

# STATUS OF THE EMPLOYMENT EQUITY AMENDMENT ACT



## Operational Status of the Employment Equity Amendment Act

The Employment Equity Amendment Act is not yet operative as a specific date for the amendments to take effect has not been gazetted. The President has signed the Act, but its implementation depends on the finalization and gazetting of the Regulations.

### Implications While Waiting for the Act to Activate

Currently, as businesses await the activation of the Amendment Act, nothing changes, and they can continue with their Employment Equity processes and plans as normal.

### Expiry of Normal Employment Equity Plan and Formulating a New Plan

Employers whose normal Employment Equity Plans expire this year will need to develop a new 5-year plan once the Amendment Act comes into effect.

### Decision-Making on Targets Under the Amendment Act

While employers retain the autonomy to decide on their targets, the Amendment Act allows targets to be set for them, depending on the sector they operate in. Employers can still decide on their year-by-year plans to achieve the targets.

### Handling of 2023 Employment Equity Reports

Employers should continue with their 2023 Employment Equity reports as normal until any changes are specified in the finalized regulations. The deadlines for EEA2 and EEA4 reports remain from 01 October 2023 to 15 January 2024.

### Impact on BBBEE Verification

The Employment Equity Amendment Act does not affect BBBEE verification.

### Compliance with Numerical Targets and Employment Equity Certificate

Failure to meet the sectoral numerical targets does not necessarily result in forfeiture of the Employment Equity Certificate. However, there must be justifiable grounds for non-compliance.

### Justifiable Grounds for Failing to Meet Sectoral Numerical Goals

The justifiable grounds for failing to meet the sectoral numerical goals include insufficient recruitment and promotion opportunities, lack of qualified individuals from designated groups, mergers, acquisitions, transfers, and impacts on business economic activities.

### Employment Equity Certificate Requirement

An Employment Equity Certificate is required only if the employer does business with the state.

### Impact of Employment Equity Certificate on Contracts with the State

For employers who already have contracts with the state, failure to obtain an Employment Equity Certificate may result in possible cancellation or refusal of contracts, based on provisions in the Act.

### Employment Equity Certificate for Employers with Less than 50 Employees

Employers with less than 50 employees can still obtain an Employment Equity Certificate, and they are not required to submit annual reports.

### CCMA and Labour Court Influence on Employment Equity Certificate

Arbitration awards and/or court orders against employers for breaching prohibitions on unfair discrimination or failure to pay minimum wages in the previous 12 months may lead to a denial of the issuance of an Employment Equity Certificate.



### **Opting Out of Complying with Sectoral Numerical Targets**

Employers cannot opt out of complying with the sectoral numerical targets.

### **Duration to Meet Sectoral Numerical Targets**

Employers have 5 years to meet the sectoral numerical targets, and an annual Employment Equity certificate must be issued. Specific details regarding compliance within 1 year are not defined.

### **Non-Industry-Specific Targets**

Employers not falling into the 18 industries can set their own numerical goals and plans and continue with normal operations as the sectoral targets do not apply to them.

### **Semi or Unskilled Employees in the Employment Equity Plan**

Semi or unskilled employees are outside the sectoral targets, allowing employers to set their own numerical goals and plans for them.

### **Prohibition of Dismissing Employees Based on Race and Gender for Numerical Targets**

Dismissing employees based on race and gender to achieve numerical targets is not allowed.

### **Involvement of Unions**

If the union is a representative (majority) trade union, it becomes the Employment Equity Committee, and the designated employer consults with the union, not with its employees.

### **Duration of the Employment Equity Plan Under the Amendment Act**

The Employment Equity Plan under the Amendment Act lasts for 5 years.

### **Enforcing Sectoral Targets**

Employers cannot unilaterally enforce sectoral targets. Consultation with the committee is required for preparation, implementation, analysis, timetable, and strategies within the 5-year plan.

### **Designated Employee Classification**

The classification of designated employees remains unchanged, encompassing Black (African, Coloured, and Indian) people, women, and people with disabilities meeting specific criteria.

### **Issued Drafts**

The draft sectoral targets and draft regulations for Employment Equity Analysis have been issued.

### **Implementation Date of the Act**

The implementation date of the Act will be specified in the finalized and gazetted regulations, likely not in 2023.

### **Volunteering as a Designated Employer**

Employers cannot volunteer to be designated employers if they employ less than 50 employees.

### **Knowledge Mining Academy: Your Partner in Employment Equity Transformation**

At Knowledge Mining Academy, we understand the significance of Employment Equity (EE) transformation in today's business landscape.

We offer a range of services and resources tailored to assist you on your EE journey.

Knowledge Mining Academy is dedicated to empowering your organization to achieve its Employment Equity objectives and contribute to building a diverse and inclusive workplace. Together, we can navigate the complexities of EE compliance, foster a culture of equity, and drive positive change within your organization. Contact us today to embark on your EE transformation journey with confidence.