

South Africa

Employment Equity Act, 1998

## Employment Equity Regulations, 2014

Government Notice R595 of 2014

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## Employment Equity Regulations, 2014

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## South Africa

### Employment Equity Act, 1998

## Employment Equity Regulations, 2014

### Government Notice R595 of 2014

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**Commenced on 1 August 2014**

*[This is the version of this document from 8 August 2019.]*

*[Amended by Employment Equity Regulations, 2014: Amendment (Government Notice R1057 of 2019) on 8 August 2019]*

I, Mildred Nelisiwe Oliphant, Minister of Labour, hereby under section 55(1) of the Employment Equity Act, 1998 (Act 55 of 1998 as amended), make the regulations in the schedule.

## Definitions

### 1. Definitions

In these Regulations any word or expression to which a meaning has been assigned in the Act, has the meaning so assigned and, unless the context otherwise indicates.

“**Basic Conditions of Employment Act**” means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), as amended;

“**Labour Relations Act**” means the Labour Relations Act, 1995 (Act No. 66 of 1995), as amended;

“**listed ground**” means a ground listed in terms of section 6(1) of the Act;

“**Regional demographics**” means the Provincial Economically Active Population;

“**temporary employees**” mean employees who are employed for less than three months;

“**the Act**” means the Employment Equity Act, 1998 (Act No. 55 of 1998), as amended; and

“**work of equal value**” includes works that is the same, substantially the same or of the same value as other work, as contemplated in regulation 4 of these Regulations.

## Work of equal value

### 2. Equal pay for work of equal value criteria

These Regulations are published to prescribe the criteria and methodology for assessing work of equal value contemplated in section 6(4) of the Act.

### 3. Eliminating unfair discrimination

- (1) An employer must, in order to eliminate unfair discrimination, take steps to eliminate differences in terms and conditions of employment, including remuneration of employees who perform work of equal value if those differences are directly or indirectly based on a listed ground or any arbitrary ground that is prohibited by section 6(1) of the Act.

- (2) Without limiting sub-regulation (1), an employer must ensure that employees are not paid different remuneration for work of equal value based on race, gender or disability.

#### 4. Meaning of work of equal value

For the purpose of these Regulations, the work performed by an employee—

- (1) is the same as the work of another employee of the same employer, if their work is identical or interchangeable;
- (2) is substantially the same as the work of another employee employed by that employer, if the work performed by the employees is sufficiently similar that they can reasonably be considered to be performing the same job, even if their work is not identical or interchangeable;
- (3) is of the same value as the work of another employee of the same employer in a different job, if their respective occupations are accorded the same value in accordance with regulations 5 to 7.

#### 5. Methodology

When, applying section 6(4) of the Act—

- (1) it must first be established—
  - (a) whether the work concerned is of equal value in accordance with regulation 6; and
  - (b) whether there is a difference in terms and conditions of employment, including remuneration.
- (2) it must then be established whether any difference in terms of sub-regulation (1)(b) constitutes unfair discrimination, applying the provisions of section 11 of the Act.

#### 6. Assessing whether work is of equal value

- (1) In considering whether work is of equal value, the relevant jobs must be objectively assessed taking into account the following criteria:
  - (a) the responsibility demanded of the work, including responsibility for people, finances and material;
  - (b) the skills, qualifications, including prior learning and experience required to perform the work, whether formal or informal;
  - (c) physical, mental and emotional effort required to perform the work; and
  - (d) to the extent that it is relevant, the conditions under which work is performed, including physical environment, psychological conditions, time when and geographic location where the work is performed.
- (2) In addition to the criteria specified in sub-regulation (1) any other factor indicating the value of the work may be taken into account in evaluating work, provided the employer shows that the factor is relevant to assessing the value of the work.
- (3) The assessment undertaken in terms of sub-regulations (1) and (2) must be conducted in a manner that is free from bias on grounds of race, gender or disability, any other listed ground or any arbitrary ground that is prohibited in terms of section 6(1) of the Act.
- (4) Despite sub-regulations (1) and (2), an employer may justify the value assigned to an employee's work by reference to the classification of a relevant job in terms of a sectoral determination made by the Minister of Labour in terms of section 55 of the Basic Conditions of Employment Act, 1997 ([Act No. 75 of 1997](#)) which applies to the employer.

## 7. Factors justifying differentiation in terms and conditions of employment

- (1) If employees perform work that is of equal value, a difference in terms and conditions of employment, including remuneration, is not unfair discrimination if the difference is fair and rational and is based on any one or a combination of the following grounds:
  - (a) the individuals' respective seniority or length of service;
  - (b) the individuals' respective qualifications, ability, competence or potential above the minimum acceptable levels required for the performance of the job;
  - (c) the individuals' respective performance, quantity or quality of work, provided that employees are equally subject to the employer's performance evaluation system, that the performance evaluation system is consistently applied;
  - (d) where an employee is demoted as a result of organisational restructuring or for any other legitimate reason without a reduction in pay and fixing the employee's salary at this level until the remuneration of employees in the same job category reaches this level;
  - (e) where an individual is employed temporarily in a position for purposes of gaining experience or training and as a result receives different remuneration or enjoys different terms and conditions of employment;
  - (f) the existence of a shortage of relevant skill, or the market value in a particular job classification; and
  - (g) any other relevant factor that is not unfairly discriminatory in terms of section 6(1) of the Act.
- (2) A differentiation in terms and conditions of employment based on one or more grounds listed in sub-regulation (1) will be fair and rational if it is established, in accordance with section 11 of the Act, that—
  - (a) Its application is not biased against an employee or group of employees based on race, gender or disability or any other ground listed in section 6(1) of the Act; and
  - (b) It is applied in a proportionate manner.

## Duties of a designated employer

## 8. Collecting information and conducting an analysis

- (1) When a designated employer collects information contemplated in section 19 of the Act, the employer must request each employee in the workforce to complete a declaration using the EEA1 form.
- (2) An employee may add information to the EEA1 form.
- (3) Where an employee refuses to complete the EEA1 form or provides inaccurate information, the employer may establish the designation of an employee by using reliable historical and existing data. People with disabilities have the right not to declare their disability, unless it is in line with the inherent requirements of the job.
- (4) A designated employer must conduct an analysis as required by section 19 of the Act by reviewing its workforce profile and employment policies, practices, procedures and the working environment in order to identify employment barriers which adversely affect people from designated groups from being equitably represented across all occupational levels. The outcome of the analysis should be reported using the EEA12 in these regulations.

- (5) A designated employer must refer to the relevant Codes of Good Practice issued in terms of section [54](#) of the Act as a guide when collecting information and conducting the analysis required by section [19](#) of the Act.
- (6) When a designated employer conducts the analysis as required by section [19](#) of the Act, the employer may refer to—
  - (a) EEA8, a guide on the applicable national and regional economically active population (EAP); and
  - (b) EEA9, which contains a description of occupational levels.

## 9. Duty to prepare and implement an Employment Equity Plan

- (1) A designated employer must refer to the relevant Codes of Good Practice issued in terms of section [54](#) of the Act when preparing an Employment Equity Plan contemplated in section [20](#) of the Act.
- (2) The Employment Equity Plan must contain, at a minimum, all the elements contained in the EEA13 template of these regulations.
- (3) A designated employer must retain their Employment Equity Plan for a period of five years after the expiry of the plan.
- (4) A designated employer must refer to the EEA9 in the regulations for guidance on how to differentiate between the various occupational levels.

## 10. Duty to report

- (1) A designated employer must submit a report to the Director-General in terms of section [21](#) of the Act annually on the first working day of October or by 15 January of the following year only in the case of electronic reporting using the EEA2 form.
- (2) Employment equity reports must be addressed to the Employment Equity Registry, Department of Labour, Private Bag X117, Pretoria, 0001 or submitted electronically using the online reporting system available on the departmental website, [www.labour.gov.za](http://www.labour.gov.za)
- (3) An employer who becomes designated on or after the first working day of April, but before the first working day of October, must only submit its first report on the first working day of October of the following year.
- (4) A designated employer that is a holding company with more than one registered entity may choose to submit a consolidated report.
- (5) A designated employer who chooses to submit a consolidated report contemplated in sub regulation [10\(4\)](#) must have a consolidated Employment Equity Plan which is supported by individual Employment Equity Plans for each of the registered entities included in the consolidated report.
- (6) The method of reporting contemplated in sub-regulation [10\(4\)](#) should remain consistent for the duration of the plan.
- (7) An employer must inform the Department in writing immediately of any changes to their trade name, designation status, contact details or any other major changes, including mergers, acquisitions and insolvencies.
- (8) A designated employer who is unable to report must notify the Director-General in writing before the last working day of August in the same year giving reasons for its inability to do so using the EEA14 form.
- (9) A designated employer must retain a copy of the report for a period of five years after it has been submitted to the Director-General.

- (10) In terms of Section 22, every designated employer must publish a summary of a report required by Section 21 reflecting progress in their annual financial report by using the EEA10 annexure for guidance.
- (11) An employment equity report (EEA2), except for the Income Differential Statement reflected in the EEA4 form, submitted to the Department of Labour is a public document and a copy may be requested by the public by completing and submitting the EEA11 form to the Department of Labour, Employment Equity Registry.

## **11. Duty to inform**

The notice contemplated in section [25\(1\)](#) of the Act is contained as the Summary of the Act in annexure EEA3 of these Regulations and must be displayed at the workplace.

## **12. Income differentials and discrimination**

- (1) A designated employer must submit an Income Differential Statement in terms of section [27](#) of the Act using the EEA4 form to the Employment Conditions Commission, which must be addressed to the Employment Equity Registry, Department of Labour, Private Bag X117, Pretoria, 0001, unless the employer is completing the prescribed forms on the Department of Labour's EE Online Reporting System.
- (2) An employer who becomes designated on or after the first working day of April, but before the first working day of October, must only submit their Income Differential Statement on the first working day of October of the following year.
- (3) A designated employer must retain a copy of the statement of income differentials contemplated in sub-regulation 12(1) for a period of five years after it has been submitted.

## **Enforcement mechanisms**

### **13. Requesting an undertaking**

A labour inspector may request and obtain a written undertaking using the EEA5 form.

### **14. Compliance order**

A labour inspector may issue a compliance order to a designated employer using the EEA6 form.

### **15. Review by the Director-General (DG Review)**

The Director-General may require designated employers who have been identified for the DG Review process to fully and accurately complete the DG Review Assessment form (EEA7) and furnish the required documents.

## **General administrative matters**

### **16. Repeal of laws**

The Employment Equity Regulations, 2009 as published in Government Notice No. 32393 of 14 July 2009 is hereby repealed.

### **17. Short title**

These Regulations are called the Employment Equity Regulations, 2014.

## Forms

*[form EEA4 repealed and replalced by [Government Notice R1057 of 2019](#)]*

*[Editorial note: The forms have not been reproduced.]*