profile of designated employees, should be taken into account. The 'relevant recruitment area' is that geographic area from which the employer would reasonably be expected to draw or recruit employees.
- d. Recruitment areas may vary depending upon the level of responsibility and the degree of specialisation of the occupation. Usually, the higher the degree of responsibility or specialisation required for the job, the broader the recruitment area.
- e. The standard occupational classification as defined in form EEA 10 should form the basis for determining occupational categories. Occupational levels could be determined by any of the professional job grading systems (Paterson, Peromnes, Hay, etc.) or their equivalents as detailed in form EEA 9. In the absence of a formal job grading system, designated employers may use equivalent occupational levels as the basis for the workforce analysis.
- f. Sections B and C of the Employment Equity Report as defined by form EEA 2 should guide employers in establishing information requirements to develop a plan, and provide the basis for developing a workforce profile.

8. DEVELOPING THE PLAN

8.1 Duration of the plan ⁸

The duration of the plan should be for a period that will allow the employer to make reasonable progress towards achieving employment equity. This period should be no shorter than one year and no longer than five years, as specified in the Act.

8.2 Broad objectives of the plan

The broad objectives of the plan should be specified and a timetable developed for the fulfilment of each objective. These objectives should -

- take into account the output of the planning phase;
- the particular circumstances of the employer, and
- be aligned with and included in the broader business strategy of the employer.

8.3 Affirmative action measures ²

8.3.1 Affirmative action measures, to address the barriers identified during the analysis, should be developed to improve the under-representation of designated group members. Such measures relate to, but are not limited to the following:

- **Appointment of members from designated groups**
This would include transparent recruitment strategies such as appropriate and unbiased selection criteria and selection panels, and targeted advertising.
- **Increasing the pool of available candidates**
Community investment and bridging programmes can increase the number of potential candidates.
- **Training and development of people from designated groups**
These measures include access to training by members of designated groups, structured training and development programmes like learnerships and internships; on the job mentoring and coaching, and accelerated training for new recruits. Where required, diversity training should be provided to responsible managers as well as training in coaching and mentoring skills.
- **Promotion of people from designated groups**

This could form part of structured succession and experience planning and would include appropriate and accelerated training.

- **Retention of people from designated groups**

Retention strategies would include the promotion of a more diverse organisational culture; an interactive communication and feedback strategy; and ongoing labour turnover analysis.

- **Reasonable accommodation¹⁰ for people from designated groups**

These measures include providing an enabling environment for disabled workers and workers with family responsibilities so that they may participate fully and, in so doing, improve productivity. Examples of reasonable accommodation are accessible working areas, modifications to buildings and facilities, and flexible working hours where these can be accommodated.

- **Steps to ensure that members of designated groups are appointed in such positions that they are able to meaningfully participate in corporate decision-making processes**

A conscious effort should be made to avoid all forms of tokenism. Candidates must be appointed with commensurate degrees of authority.

- **Steps to ensure that the corporate culture of the past is transformed in a way that affirms diversity in the workplace and harnesses the potential of all employees**

Such steps could include programmes for all staff, including management, contextualising employment equity and sensitising employees with regard to the grounds of discrimination such as race, diversity, gender, disability, and religious accommodation.

- **Any other measures arising out of the consultative process**

8.3.2 All corrective measures to eliminate any barriers identified during the analysis should be specified in the plan.

8.3.3 The employer is under no obligation to introduce an absolute barrier relating to people who are not from designated groups, for example having a policy of not considering white males at all for promotion or excluding them from applying for vacant positions.

8.4 Numerical goals ¹¹

8.4.1 Numerical goals should be developed for the appointment and promotion of people from designated groups. The purpose of these goals would be to increase the representation of people from designated groups in each occupational category and level in the employer's workforce, where under-representation has been identified and to make the workforce reflective of the relevant demographics as provided for in form EEA 8.

8.4.2 In developing the numerical goals, the following factors should be taken into consideration –

- The degree of under-representation of employees from designated groups in each occupational category and level in the employer's workforce;
- present and planned vacancies;
- the provincial and national economically active population as presented in form EEA 8;
- the pool of suitably qualified persons from designated groups, from which the employer may be reasonably expected to draw for recruitment purposes;
- present and anticipated economic and financial factors relevant to the industry in which the employer operates;
- economic and financial circumstances of the employer;
- the anticipated growth or reduction in the employer's workforce during the time period for the goals;
- the expected turnover of employees in the employer's workforce during the time period for the goals, and
- labour turnover trends and underlying reasons, specifically for employees from designated groups.

8.5 Consensus

In setting objectives and developing corrective measures, parties to the consultative processes should attempt to reach consensus on what would constitute reasonable progress over the duration of the plan.

8.6 Resources

Resources, including budgets, should be appropriately allocated in order to implement the agreed components of the plan.

8.7 Assignment of responsibility

Responsibility for implementation and monitoring of the plan, as assigned during the planning phase, should be confirmed and noted.

8.8 Dispute Resolution

8.8.1 Internal procedures for resolving any dispute about the interpretation and implementation of the plan should be agreed and specified.

8.8.2 The use of existing dispute resolution procedures should be encouraged provided that they are appropriate, and if necessary adapted to the needs of employment equity.

8.8.3 Alternatively, a mechanism with appropriate representation from employer and employees may be established in order to address and resolve such disputes.

8.9 Communication

8.9.1 The plan should be appropriately and comprehensively communicated to employees. This communication mechanism should indicate the parties responsible for the implementation of the plan and the agreed dispute resolution procedures. Information about the plan should be easily accessible to all levels of employees.

9. MONITORING AND EVALUATING THE PLAN

9.1 Records should be kept to effectively monitor and evaluate the plan.

9.2 Mechanisms to monitor and evaluate the implementation of the plan should be agreed and include benchmarks that would permit assessment of reasonable progress.

9.3 The plan should be evaluated at regular intervals to ensure that reasonable progress is made. This evaluation should be integrated into mechanisms that the employer normally utilises to monitor its operations.

9.4 The consultative forum(s) should continue to meet on a regular basis, and should receive progress reports. Progress should be recorded and communicated to employees. Such meetings should take place at reasonable intervals to ensure feedback and inform the ongoing implementation process.

9.5 The plan should be reviewed and revised, as necessary, through consultation.

9.6 Reporting ¹²

9.6.1 Larger employers, with 150 or more employees, will be required to submit first reports by 1 June 2000 and thereafter annually on the first working day of October, starting in 2001.

9.6.2 Smaller employers, with fewer than 150 employees, will be required to submit their first reports by 1 December 2000 and thereafter every second year, on the first working day of October, starting in 2002.

9.6.3 The reporting format for employers is contained in the Employment Equity Report as defined in form EEA2.

9.6.4 Designated employers whose operations extend across different geographical areas, functional units, workplaces or industry sectors may elect to submit either a consolidated or a separate report for each of these. This decision should be made by employers after consultation with the relevant stakeholders.

Footnotes

1. Section 3(c) of the Act
2. See the definition of "designated employer" in the Act.
3. See section 24 of the Act.

4. See sections 16 and 17 of the Act.
5. See the definition of "designated groups" in the Act.
6. See section 19 of the Act.
7. See the definition of "family responsibility " in the Act.
8. See section 20(2)(e) of the Act.
9. See sections 15 and 20(2)(b) of the Act.
10. See the definition of "reasonable accommodation" in the Act.
11. See section 20(2)(e) of the Act.
12. See section 21 of the Act.