



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

GAZETE YA MFUMO

REPHABLIKI RA AFRIKA DZONGA

Registered at the Post Office as a Newspaper

Tsarisiwile e Posweni Tani hi Phephahungu

VOL. 400
VHOLOMU

CAPE TOWN, 19 OCTOBER 1998

KAPA, 19 NHLANGULA 1998

No. 19370

OFFICE OF THE PRESIDENT

No. 1323. 19 October 1998

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 55 of 1998: Employment Equity Act, 1998.

HOFISI YA PRESIDENTE

No. 1323. 19 Nhlangua 1998

Hi mi tivisa leswaku Presidente u amukerile nawu lowu wu phablixiweke ku andzisa vutivi bya n'wina:—

No. 55 ra 1998: Nawu wa Ndzingano wa Mintirho/Vuthori, 1998.

ACT

To provide for employment equity; and to provide for matters incidental thereto.

PREAMBLE

Recognising—

that as a result of apartheid and other discriminatory laws and practices, there are disparities in employment, occupation and income within the national labour market; and

that those disparities create such pronounced disadvantages for certain categories of people that they cannot be redressed simply by repealing discriminatory laws,

Therefore, in order to—

promote the constitutional right of equality and the exercise of true democracy;

eliminate unfair discrimination in employment;

ensure the implementation of employment equity to redress the effects of discrimination;

achieve a diverse workforce broadly representative of our people;

promote economic development and efficiency in the workforce; and

give effect to the obligations of the Republic as a member of the International Labour Organisation,

(English text signed by the President.)
(Assented to 12 October 1998.)

BE IT ENACTED by the Parliament of the Republic of South Africa as follows:—

ARRANGEMENT OF ACT

CHAPTER I

DEFINITIONS, PURPOSE, INTERPRETATION AND APPLICATION 5

1. Definitions
2. Purpose of this Act
3. Interpretation of this Act
4. Application of this Act

CHAPTER II 10

PROHIBITION OF UNFAIR DISCRIMINATION

5. Elimination of unfair discrimination
6. Prohibition of unfair discrimination
7. Medical testing
8. Psychometric testing 15
9. Applicants
10. Disputes concerning this Chapter
11. Burden of proof

NAWU

Ku endlela ku nyika ndzingano emintirhweni/vuthori; ni ku endla makungu ya timhaka leti yelanaka na swona.

MANGHENELO

Ku lemuka—

leswaku hikwalaho ka xivangelo xa xihlawu-hlawu na milawu yin'wana ya xihlawu-hlawu na mintolovelo, ku na ku hambana eka matholele, ntirho na miholo eka makete ya mintirho ya rixaka; na
leswaku ku hambana ko tano ku tumbuluxa ntsandziso eka mikhetekanyo yin'wana ya vanhu hi ndlela leyi, swi nga ka swi nga koteki ku swi lulamisa hi tlhelo ro susisa xisweswo milawu ya xihlawu-hlawu,

Hikokwalaho, eka ku endlela leswaku ku—

tlakusiwa mfanelo ya vumbiwa ya ndzinganelo no tirhisa dimokirasi ya xiviri;
ku herisiwa xihlawu-hlawu lexi nga ri ki kahle entirhweni;
ku vonisisiwa leswaku ku tirhisiwa endlele ra ndzingano entirhweni hi tlhelo ro endlela ku lulamisa leswi vangiweke hi xihlawu-hlawu;
eka ku fikelela vuyimeri lebyi anameke bya vatirhi vo hambana-hambana va vanhu va ka hina;
ku tlakusa nhluvuko wa ikhonomi na vueneti xikarhi ka vatirhi; no
endla leswi pfunaka eka leswi swi nga timfanelo ta Riphabliki tani hi leswi ri nga xirho eka Nhlanguano wa Mintirho ya Tinxaka,

*(English text signed by the President.)
(Assented to 12 October 1998.)*

Palamende ya Riphabliki ra Afrika Dzonga yi veka Nawu hi ndlela leyi:—

MALULAMISELO YA NAWU

KAVANYISA KA 1

5 TINHLAMUSELO, XIKONGOMELO, TIRHISELO NA KU HLAMUSELA

1. Tinhlamuselo
2. Xikongomelo xa Nawu lowu
3. Nhlamuselo ya Nawu lowu
4. Matirhisele ya Nawu lowu

10

KAVANYISA KA II

KU SIVELA XIHLAWU-HLAWU LEXI NGA RI KI KAHLE

5. Ku herisa xihlawu-hlawu lexi nga ri ki kahle
6. Ku sivela xihlawu-hlawu lexi nga ri ki kahle
7. Swikambelo swa Vutshunguri
- 15 8. Vukamberi bya ntivo-mieheleto na mimpimanyiso yin'wana yo fana
9. Vakomberi va mintirho
10. Minkanetano/Madzolonga mayelana na Kavanyisa loku
11. Mpingu wa xikombiso xa ntiyiso

CHAPTER III**AFFIRMATIVE ACTION**

12. Application of this Chapter	
13. Duties of designated employers	
14. Voluntary compliance with this Chapter	5
15. Affirmative action measures	
16. Consultation with employees	
17. Matters for consultation	
18. Disclosure of information	
19. Analysis	10
20. Employment equity plan	
21. Report	
22. Publication of report	
23. Successive employment equity plans	
24. Designated employer must assign manager	15
25. Duty to inform	
26. Duty to keep records	
27. Income differentials	

CHAPTER IV**COMMISSION FOR EMPLOYMENT EQUITY** 20

28. Establishment of Commission for Employment Equity	
29. Composition of Commission for Employment Equity	
30. Functions of Commission for Employment Equity	
31. Staff and expenses	
32. Public hearings	25
33. Report by Commission for Employment Equity	

CHAPTER V**MONITORING, ENFORCEMENT AND LEGAL PROCEEDINGS****Part A*****Monitoring*** 30

34. Monitoring by employees and trade union representatives	
---	--

Enforcement

35. Powers of labour inspectors	
36. Undertaking to comply	
37. Compliance order	35
38. Limitations	
39. Objections against compliance order	
40. Appeal from compliance order	
41. Register of designated employers	
42. Assessment of compliance	40
43. Review by Director-General	
44. Outcome of Director-General's review	
45. Failure to comply with Director-General's recommendation	

Part B***Legal proceedings*** 45

46. Conflict of proceedings	
47. Consolidation of proceedings	
48. Powers of commissioner in arbitration proceedings	
49. Jurisdiction of Labour Court	

KAVANYISA KA III**KU LULAMISA LESWI KHALE A SWI HOMBOLOKILE**

12. Tirhisele ra Kavanyisa loku
13. Mintirho ya vathori lava hlawuriweke
- 5 14. Ku tinyiketa eka ku landzelela Kavanyisa loku
15. Magoza yo lulamisa leswi khale a swi hambolokile
16. Ku tihlanganisa no tsundzuxana na vathoriwa
17. Timhaka leti fanelaka ku va ni vutihlanganisi no tsundzuxana
18. Ku paluxa marungula
- 10 19. Ntlhantlho
20. Pulani kumbe makungu ya vuthori bya ndzingano
21. Xiviko
22. Ku hangalasiwa/tivisiwa ka xiviko
23. Makungu ya ndzingano wa vuthori ya ndzandzelelano
- 15 24. Muthori loyi a nga hlawuriwa u fanela ku hlawula mininjere
25. Ntirho wo tivisa
26. Ntirho wo hlaysia tirhekodo
27. Ku hambana ka miholo kumbe mali leyi yi ngenaka

KAVANYISA KA IV**20 KHOMIXINI YA NDZINGANO WA VUTHORI/NTIRHO**

28. Ku tumbuluxiwa ka Khomixini ya Ndzingano wa Vuthori/Ntirho
29. Xivumbeko xa Khomixini ya Ndzingano wa Vuthori/Ntirho
30. Mintirho ya Khomixini eka Ndzingano wa Vuthori/Ntirho
31. Vatrhi na Timali leti tirhisiweke
- 25 32. Ku tengisiwa/tenga ka mani na mani
33. Xiviko hi Khomixini ya Ndzingano wa Vuthori/Mintirho

KAVANYISA KA V**KU LAWULA, KU TIRHISA NA MAFAMBISELE YA LE NAWINI****Xiphemu xa A****30 Ku lawula**

34. Ku lawula hi vatrhi na vayimeri vo yimela nhlango wa vatrhi

Ku tirhisiwa

35. Matimba ya swipikitere kumbe vakamberi va mintirho
36. Ku endla xihlabanyo xo landzelela
- 35 37. Xileriso xo landzelela
38. Swipimelo
39. Minkaneto ehenhla ka ku landzelela xileriso
40. Ku apila eka xileriso xo landzelela/vulandzeleri
41. Rijistara ra vathori lava nga hlawuriwa
- 40 42. Ku pimanyisa ka vulandzeleri
43. Vukambisisi hi Mulawuri-Jenerala
44. Mbuyelo wa vukambisisi bya Mulawuri-Jenerala
45. Ku tsandzeka ku landzelela xibumabumelo xa Mulawuri-Jenerala

Xiphemu xa B**45 Mafambisele ya le nawini**

46. Ntlimbo wa mafambisele
47. Ku hlanganisiwa ka Mafambisele
48. Matimba ya khomixinara eka mafambisele ya vulamuleri
49. Vulawuri bya Khoto ya Mintirho

50. Powers of Labour Court

Part C*Protection of employee rights*

51. Protection of employee rights
 52. Procedure for disputes 5

CHAPTER VI**GENERAL PROVISIONS**

53. State contracts
 54. Codes of good practice
 55. Regulations 10
 56. Delegations
 57. Temporary employment services
 58. Designation of organs of state
 59. Breach of confidentiality
 60. Liability of employers 15
 61. Obstruction, undue influence and fraud
 62. This Act binds State
 63. Application of Act when in conflict with other laws
 64. Repeal of laws and transitional arrangements
 65. Short title and commencement 20

SCHEDULE 1*Maximum permissible fines that may be imposed for contravening this Act***SCHEDULE 2***Laws repealed***SCHEDULE 3 25***Transitional arrangements***SCHEDULE 4***Turnover threshold applicable to designated employers***CHAPTER I****DEFINITIONS, PURPOSE, INTERPRETATION AND APPLICATION 30****Definitions**

1. In this Act, unless the context otherwise indicates—
 “Basic Conditions of Employment Act” means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
 “black people” is a generic term which means Africans, Coloureds and Indians; 35
 “CCMA” means the Commission for Conciliation, Mediation and Arbitration, established by section 112 of the Labour Relations Act;
 “code of good practice” means a document issued by the Minister in terms of section 54;

50. Matimba ya Khoto ya Mintirho

Xiphemu xa C

Ku sirhelela timfanelo ta mutirhi

51. Ku sirhelela timfanelo ta mutirhi
5 52. Ndlela ya mafambisele ya minkanetano

KAVANYISA KA VI

MAKUNGU MAN'WANA NI MAN'WANA

53. Tikontraka ta mfumo/Mintwanano ya mfumo
54. Milawu ya maendlele lamanene
10 55. Swanawana
56. Vurhumiwa
57. Vutirheli bya Mintirho/Vuthori bya nkarhinyana
58. Ku hlawuriwa ka swirho/marhavi ya mfumo
59. Ku tlula nawu wo hlayisa swihundla
15 60. Nandzu wa vathori
61. Ku sivele, ku kucetela ko homboloka na vukanganyisi
62. Nawu lowu wu boha Mfumo
63. Ku tirhisiwa ka Nawu loko ku ri na ntlimbo kumbe dzolonga ni milawu yin'wana
64. Ku herisiwa ka milawu na mindzulamiso ya nkarhinyana
20 65. Nhlokomhaka hi ku Komisa na siku ro sungula ku tirha

XITANDZHAKU XA 1

Vugima-nkulu/maksimamu wa mindziho leyi pfumele riwaka leyi nga ha hakeri-waka eka ku tlula Nawu lowu

XITANDZHAKU XA 2

- 25 *Milawu leyi nga herisiwa susiwa*

XITANDZHAKU XA 3

Mindzulamiso ya nkarhinyana

XITANDZHAKU XA 4

Laha ku sungulaka vuyelo lebyi tirhaka eka vathori lava hlawuriweke

- 30 **KAVANYISA KA 1**

TINHLAMUSELO, XIKONGOMELO, TIRHISELO NA KU HLAMUSELA

Tinhlamuselo

1. Eka Nawu lowu, handle ka loko nhlamuselo yi nga ha swi komba ku va eka Xiyimo xin'wana—
35 “Swiboho swa Masungulo swa Nawu wa Vuthori” swi vula Masungulo ya Swiboho swa Nawu wa Vuthori, 1997 (Nawu wa No. 75 wa 1997);
“vantima” kumbe vanhu va vantima i rito kumbe theme leri nga ra xihlawulekisi xa rixaka ra vanhu laha ku katsiwaka Vantima, Makhaladi na Ma-Indiya;
“CCMA” swi vula Khomixini yo Twananisa no lamula, Vulamuri kumbe ku
40 khongotela no Lamulela leyi nga tumbuluxiwa hi xiyenge xa 112 xa Nawu wa Vuxaka bya le Mintirhweni (Commission for Conciliation, Mediation and Arbitration);
“milawu ya maendlele lamanene” swi vula tsalwa leri humesiweke hi Holobyne hi ku ya hi xiyenge xa 54;

“collective agreement” means a written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded by one or more registered trade unions, on the one hand and, on the other hand—

- (a) one or more employers;
- (b) one or more registered employers’ organisations; or 5
- (c) one or more employers and one or more registered employers’ organisations;

“Commission” means the Commission for Employment Equity, established by section 28;

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); 10

“designated employer” means—

- (a) an employer who employs 50 or more employees;
- (b) an employer who employs fewer than 50 employees, but has a total annual turnover that is equal to or above the applicable annual turnover of a small business in terms of Schedule 4 to this Act; 15
- (c) a municipality, as referred to in Chapter 7 of the Constitution;
- (d) an organ of state as defined in section 239 of the Constitution, but excluding local spheres of government, the National Defence Force, the National Intelligence Agency and the South African Secret Service; and
- (e) an employer bound by a collective agreement in terms of section 23 or 31 of the Labour Relations Act, which appoints it as a designated employer in terms of this Act, to the extent provided for in the agreement; 20

“designated groups” means black people, women and people with disabilities;

“Director-General” means the Director-General of the Department of Labour;

“dismissal” has the meaning assigned to it in section 186 of the Labour Relations Act; 25

“dispute” includes an alleged dispute;

“employee” means any person other than an independent contractor who—

- (a) works for another person or for the State and who receives, or is entitled to receive, any remuneration; and 30
- (b) in any manner assists in carrying on or conducting the business of an employer,

and “employed” and “employment” have corresponding meanings;

“employment law” means any provision of this Act or any of the following Acts:

- (a) The Unemployment Insurance Act, 1966 (Act No. 30 of 1966); 35
- (b) the Guidance and Placement Act, 1981 (Act No. 62 of 1981);
- (c) the Manpower Training Act, 1981 (Act No. 56 of 1981);
- (d) the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
- (e) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993); 40
- (f) the Labour Relations Act, 1995 (Act No. 66 of 1995);
- (g) the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
- (h) any other Act, whose administration has been assigned to the Minister.

- “ntwanano wa nhlengelo/xintlawa” swi vula ntwanano lowu endliweke hi ku tsala kunene mayelana na milawu na swiboho swa vuthori kumbe mhaka yihi ni yihi leyi nga ya ntwanano leyi bohiweke hi nhlango wun’we kumbe yo tala leyi rijistariweke hi tlhelo rihi kumbe rihi—
- 5 (a) muthori un’we kumbe vo tala;
- (b) muthori un’we kumbe vo tala lava nga rijistariwa tani hi minhlango ya vathori; kumbe
- (c) muthori un’we kumbe vo tala na nhlango wun’we wa vathori lowu nga rijistariwa kumbe yo tala;
- 10 “Khomixini” swi vula Khomixini ya Ndzingano eka Ntirho/Vuthori leyi nga tumbuluxiwa hi ku ya hi xiyenge xa 28;
- “Vumbiwa” swi vula Vumbiwa ra Riphabliki ra Afrika Dzonga 1996 (Nawu wa No.108 wa 1996);
- “muthori loyi a hlawuriweke” swi vula—
- 15 (a) muthori loyi a tholaka 50 wa vatirhi kumbe ku tlula kwalaho;
- (b) muthori loyi a tholaka ehansi ka nhlalo ya 50 wa vatirhi, kambe a ri na ntsengo wa vuyelo lowu hi lembe wu ringanaka ni kumbe ku va ehenhla ka vuyelo lebyi nga ri ki ehansi ka ntsengo lowu amukelekaka lembe ni lembe eka bindzu lerintsongo hi ku ya hi Xitandzhaku xa 4 xa Nawu lowu;
- 20 (c) masipala tani hi laha ri kongomisiweke ha kona eka Kavanyisa ka 7 eka Vumbiwa; na
- (d) xirho xa mfumo tani hi laha swi hlamuseriweke ha kona eka xiyenge xa 239 eka Vumbiwa, kambe ku nga katsiwi mavandla man’wana ya xikaya eka mfumo, Vuthu ra Vusirhelelo ra Rixaka, Vandla ra Vuhlori ra Rixaka na
- 25 Ntirho wa swa Swihundla wa Afrika Dzonga.
- (e) muthori loyi a bohiwaka hi xikatsa xa mimpfumelelano ku ya hi xiyenge xa 23 kumbe xa 31 xa Nawu wa Vuxaka bya le Mintirhweni, lowu wu n’wi tholaka tani hi muthori loyi a hlawuriweke hi ku landza Nawu lowu, ku fika eka mpimo lowu wu kunguhatiweke eka mpfumelelano;
- 30 “mintlawa ya vahlawuriwa” swi vula vanhu va vantima, vavasati na vanhu lava va nga vafumari ni vutsoniwa;
- “Mulawuri-Jenerala” swi vula Mulawuri-Jenerala wa Ndzawulo ya Mintirho,
- “ku hlongoriwa” swi katsa mpumbo wo kanetana;
- “nkanetano” wu katsa mpumbo lowu pumbiweke;
- 35 “muthoriwa” swi vula munhu un’wana ni un’wana handle ka loyi a ti endlelaka kontraka kumbe ntwanano hi ndlela yo ti yimela hi yexe—
- (a) a tirhaka ehansi ka wun’wana munhu kumbe eka Mfumo naswona a ri loyi a kumaka, kumbe a ri loyi a nga faneriwa hi ku amukela, hakelo yihi na yihi; kumbe
- 40 (b) a pfuna hi tlhelo rihi na rihi eka ku yisa emahlweni kumbe ku fambisa bindzu ra muthori, naswona a “thoriwile” naswona “vuthori/ntirho” wu ri na tinhlamuselo leti yelanaka;
- “nawu wa vuthori/ntirho” wu vula leswaku makungu waha ni waha ya Nawu lowu kumbe man’wana ni man’wana ya Nawu lowu kumbe eka yin’wana ya
- 45 Milawu leyi landzelaka:
- (a) Nawu wa Ndzindzakhombo wo Pfumaleka ka Mintirho, 1966 (Nawu wa No. 30 wa 1966);
- (b) Nawu wa Vuleteri ni Vutshamiseki, 1981 (Nawu wa No. 62 wa 1981);
- 50 (c) Nawu wa Ndzetelo eka Mintirho (Manpower), 1981 (Nawu wa No. 56 wa 1981);
- (d) Nawu wa Ntirho wa Rihanyu ni Vuhlayiseki, 1993 (Nawu wa No. 85 wa 1993);
- (e) Ndziriso wo Vaviseka Entirhweni ni Mavabyi, 1993 (Nawu wa No. 130 wa 1993);
- 55 (f) Nawu wa Vuxaka bya le Mintirhweni, 1995 (Nawu wa No. 66 wa 1995);
- (g) Nawu wa Masungulo ya Swiboho swa Ntirho/Vuthori, 1997 (Nawu wa No. 75 wa 1997)
- (h) Nawu wihi ni wihi, lowu malawulele ya wona ma nga nyiketiwa eka Holoby.

“employment policy or practice” includes, but is not limited to—

- (a) recruitment procedures, advertising and selection criteria;
- (b) appointments and the appointment process;
- (c) job classification and grading;
- (d) remuneration, employment benefits and terms and conditions of employment; 5
- (e) job assignments;
- (f) the working environment and facilities;
- (g) training and development;
- (h) performance evaluation systems;
- (i) promotion; 10
- (j) transfer;
- (k) demotion;
- (l) disciplinary measures other than dismissal; and
- (m) dismissal.

“family responsibility” means the responsibility of employees in relation to their spouse or partner, their dependent children or other members of their immediate family who need their care or support; 15

“HIV” means the Human Immunodeficiency Virus;

“labour inspector” means a person appointed in terms of section 65 of the Basic Conditions of Employment Act; 20

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

“medical testing” includes any test, question, inquiry or other means designed to ascertain, or which has the effect of enabling the employer to ascertain, whether an employee has any medical condition; 25

“Minister” means the Minister of Labour;

“NEDLAC” means the National Economic, Development and Labour Council established by section 2 of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994);

“organ of state” means an organ of state as defined in section 239 of the Constitution; 30

“people with disabilities” means people who have a long-term or recurring physical or mental impairment which substantially limits their prospects of entry into, or advancement in, employment;

“pregnancy” includes intended pregnancy, termination of pregnancy and any medical circumstances related to pregnancy; 35

“prescribed” means prescribed by a regulation made under section 55;

“public service” means the public service referred to in section 1(1) of the Public Service Act, 1994 (promulgated by Proclamation No. 103 of 1994), and includes any organisational component contemplated in section 7(4) of that Act and specified in the first column of Schedule 2 to that Act, but excluding— 40

- (a) the National Defence Force;
- (b) the National Intelligence Agency; and
- (c) the South African Secret Service.

“reasonable accommodation” means any modification or adjustment to a job or to the working environment that will enable a person from a designated group to have access to or participate or advance in employment; 45

“registered employers’ organisation” means an employers’ organisation as defined in section 213 of the Labour Relations Act and registered in terms of section 96 of that Act; 50

“nawu wa maendlele eka swa matholele kumbe tirhele”; swi katsa ntsena, loko ku nga ri na xipimelo xa—

- (a) tindlela ta magalachele, swinavetisi na ndlela ya mahlawulele;
 - (b) matholele na ku landzelela endlele ra matholele;
 - 5 (c) ku avanyisiwa ka mintirho na mikhetekanyo;
 - (d) tihakelo/miholo; swipfuno swa le ntirhweni kumbe mimpindzulo ni mint-wanano kun’we ni swiboho entirhweni kumbe eka vuthori;
 - (e) mintirho leyi nyikiwaka eka mintirho;
 - (f) mbango kumbe ndhawu yo tirhela eka yona ni swiolovisi;
 - 10 (g) ndzetelo ni nhluvuko;
 - (h) tisisiteme ta mpimanyiso wa tirhele (performance evaluation systems);
 - (i) ku tlakusiwa;
 - (j) ku hundziseriwa kun’wana;
 - (k) ku chichiwa;
 - 15 (l) magoza lama tekiwaka eka vuyingiseri handle ko hlongola; na
 - (m) ku hlongoriwa.
- “vutihlamuleri bya ndyangu” swi vula vutihlamuleri bya vatirhi mayelana na munghana kumbe phatinara, vana va vona kumbe swirho swin’wana swa le ndyangwini leswi swi nga ni vuxaka lebyi nga kusuhi swinene ni va ndyangu laha swirho leswi swi fanelaka ku va swi hlayisiwa hi vona na seketeriwa;
- 20 “HIV” swi vula vhayirasi leyi vangaka vuvabyi bya Eyidzi;
- “xipikitere xa le ntirhweni” swi vula munhu loyi a nga thoriwa hi ku ya hi xiyenge xa 65 xa Nawu wa Masungulo ya Swiboho swa Ntirho/Vuthori;
- “Nawu wa Vuxaka bya le Mintirhweni” swi vula Nawu wa Vuxaka bya le
- 25 Mintirhweni, 1995 (Nawu wa No. 66 wa 1995);
- “ku kamberiwa eka vutshunguri” ku katsiwa ku kambela kun’wana ni kun’wana, xivutiso, xilavisiso kumbe maendlele manwana lama nga lulamisiwa hi ndlela yo kota ku kumisisa, kumbe lama kotaka ku endla leswaku muthori a kota ku tiyisisa, loko kuri hi leswaku hakunene muthoriwa u na xiboho xihhi na xihhi mayelana na
- 30 swa vutshunguri;
- “Holobye” swi vula Holobye wa Mintirho;
- (“HIRNM”) swi vula Huvo ya Ikonomi ya Rixaka, Nhluvuko ni Mintirho (“NEDLAC”) yi timbuluxiwile hi xiyenge xa 2 xa Nawu wa Huvo ya Ikonomi ya Rixaka, Nhluvuko na Mintirho, 1994 (Nawu wa No. 35 wa 1994);
- 35 “xirho xa mfumo” swi vula xirho xa mfumo tani hi laha swi hlamuseriweke ha kona eka xiyenge xa 239 xa Vumbiwa;
- “vanhu lava va nga vatsoniwa” swi vula vanhu lava xanisekeke nkarhi wo leha kumbe nkarhi na nkarhi emirini kumbe vutsoniwa ebyongweni yi ri mhaka leyi yi va vangela ku va va na swipimelo leswi va sivelaka ku kota ku amukeleka
- 40 eka, kumbe ku nghena entirhweni eka ndhawu ya ntirho kumbe vuthori;
- “Ntirho wa mfumo” swi vula ntirho wa mfumo lowu kongomisiweke eka xiyenge xa 1(i) xa Nawu wa Ntirho wa Mfumo, 1994 (lowu tivisiweke ximfumo hi Xitiviso xa No. 103 xa 1994), naswona ku Katsiwa na nhlangano wun’wana ni wun’wana; lowu hlamuseriweke eka xiyenge xa 7(4) xa Nawu wolowo no
- 45 hlamuseriwa eka rixaxa ro sungula ra Xitandzhaku xa 2 eka Nawu wolowo, kambe ku nga ka tsiwi—
- (a) Vuthu ra Vusirheleri bya Rixaka;
- (b) Nhlangano wa Vuhlori bya Rixaka; na
- (c) Ntirho wo Hlayisa Swihundla wa Afrika Dzonga.
- 50 “ku biha emirini kumbe ku tika” swi katsa ku biha emirini loku kungeriweke, ku humesa khwiri na matshamelo waha ni waha ya swa vutshunguri lebyi yelanaka no biha emirini;
- “leswi hlamuseriweke” swi vula leswaku swi hlamuseriweke ku ya hi xinawana lexi endliweke ehansi ka xiyenge xa 55;
- 55 “vurhurhelo lebyi amukelekaka” swi vula hundzuluko wihi ni wihi kumbe vutshamiseki eka ntirho kumbe eka ndhawu ya ntirho leswi nga ta endla leswaku munhu wo huma eka ntlawa lowu kombisiweke a kota ku va a ya emahlweni no ti katsa kumbe a fikelela eka ku va a thoriwa eka ntirho;
- “nhlangano wo yimela vatirhi lowu nga rijistariwa” swi vula nhlangano wa
- 60 vathori tani hi laha swi hlamuseriweke ha kona eka xiyenge xa 213 xa Nawu wa Vuxaka bya le Mintirhweni no va wu rijistariwile ku ya hi xiyenge xa 96 xa Nawu wolowo;

“registered trade union” means a trade union as defined in section 213 of the Labour Relations Act and registered in terms of section 96 of that Act;

“remuneration” means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State; 5

“representative trade union” means a registered trade union, or two or more registered trade unions acting jointly, that are sufficiently representative of the employees employed by an employer in a workplace;

“Republic” means the Republic of South Africa as defined in the Constitution;

“serve” or “submit”, in relation to any communication, means either— 10

(a) to send it in writing delivered by hand or registered post; or

(b) to transmit it using any electronic mechanism as a result of which the recipient is capable of printing the communication;

“suitably qualified person” means a person contemplated in sections 20(3) and (4);

“this Act” includes any regulations made under section 55, but excludes any 15 footnote;

“trade union representative” means a member of a registered trade union who is elected to represent employees in a workplace;

“workplace forum” means a workplace forum established in terms of Chapter V of the Labour Relations Act. 20

Purpose of this Act

2. The purpose of this Act is to achieve equity in the workplace by—
- (a) promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and
- (b) implementing affirmative action measures to redress the disadvantages in 25 employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels in the workforce.

Interpretation of this Act

3. This Act must be interpreted— 30
- (a) in compliance with the Constitution;
- (b) so as to give effect to its purpose;
- (c) taking into account any relevant code of good practice issued in terms of this Act or any other employment law; and
- (d) in compliance with the international law obligations of the Republic, in 35 particular those contained in the International Labour Organisation Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation.

“nhlangano wo yimela vatirhi lowu rijistariweke” swi vula nhlangano wo yimela vatirhi tani hi laha swi hlamuseriweke ha kona eka xiyenge xa 213 xa mayelana na Nawu wa Vuxaka bya le Mintirhweni no va wu rijistariwile kumbe ku tsarisiwa hi ku ya hi xiyenge xa 96 xa Nawu wolowo;

5 “muholo/hakelo” swi vula hakelo ya hi mali kumbe hi tlhelo ra swihanano, kumbe ku ri hi matlhelo hinkwawo hi mali ni hi swihanano/hi ku hanana, laha ku endliwaka hakelo kumbe hi tlhelo ro va munhu wihi ni wihi a ta fanela ku va a hakeriwa hi tlhelo ro va a tirhile ntirho wa munhu wun’wana, ku katsa no tirha ehansi ka Hulumende;

10 “nhlangano wo yimela vatirhi lowu nga na vuyimeri” swi vula nhlangano wo yimela vatirhi lowu nga rijistariwa, kumbe yi ri minhlango yimbirhi kumbe yo tlula kwalaho leyi tirhisanaka swin’we, no va yi tsarisiwile, leyi yi nga na vuyimeri byo ringana kahle hi tlhelo ra vathoriwa lava nga thola hi muthori eka ndhawu ya ntirho;

15 “Riphabliki” swi vula Riphabliki ra Afrika Dzonga tani hi laha swi hlamuseriweke ha kona eka Vumbiwa;

“ku tirha” kumbe ku “rhumela” hi mayelana na xihlanganiso xihhi na xihhi, swi vula leswaku swi nga ha va kumbe swi—

20 (a) rhumeriwa hi ku tsala kunene no rhumela hi ku yisa kunene hi xiviri kumbe hi voko kumbe hi papila leri ri nga rijistariwa kunene eposweni; kumbe

(b) ku rhumela hi tlhelo ro tirhisa muchini wihi ni wihi wa xielekitironiki leswi nga ta endla leswaku muamukeri wa marungula a va loyi a kotaka ku tsala marungula hi muchini;

25 “munhu loyi a nga xhwaswa kahle” swi vula munhu loyi a nga hlamuseriwa eka swiyenge swa 20(3) na (4);

“Nawu lowu” wu katsa swinawana swin’wana na swin’wana leswi nga endliwa ehansi ka xiyenge xa 55, kambe a swi katsi marito waha na waha lama nga le hansi-hansi ka pheji;

30 “vuyimeri bya nhlangano wo yimela vatirhi” swi vula xirho xa nhlangano wo yimela vatirhi lowu nga rijistariwa lowu nga hlawuriwa ku yimela vathoriwa/-vatirhi eka ndhawu ya ntirho;

“huvo ya ndhawu ya le ntirhweni” kumbe foramu ya le ka ndhawu ya ntirho swi vula huvo ya le ka ndhawu ya ntirho leyi nga tumbuluxiwa hi ku ya hi Kavanyisa ka V ka Nawu wa Vuxaka bya le Mintirhweni.

35 Xikongomelo xa Nawu lowu

2. Xikongomelo xa Nawu lowu i ku fikelela ndzingano eka ndhawu ya ntirho hi tlhelo ro—

(a) tlakusa xiyimo xo ringanana na makhomela lamanene eka vuthori/ntirho hi tlhelo ro herisa xihlawu-hlawu lexi nga ri ki kahle; na

40 (b) ku tirhisa endlele ro lulamisa leswi khale a swi hambolokile (affirmative action) hi tlhelo ro endlele ku lulamisa leswi a swi nga ri kahle eka matholele tani hi laha swi veke xiswona xikarhi ka mintlawe leyi a yi hlawuleriwela etlhelo, leswaku sweswi ku ta vonisisiwa leswaku ku va na ndzingano wa vuyimeri eka mikhetekanyo hinkwayo ya mintirho na swiyimo eka ntlawa wa vatirhi.

45

Nhlamuselo ya Nawu lowu

3. Nawu lowu wu fanela ku hlamuseriwa—

(a) hi tlhelo ro va ku landzeleriwa leswi nga ka Vumbiwa;

(b) ku endlele ku nyika matimba ya xikongomelo xa wona;

50 (c) ku lemukiwa tirhisele rihi ni rihi lerinene tani hi laha swi tivisiweke ha kona ku ya hi Nawu lowu kumbe ku ya hi nawu wihi ni wihi wa vuthori/ntirho; na

(d) hi tlhelo ro landzelela nawu wa tinxaka wa xitshembhiso xa Riphabliki, ngopfu-ngopfu leti kumekaka eka ntwanano wa Nhlangano wa Mintirho ya Tinxaka (No. 111) mayelana na Xihlawu-hlawu eka Mayelana na Vuthori na

55 Ntirho

Application of this Act

4. (1) Chapter II of this Act applies to all employees and employers.
(2) Except where Chapter III provides otherwise, Chapter III of this Act applies only to designated employers and people from designated groups.
(3) This Act does not apply to members of the National Defence Force, the National Intelligence Agency, or the South African Secret Service¹. 5

CHAPTER II**PROHIBITION OF UNFAIR DISCRIMINATION****Elimination of unfair discrimination**

5. Every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice. 10

Prohibition of unfair discrimination

6. (1) No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth. 15
(2) It is not unfair discrimination to—
(a) take affirmative action measures consistent with the purpose of this Act; or
(b) distinguish, exclude or prefer any person on the basis of an inherent requirement of a job. 20
(3) Harassment of an employee is a form of unfair discrimination and is prohibited on any one, or a combination of grounds of unfair discrimination listed in subsection (1).

Medical testing

7. (1) Medical testing of an employee is prohibited, unless— 25
(a) legislation permits or requires the testing; or
(b) it is justifiable in the light of medical facts, employment conditions, social policy, the fair distribution of employee benefits or the inherent requirements of a job.
(2) Testing of an employee to determine that employee's HIV status is prohibited unless such testing is determined to be justifiable by the Labour Court in terms of section 50(4) of this Act. 30

1. These persons are not defined as "employees" under the Labour Relations Act. However, they could bring unfair discrimination matters before the Constitutional Court, or lodge complaints with the Human Rights Commission.

Matirhisele ya Nawu lowu

4. (1) Kavanyisa ka II eka Nawu lowu ku khumba vathoriwa/vatirhi hinkwavo na vanyiki va mintirho.

(2) Handle ka laha Kavanyisa ka III ku nga ha va ku hlamuseriwile hi ndlela yin'wana, Kavanyisa ka III ka Nawu lowu ku khumba vathori lava hlawuriweke na vanhu lava humaka hi le ka mintlawe leyi nga hlawuriwa.

(3) Nawu lowu a wu khumbi lava nga swirho swa Vuthu ra Vusirhelelo bya Rixaka, Nhlangano wa Vuhlori bya Rixaka, kumbe Ntirho wa Swihundla eAfrika Dzonga¹.

KAVANYISA KA II

10

KU SIVELA XIHLAWU-HLAWU LEXI NGA RI KI KAHLE**Ku herisa xihlawu-hlawu lexi nga ri ki kahle**

5. Muthori wun'wana ni wun'wana u fanela ku va a teka magoza yo hluvukisa mhaka yo va ku va ni minkarhi ya timfanelo to ringanana eka ndhawu ya ntirho hi tlhelo ro herisa xihlawu-hlawu lexi nga ri ki kahle eka endlele ra nawu wa mafambisele
15 waha ni waha ya ndhawu ya ntirho kumbe eka ntirho.

Ku sivela xihlawu-hlawu lexi nga ri ki kahle

6. (1) Ku hava munhu loyi a nga ha endlaka xihlawu-hlawu, hi endlele leri kongomeke kumbe hi ndlela yin'wana eka muthoriwa, eka endlele rihi ni rihi ra vuthori kumbe ntirho, hikwalaho ka xikongomelo xin'we kumbe swo tala, ku katsa mhaka ya
20 rixaka, rembewu, xinuna kumbe xisati, ku biha emirini, ku teka no tekiwa ni ku va u nga vi eka swa vukati, vutihlamuleri bya ndyangu, ntlawa wa rixaka kumbe ku tumbuluka eka vanhu va mahanyeke yo karhi, muhlovo wa nhonge, ku voyamela eka tlhelo rin'we ra rimbewu, vukhale, vutsoniwa, vukhonger, xiyimo xa HIV, ripfalo, vutshembheri, maehleketelele eka swa tipolitiki, mfuwo, ririmi no velekiwa.
25 (2) A hi mkaka ya xihlawu-hlawu xo biha eka ku—
(a) ku teka magoza yo lulamisa leswi khale a swi hambolokile leswi yelanaka na xikongome lo xa Nawu lowu; kumbe
(b) ku hlawula, ku khira kumbe ku tsakela munhu wihi na wihi hikwalaho ka leswi swi nga swilaveko leswi ti simekeke tani hi swilaveko swa ntirho.
30 (3) Ku dunga-dunga (Harassment) mutirhi i xiyimo xa xihlawu-hlawu lexi nga ri ki kahle naswona i mhaka leyi aleriwaka ku va yi endlwa eka mani na mani, kumbe eka ku katsa mhaka ya xihlawu-hlawu lexi nga ri ki kahle tani hi laha swi xaxametiweke ha kona eka xiyenganyana xa (1).

Swikambelo swa Vutshunguri

35 7. (1) Ku kamberiwa hi ndlela ya vutshunguri eka muthoriwa swa aleriwa/a swi pfumeleriwi handle ka loko—
(a) nawu wa mfumo wo pfumelela kumbe wu koxa leswaku ku kamberiwa; kumbe
(b) swi ri leswi nyikiweke mfanelo yo endla tano hikwalaho ka xikongomelo xa
40 ntiyiso lowu lavekaka eka swa vutshunguri, swiboho swa vuthori/ntirho, nawu wa mafambisele xikarhi ka vanhu, ku averiwa no phakeriwa hi ndlela leyinene leswi pfunaka eka vatirhi kumbe swilaveko leswi tikombaka ku va swi ri kona eka ntirho.
(2) ku kambela mutirhi ku endlela ku tiva xiyimo xa HIV xa mutirhi a ku
45 pfumeleriwi handle ka loko ku kambela koloko ku voniwa ku fanerile hi Khoto ya ta Mintirho hi ku landza Xiyenge xa 50(4) xa Nawu lowu.

1. Vanhu lava a va hlamuseriwi tani hi tlhelo ro va va ri "vathoriwa" ehansi ka Nawu wa Vuxaka bya le Mintirhweni. Hambiswiritano, va nga swi kota ku yisa timhaka ta xihlawu-hlawu lexi nga ri ki lexinene eka Khoto ya Vumbiwa, kumbe va ngenisa kumbe ku yisa swivilelo eka Khomixini ya Timfanelo ta Vanhu.

Psychological testing and other similar assessments

8. Psychological testing and other similar assessments of an employee are prohibited unless the test or assessment being used—

- (a) has been scientifically shown to be valid and reliable;
- (b) can be applied fairly to all employees; and
- (c) is not biased against any employee or group.

5

Applicants

9. For purposes of sections 6, 7 and 8, “employee” includes an applicant for employment.

Disputes concerning this Chapter

10

10. (1) In this section, the word “dispute” excludes a dispute about an unfair dismissal, which must be referred to the appropriate body for conciliation and arbitration or adjudication in terms of Chapter VIII of the Labour Relations Act.

(2) Any party to a dispute concerning this Chapter may refer the dispute in writing to the CCMA within six months after the act or omission that allegedly constitutes unfair discrimination. 15

(3) The CCMA may at any time permit a party that shows good cause to refer a dispute after the relevant time limit set out in subsection (2).

(4) The party that refers a dispute must satisfy the CCMA that—

- (a) a copy of the referral has been served on every other party to the dispute; and 20
- (b) the referring party has made a reasonable attempt to resolve the dispute.

(5) The CCMA must attempt to resolve the dispute through conciliation.

(6) If the dispute remains unresolved after conciliation—

- (a) any party to the dispute may refer it to the Labour Court for adjudication; or
- (b) all the parties to the dispute may consent to arbitration of the dispute. 25

(7) The relevant provisions of Parts C and D of Chapter VII of the Labour Relations Act, with the changes required by context, apply in respect of a dispute in terms of this Chapter.

Burden of proof

11. Whenever unfair discrimination² is alleged in terms of this Act, the employer 30 against whom the allegation is made must establish that it is fair.

2. Section 6(1) lists the following as prohibited grounds of discrimination:

“race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth”.

Vukamberi bya ntivo-miehleketo na mimpimanyiso yin'wana yo fana

8. Vukamberi bya ntivo-miehleketo na mimpimanyiso yin'wana yo fana ya mutirhi a byi pfumeleriwi handle ka loko vukamberi kumbe ku pimanyisa loku tirhisiwaka—

- (a) ku kombisiwile hi ndlela ya xisayense ku va byi ri lebyi tirhisekaka no tshembeka;
- (b) ku nga endliwaka hi ndlela leyinene eka vatirhi hinkwavo; na
- (c) a ku nga voyameli eka mutirhi kumbe ntlawa wihi na wihi wo karhi.

Vakomberi va mintirho

9. Hikwalaho ka swikongomelo swa swiyenge swa 6,7 na 8 “muthoriwa” swi katsa mukomberi wa ntirho eka vuthori/entirhweni.

Minkanetano/Madzolonga mayelana na Kavanyisa loku

10. (1) Eka xiyenge lexi, rito leri ra “nkanetano” ri veka etihelo ku kanetana mayelana no hlongoriwa hi ndlela leyi nga fanelangiki, laha swi fanelaka ku va swi kongomisiwa eka huvo leyi nga kongomana kahle ni mhaka leyi laha yi tirhanaka na ku twananisa no lamula kumbe ku ahlula hi ku ya hi Kavanyisa ka VIII ka Nawu wa Vuxaka bya le Mintirhweni.

(2) Ntlawa wihi na wihi lowu nga eka nkaneto mayelana na kavanyisa loku, ku nga ha kongomisiwa nkanetano wa kona hi ku tsala kunene eka CCMA/KLHA. Ku nga si hundza ntsevu wa tinhweti endzhaku ka loko ka ha ku humelela mhaka yo tano kumbe loko ka ha ku va ku nga endliwanga leswi nga va xivangelo xa mpumbo wa xihlawu-hlawu lexi nga fanelangiki.

(3) Khomixini yo Lamula, ku Hlanganisa no Ahlula (CCMA/KLHA) yi nga swi kota ku va eka nkarhi wihi ni wihi yi pfumelela ntlawa lowu kombaka ku va yi ri mhaka leyi faneleke kahle ku kongomisa mholovo endzhaku ka loko nkarhi lowu faneleke lowu nga na xipimelo tani hi laha swi kombisiweke ha kona eka xiyengenyana xa (2).

(4) Ntlawa lowu kongomisa mholovo/nkanetano wu fanela ku va wu enetisa Khomixini yo Lamula, ku Hlanganisa no Ahlula (CCMA/KLHA) leswaku—

- (a) kopi ya papila ra murhumeri ri yisiwile eka un'wana ni un'wana loyi a khumbekaka hi nkanetano; ni
- (b) leswaku loyi a endlaka ku kongomisa ka papila ra kona a sungurile a ringeta ku herisa nkanetano/mholovo.

(5) CCMA/KLHA kumbe Khomixini yo Lamula, ku Hlanganisa no Ahlula yi fanela ku va yi ringeta ku herisa nkanetano/mholovo hi ndlela yo lamulela.

(6) Loko mholovo/nkanetano wo ka wu nga herisiwi endzhaku ka ku lamula—

- (a) ntlawa wihi na wihi lowu khumbekaka eka nkanetano wu nga ha kongomisa mhaka leyi eka Khoto ya Mintirho leswaku mhaka yi ahluriwa; kumbe
- (b) mintlawu hinkwayo eka mholovo/nkanetano yi nga ha nyika mpfumelelo eka ku va mhaka yi ololoxiwa hi ndlela yo ahlula kunene.

(7) Makungu lama yelanaka ya Xiphemu xa 5 C na D na xa Kavanyisa ka VII xa nawu wa Vuxaka bya le Mintirhweni, ni mihundzuluxo leyi lavekaka eka nhlamuselo, ya tirhisiwa mayelana na mhaka ya mikanetano/timholovo hi ku ya hi Kavanyisa loku.

Mpingu wa xikombiso xa ntiyiso

11. Loko nkarhi wihi na wihi ku va na xihlawu-hlawu lexi nga fanelangiki² lexi ku pumbiwaka xona hi ku ya hi Nawu lowu, muthori loyi ku endlwaka mpumbo eka yena u fanela ku vonisisa leswaku swi endlwe hi ndlela leyi faneleke kahle.

2. Xiyenge xa 6 (1) xi longoloxa leswi landzelaka tani hi loko swi ri swikongomelo swa xihlawu-hlawu: “rixaka, rimbewu, xinuna na xisati, ku biha emirini kumbe ku tika, ku teka no tekiwa, vutihlamuleri endyangwini ku tumbuluka eka rixaka ni vanhu vo karhi, muhlovo wa nhlonge, mavoyamele eka rimbewu ro karhi, vukhale, ripfalo, vutshemberi, maehleketelele ya swa tipolitiki, mfuwo, ririmi na ku velekiwa”

CHAPTER III

AFFIRMATIVE ACTION

Application of this Chapter

12. Except where otherwise provided, this Chapter applies only to designated employers. 5

Duties of designated employers

13. (1) Every designated employer must, in order to achieve employment equity, implement affirmative action measures for people from designated groups in terms of this Act.

- (2) A designated employer must— 10
- (a) consult with its employees as required by section 16;
 - (b) conduct an analysis as required by section 19;
 - (c) prepare an employment equity plan as required by section 20; and
 - (d) report to the Director-General on progress made in implementing its employment equity plan, as required by section 21. 15

Voluntary compliance with this Chapter

14. An employer that is not a designated employer may notify the Director-General that it intends to comply with this Chapter as if it were a designated employer.

Affirmative action measures

15. (1) Affirmative action measures are measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce of a designated employer. 20

(2) Affirmative action measures implemented by a designated employer must include— 25

- (a) measures to identify and eliminate employment barriers, including unfair discrimination, which adversely affect people from designated groups;
- (b) measures designed to further diversity in the workplace based on equal dignity and respect of all people;
- (c) making reasonable accommodation for people from designated groups in order to ensure that they enjoy equal opportunities and are equitably represented in the workforce of a designated employer; 30
- (d) subject to subsection (3), measures to—
 - (i) ensure the equitable representation of suitably qualified people from designated groups in all occupational categories and levels in the workforce; and 35
 - (ii) retain and develop people from designated groups and to implement appropriate training measures, including measures in terms of an Act of Parliament providing for skills development.

KAVANYISA KA III**KU LULAMISA LESWI KHALE A SWI HOMBOLOKILE****Tirhisele ra Kavanyisa loku**

12. Handle ka laha swi endliweke/nyikiweke, Kavanyisa loku ku tirhana na vathori
5 lava hlawuriweke ntsena.

Mintirho ya vathori lava hlawuriweke

13. (1) Muthori un'wana ni un'wana loyi a hlawuriweke, u fanela kuva loko a lava
ku fikelela eka ndzingano wa vuthori, a tirhisa endlele leri ro lulamisa leswi khale a swi
hombolokile eka vanhu lava humaka eka mintlawe leyi hlawuriweke hi ku ya hi Nawu
10 lowu.

(2) Muthori loyi a hlawuriweke u fanela ku va a—

- (a) tsundzuxana na vathoriwa/vatirhi va yena tani hi laha swi lavekaka ha kona
eka xiyenge xa 16;
- 15 (b) endla ntlhantlho wa vuxopaxopi tani hi laha swi lavekaka ha kona eka
xiyenge xa 19;
- (c) lulamisa rhengu ra ndzingano wa vuthori tani hi laha swi lavekaka ha kona
eka xiyenge xa 20; no
- 20 (d) vika eka Mulawuri-Jenerala hi mayelana na nhluvuko lowu endliweke eka
matirhisele ya pulani ya ndzingano wa vuthori, tani hi laha swi lavekaka ha
kona eka xiyenge xa 21.

Ku tinyiketa eka ku landzelela Kavanyisa loku

14. Muthori loyi a nga hlawuriwangiki a nga ha tivisa Mulawuri-Jenerala leswaku
yena u anakanya ku va a landzelela leswi nga ka Kavanyisa loku wonge hi loko a ri
muthori loyi a nga hlawuriwa.

25 Magoza yo lulamisa leswi khale a swi hambolokile

15. (1) Magoza yo lulamisa leswi khale a swi hambolokile i magoza lama nga
endliwa ehenhla ko endlela ku vonisisa leswaku vanhu lava va nga fanela kahle eka
swilaveko swa vona lava humaka hi le ka mintlawe leyi hlawuriweke na vona va va na
nkarhi na timfanelo to ringanana eka vuthori ni leswaku na vona va vekiwa eka xiyimo
30 xo ringanana eka mikhetekanyo hinkwayo ya mintirho na swiyelo hinkwaswo eka
ntlawa wa vatirhi lava nga hansi ka muthori loyi a hlawuriweke.

(2) Magoza ya endlelo ro lulamisa leswi khale a swi hambolokile lama tirhisiwaka
hi muthori loyi a hlawuriweke ya fanela ku katsa—

- 35 (a) magoza yo kombisa no herisa mindzilikana ya vuthori, ku katsa xihlawu-
hlawu lexi nga fanelangiki, lexi khumbaka vanhu vo huma hi le ka mintlawe
leyi nga hlawuriwa hi ndlela leyi nga amukelekiki;
- (b) magoza lama nga endliwa hi tlhelo ro vonisisa leswaku ku yiwa emahlweni
ni ku va na ku hambana-hambana eka ndhawu ya ntirho swi endliwa hi ndlela
40 ya masungulo yo va na ndzingano eka ku xiximana na xichavo eka vanhu
hinkwavo;
- (c) ku endla vurhuhelo lebyi amukelekaka bya vanhu lava humaka eka
mintlawe leyi nga hlawuriwa hi tlhelo ro endlela ku vonisisa leswaku na vona
va ta kota ku va va tiphina hi ndzingano wa swiyimo leswi nga kona no va
ni vuyimeri lebyi ringanaka eka ntlawa wa vatirhi ehansi ka muthori loyi a
45 nga hlawuriwa;
- (d) hi ku ya hi xiyengenyana xa (3) magoza yo—
 - (i) vonisisa leswaku ku va na vuyimeri lebyi nga na ndzingano bya vanhu
lava nga na swilaveko leswinene xikarhi ka vanhu lava humaka hi le ka
mintlawe leyi nga hlawuriwa eka mikhetekanyo hinkwayo ya mintirho
50 na swiyelo eka ntlawa wa vatirhi; na
 - (ii) ku hlayisa no hlukukisa vanhu lava humaka eka mintlawe leyi nga
nhlawuriwa no tirhisa tindlela letinene ta ndzetelo, ku katsa na
maendlele hi ku ya hi Nawu wa Palamende eka ku nyika tindyondzo to
hlukukisa vutivi bya ntirho.

(3) The measures referred to in subsection (2)(d) include preferential treatment and numerical goals, but exclude quotas.

(4) Subject to section 42, nothing in this section requires a designated employer to take any decision concerning an employment policy or practice that would establish an absolute barrier to the prospective or continued employment or advancement of people who are not from designated groups. 5

Consultation with employees

16. (1) A designated employer must take reasonable steps to consult and attempt to reach agreement on the matters referred to in section 17—

(a) with a representative trade union representing members at the workplace and its employees or representatives nominated by them; or 10

(b) if no representative trade union represents members at the workplace, with its employees or representatives nominated by them.

(2) The employees or their nominated representatives with whom an employer consults in terms of subsection (1)(a) and (b), taken as a whole, must reflect the interests of— 15

(a) employees from across all occupational categories and levels of the employer's workforce;

(b) employees from designated groups; and

(c) employees who are not from designated groups. 20

(3) This section does not affect the obligation of any designated employer in terms of section 86 of the Labour Relations Act to consult and reach consensus with a workplace forum on any of the matters referred to in section 17 of this Act.

Matters for consultation

17. A designated employer must consult the parties referred to in section 16 concerning— 25

(a) the conduct of the analysis referred to in section 19;

(b) the preparation and implementation of the employment equity plan referred to in section 20; and

(c) a report referred to in section 21. 30

Disclosure of information

18. (1) When a designated employer engages in consultation in terms of this Chapter, that employer must disclose to the consulting parties all relevant information that will allow those parties to consult effectively.

(2) Unless this Act provides otherwise, the provisions of section 16³ of the Labour Relations Act, with the changes required by context, apply to disclosure of information. 35

Analysis

19. (1) A designated employer must collect information and conduct an analysis, as prescribed, of its employment policies, practices, procedures and the working

3. Section 16 of the Labour Relations Act contains detailed provisions about disclosure of information, and disputes concerning disclosure. Regulations concerning the conduct of an analysis may, under section 55, read with section 19, be made. However, the employment policies and practices defined in section 1 are an indication of the potential areas of both direct and indirect discrimination that should be subject to analysis.

(3) Magoza lama nga kongomisiwa eka xiyengenyana xa (2)(d) ma katsa ku pfuneta hi tlhelo ra vutihlawuleri ni swikongomelo swa nyumeresi, kambe a swi katsi mhaka ya swa mimpimo (quotas).

- (4) Hi ku ya hi xiyenge xa 42, ku hava nchumu eka xiyenge lexi, lexi lavaka muthori
 5 loyi a nga hlawuriwa ku va a teka xiboho xihhi na xihhi mayelana na nawu wa mafambisele ya swa vuthori kumbe endlele ra ntirho leri nga ta vanga ku tumbuluxiwa ka ndzilikana wa xiviri eka vuthori lebyi fanelaka ku va kona kumbe ku ya emahlweni ka vanhu lava nga humiki hi le ka mintlawe leyi nga hlawuriwa.

Ku tihlanganisa no tsundzuxana na vathoriwa

- 10 16. (1) Muthori loyi a nga hlawuriwa u fanela ku teka magoza lamanene a tihlanganisa no tsundzuxana no ringeta ku fikelela eka twanano eka timhaka leti kongomisiweke eka xiyenge xa 17—

(a) laha ku nga na vayimeri va nhlango wa vatirhi laha wu yimelaka vatirhi va ndhawu ya ntirho ni vatirhi kumbe vayimeri lava hlawuriweke hi vona;
 15 kumbe

(b) loko ku ri hava nhlango wo yimela vatirhi eka ndhawu ya ntirho ni vathoriwa va kona kumbe vayimeri lava nga hlawuriwa hi vona.

- (2) Vathoriwa/Vatirhi kumbe vayimeri lava hlawuriweke hi vatirhi laha muthori a vaka ni ku tihlanganisa no tsundzuxana na vona hi ku ya hi xiyengenyana xa (1)(a) na
 20 (b), lexi tekiwaka xikan'we xisweswo, swi fanela ku kombisa leswi tsakeriwaka no tsundzuxana—

(a) vathori/vathoriwa lava humaka eka matlhelo hinkwawo ya mikhetekanyo ya mintirho ni swiyelo swa ntlawa wa vathori;

(b) vatirhi/vathoriwa lava humaka eka mintlawe leyi nga hlawuriwa; na

- 25 (c) vatirhi/vathoriwa lava nga humiki hi le ka mintlawe leyi nga hlawuriwa.

(3) Xiyenge lexi a xi khumbi mfanelo ya muthori wihi na wihi loyi a nga hlawuriwa hi ku ya hi xiyenge xa 86 xa Nawu wa Vuxaka bya le Mintirhweni eka ku tsundzuxana no fikelela eka ntwanano na foramu ya le ka ndhawu ya ntirho eka timhaka tihi na tihi leti kongomisiweke eka xiyenge xa 17 xa Nawu lowu.

30 Timhaka leti fanelaka ku va ni vutihlanganisi no tsundzuxana

17. Muthori loyi a hlawuriweke u fanele ku tihlanganisa no tsundzuxana na mintlawe leyi kongomisiweke eka xiyenge xa 16 mayelana na—

(a) xiyimo xa ntlhantlho lowu kongomisiweke eka xiyenge xa 19;

- 35 (b) ndzulamiso na matirhisele ya ndzingano wa pulani ya ndzingano wa vuthori/ntirho lowu kongomisiweke eka xiyenge xa 20; na

(c) xiviko lexi kongomisiweke eka xiyenge xa 21.

Ku paluxa marungula

18. (1) Loko muthori loyi a nga hlawuriwa a ti nyiketa eka ku tsundzuxa no va ni vutihlanganisi hi ku ya hi Kavanyisa loku, leswaku muthori u fanela ku paluxa eka
 40 mintlawe leyi ku endlwaka vutihlanganisi na yona mayelana na marungula lama yelanaka kahle eka ku endlela leswaku mintlawe yi kota ku endla vutihlanganisi no tsundzuxana hi endlele leri ri nga ra nkoka.

- (2) Handle ka loko nawu lowu wo vula swin'wana, makungu ya xiyenge xa 16³ xa Nawu wa Vuxaka bya le Mintirhweni, ni mihundzuluxo leyi lavekaka eka vundzeni bya
 45 hlamuselo, swa tirhisiwa eka ku endlela ku paluxa marungula.

Ntlhantlho

19. (1) Muthori loyi a nga hlawuriwa u fanela ku hlengeleta marungula a tlhela a endla ntlhantlho, tani hi laha swi hlamuseriweke ha kona, mayelana na nawu wa

3. Xiyenge xa 16 xa Nawu wa Vuxaka bya le Mintirhweni xi na vuxokoxoko bya makungu mayelana na ku paluxiwa ka marungula, na minkanetano ya mayelana na ku paluxa. Swinawana mayelana na maendlele ya ntlhantlho swi nga ha hlaiwa swin'we na xiyenge xa 55 na xiyenge xa 19. Hambiswirritano, milawu ya mafambisele ya vuthori na tirhele leswi nga hlamuseriwa eka xiyenge xa L i mhaka leyi kombaka tindhawu leti nga na xihlawu-hlawu xa xiviri ni lexi xi nga kongomiki hi xiviri lexi fanelaka ku va xi ntlhantlhiwa kumbe ku xopaxopiwa.

environment, in order to identify employment barriers which adversely affect people from designated groups.

(2) An analysis conducted in terms of subsection (1) must include a profile, as prescribed, of the designated employer's workforce within each occupational category and level in order to determine the degree of underrepresentation of people from designated groups in various occupational categories and levels in that employer's workforce. 5

Employment equity plan

20. (1) A designated employer must prepare and implement an employment equity plan which will achieve reasonable progress towards employment equity in that employer's workforce. 10

(2) An employment equity plan prepared in terms of subsection (1) must state—

- (a) the objectives to be achieved for each year of the plan;
- (b) the affirmative action measures to be implemented as required by section 15(2); 15
- (c) where underrepresentation of people from designated groups has been identified by the analysis, the numerical goals⁴ to achieve the equitable representation of suitably qualified people from designated groups within each occupational category and level in the workforce, the timetable within which this is to be achieved, and the strategies intended to achieve those goals; 20
- (d) the timetable for each year of the plan for the achievement of goals and objectives other than numerical goals;
- (e) the duration of the plan, which may not be shorter than one year or longer than five years;
- (f) the procedures that will be used to monitor and evaluate the implementation of the plan and whether reasonable progress is being made towards implementing employment equity; 25
- (g) the internal procedures to resolve any dispute about the interpretation or implementation of the plan;
- (h) the persons in the workforce, including senior managers, responsible for monitoring and implementing the plan; and 30
- (i) any other prescribed matter.

(3) For purposes of this Act, a person may be suitably qualified for a job as a result of any one of, or any combination of that person's—

- (a) formal qualifications; 35
- (b) prior learning;
- (c) relevant experience; or
- (d) capacity to acquire, within a reasonable time, the ability to do the job.

4. Guidelines regarding the factors to be taken into account in determining numerical goals will be included in a Code of Good Practice. However, the factors listed in section 42(a) (Assessment of compliance) are relevant to setting numerical goals in each organisation.

mafambisele eka swa vuthori, matirhele, tindlela leti landzeleriwa na ndhawu yo tirhela eka yona, eka ku endlela ku kombisa mindzilikana ya vuthori leyi khumbaka vanhu lava humaka eka mintlawe leyi nga hlawuriwa hi ndlela leyi nga amukelekiki.

(2) Ntlhantlho lowu nga endliwa hi ku ya hi xiyengenyana xa (1)

- 5 wu fanela ku katsa xihlaya (profile), tani hi laha swi hlamuseriweke ha kona, mayelana na ntlawa wa vatirhi lava nga hansi ka muthori loyi a nga hlawuriwa eka khetekanyo wa ntirho wun'wana ni wun'wana kun'we ni xiyelo hi tihelo ro endlela ku kumisisa mpimo wa vuyimeri lebyi nga ringaniki bya vanhu lava humaka eka mintlawe leyi nga hlawuriwa eka mintirho ya mikhetekanyo yo hambana-hambana na swiyelo
10 eka ntlawa wa muthori yolo.

Pulani kumbe makungu ya vuthori bya ndzingano

20. (1) Muthori loyi a hlawuriweke u fanela ku lulamisa no tirhisa makungu ya ndzingano wa vuthori leswi nga ta endla leswaku ku va na ku fikelela eka ku ya emahlweni hi ndlela leyinene ya ndzingano wa vuthori eka ntlawa wa vatirhi wa
15 muthori wo tano.

(2) Makungu ya ndzingano wa vuthori lama lulamisiweke hi ku ya hi xiyengenyana xa (1) ma fanela ku hlamusela—

- (a) swikongomelo leswi nga ta fikeleriwa eka lembe rin'wana na rin'wana mayelana na pulani kumbe makungu;
20 (b) magoza yo lulamisa leswi hambolokeke khale ya fanela ku va ma tirhisiwa tani hi laha swi lavekaka ha kona eka xiyenge xa 15(2);
(c) laha vuyimeri byi nga eka xiyimo lexintsongo xa vanhu lava humaka eka ntlawa lowu hlawuriweke byi kombisiwile hi ntlhantlho, swikongomelo⁴ swa
25 nyumeresi swi fanela ku fikelela vuyimeri bya ndzingano bya vanhu lava nga na timfanelo kumbe swilaveko swa vutivi lebyi ringaneke xikarhi ka vanhu vo huma eka mintlawe leyi hlawuriweke eka khetekanyo wa ntirho wun'wana ni wun'wana ni xiyelo eka ntlawa wa vatirhi, nxaxamelo wo
30 komba minkarhi (Time Table) laha eka wona swi nga ta koteka ku fikelela eka xikongomelo lexi, na tindlela leti ti anakanyiweke ku ti tirhisa eka ku fikelela eka swikongomelo sweswo;
35 (d) nxaxamelo wo komba minkarhi wa lembe rin'wana ni rin'wana wa makungu kumbe pulani yo fikelela eka swikongomelo na swinavelo handle ka ku katsa swikongomelo swa nyumeresi;
(e) ku leha ka nkarhi wa makungu kumbe pulani, laha swi nga ha vaka swi nga
40 komanga eka nkarhi wa le hansi ka lembe kumbe nkarhi wo leha ku tlula ntlhanu wa melembe;
(f) tindlela ta malawulele leti nga ta tirhisiwa eka ku lawula no endla mpimanyiso wa matirhisele ya makungu kumbe pulani ni loko ku ri hi leswaku ka karhi ka endliwa nhluvuko lowu amukelekaka wu ri karhi wu
45 endleka eka ku tirhisiwa ka ndzingano eka vuthori kumbe ntirho;
(g) tindlela ta xikaya kumbe xindyangu leti tirhisiwaka eka ku ololoxa swiphiko kumbe minkaneto yihi na yihi mayelana na mahlamuselelo kumbe matirhisele ya makungu kumbe pulani;
(h) vanhu lava va nga eka ntlawa wa vatirhi, ku katsa na vamininjere va swiyimo
50 swa le henhla, lava nga na vutihlamuleri byo lawula no tirhisa pulani kumbe makungu; na mhaka yihi na yihi leyi hlawuriweke, kumbe ku hlamuseriwa.
(i) mhaka yihi na yihi leyi hlamuseriweke.
(3) Hikwalaho ka swikongomelo swa Nawu lowu, munhu swi nga ha endleka ku va a pasile ku ringana no enetisa timfanelo hinkwato ta ntirho hikokwalaho ka xihhi ni xihhi
55 xin'we xa, kumbe ku katsana kwihi ni kwihi ka—
(a) tidyondzo ta ximfumo leti munhu yaloye a ti dyondzeke;
(b) leswi munhu yaloye a nga ta a swi dyondzile;
(c) ntokoto lowu yelanaka wa munhu wo tano; kumbe
(d) munhu wo tano a ri na ntamu wo kota ku fikelela, hi nkarhi lowu twakalaka, vuswikoti byo endla ntirho.

4. Swiletelo mayelana na timhaka leti fanelaka ku va ti lemukiwa eka kukumisisa swikongomelo swa xinyumeresi swi ta katsiwa eka Milawu ya Matirhele Lamanene (Code of Good Practice). Hambiswiritano, timhaka leti xaxametiweke eka xiyenge xa 42(a) (Mpimanyiso wa vulandzeleri/vutixaxameti (Assessment of compliance) hi leti yelanaka ni ku veketela swikongomelo swa xinyumeresi eka nhlango wun'wana ni wun'wana.

(4) When determining whether a person is suitably qualified for a job, an employer must—

- (a) review all the factors listed in subsection (3); and
- (b) determine whether that person has the ability to do the job in terms of any one of, or any combination of those factors.

5

(5) In making a determination under subsection (4), an employer may not unfairly discriminate against a person solely on the grounds of that person's lack of relevant experience.

(6) An employment equity plan may contain any other measures that are consistent with the purposes of this Act.

10

Report⁵

21. (1) A designated employer that employs fewer than 150 employees must—

- (a) submit its first report to the Director-General within 12 months after the commencement of this Act or, if later, within 12 months after the date on which that employer became a designated employer; and
- (b) thereafter, submit a report to the Director-General once every two years, on the first working day of October.

15

(2) A designated employer that employs 150 or more employees must—

- (a) submit its first report to the Director-General within six months after the commencement of this Act or, if later, within six months after the date on which that employer became a designated employer; and
- (b) thereafter, submit a report to the Director-General once every year on the first working day of October.

20

(3) Despite subsections (1) and (2), a designated employer that submits its first report in the 12-month period preceding the first working day of October, should only submit its second report on the first working day of October in the following year.

25

(4) The reports referred to in subsections (1) and (2) must contain the prescribed information and must be signed by the chief executive officer of the designated employer.

(5) An employer who becomes a designated employer in terms of this Act must—

30

- (a) report as contemplated in this section for the duration of its current employment equity plan; and
- (b) notify the Director-General in writing if it is unable to report as contemplated in this section, and give reasons therefor.

(6) Every report prepared in terms of this section is a public document.

35

Publication of report

22. (1) Every designated employer that is a public company must publish a summary of a report required by section 21 in that employer's annual financial report.

(2) When a designated employer within any organ of state has produced a report in terms of section 21, the Minister responsible for that employer must table that report in Parliament.

40

5. The first report will refer to the initial development of and consultation around an employment equity plan. The subsequent reports will detail the progress made in implementing the employment equity plan.

(4) Loko ku kumisisiwa loko ku ri leswaku munhu u fanerile kahle ku endla ntirho, muthori u fanele ku—

- (a) xiyisisa timhaka hinkwato leti nga xaxametiwa eka xiyengenyana xa (3); na
- (b) ku kumisisa loko ku ri leswaku munhu loyi a khumbekaka u na vuswikoti byo tirha ntirho hi ku landza yihi na yihi yin'we ya, kumbe ku katsana kwihi na kwihi ka timhaka ta kona.

(5) Eka ku kumisisa ehansi ka xiyengenyana xa (4), muthori a nga ka a nga tirhisi xihlawu-hlawu hi ndlela leyi nga ri ki leyinene ehenhleri ka munhu hikokwalaho ka ku va munhu yaloye a nga ri na ntokoto lowu faneleke ntsena.

- (6) Makungu ya ndzingano wa vuthori ma nga ha va ma ri na mimpimo yihi na yihi yin'wana leyi fambelanaka kahle na swikongomelo swa Nawu lowu.

Xiviko⁵

21. (1) Muthori loyi a hlawuriweke loyi a tholaka vatirhi lava nga hansi ka 150 u fanela—

- (a) a ngenisa xiviko xa yena xo sungula eka Mulawuri-Jenerala ku nga si hela 12 wa tinhweti endzhaku ka ku sungula ku tirha ka Nawu lowu kumbe, loko ko va endzhaku, ku va nkarhi lowu nga ri ki ehansi ka 12 wa tinhweti endzhaku ka siku leri muthori a veke muthori wo hlawuriwa; naswona
- (b) endzhaku ka sweswo, ku rhumeriwa xiviko eka Mulawuri-Jenerala kan'we eka malembe mambirhi manwana ni manwana, eka siku ro sungula ro tirha ra Nhlangua.

(2) Muthori loyi a nga hlawuriwa loyi a tholaka 150 wa vatirhi kumbe ku tlula u fanela—

- (a) ku rhumela xiviko xo sungula eka Mulawuri-Jenerala ku nga si hela ntsevu wa tinhweti endzhaku ka ku sungula ku tirha ka Nawu lowu kumbe loko ko va endzhaku, ku fanela ku va ntsevu wa tinhweti endzhaku ka siku leri muthori wo tano a nga va muthori loyi a hlawuriweke; naswona
 - (b) endzhaku ka sweswo, ku rhumeriwa xiviko eka Mulawuri-Jenerala kan'we eka lembe rin'wana ni rin'wana eka siku ro sungula ra ntirho ra Nhlangua.
- (3) Handle ka swiyengenyana swa (1) na (2), muthori loyi a hlawuriweke loyi a rhumelaka xiviko xa yena xo sungula eka 12 wa tinhweti leti rhangeriweke hi siku ro sungula ra ntirho ra Nhlangua, u fanela ku va a rhumela xiviko xa vumbirhi eka siku ro sungula ra ntirho ra Nhlangua eka lembe leri landzelaka.

- (4) Swiviko leswi kongomisiweke eka swiyengenyana swa (1) na (2) swi fanela ku va swi ri na marungula lama hlawuriweke naswona swi fanela ku va swi sayiniwile hi mutirhela mfumo wa xiyimo xa le henhla loyi a nga hansi ka muthori loyi a hlawuriweke.

(5) Muthori loyi a vaka muthori loyi a hlawuriweke hi ku landza Nawu lowu u fanele—

- (a) ku vika tani hi laha swi ringanyetiwa eka xiyenge lexi eka nkarhi hinkwawo wa ku tirhisiwa ka pulani ya xona ya ndzingano wa mintirho/vuthori ya sweswi; na
 - (b) ku tivisa Mulawuri-Jenerala hi ku tsala loko ku ri leswaku wa tsandzeka ku vika tani hi laha swi ringanyetiwa eka xiyenge lexi, na ku nyika tinhlamuselo ta kona.
- (6) Xiviko xin'wana ni xin'wana lexi nga lulamisiwa ku ya hi xiyenge lexi xi tekiwa ri ri tsalwa ra mfumo ra mani na mani.

Ku hangalasiwa/tivisiwa ka xiviko

22. (1) Muthori wun'wana ni wun'wana loyi a hlawuriweke loyi a nga eka ndhawu ya vumaki ya mfumo u fanela ku va a tivisa kumbe ku hangalasa nkatsakanyo wa xiviko tani hi laha swi lavekaka ha kona eka xiyenge xa 21 xa mayelana na xiviko xa timali xa muthori lexi vikiwaka eka lembe rin'wana ni rin'wana.

- (2) Loko muthori loyi a hlawuriweke eka rhavi kumbe vandla rihi na rihi ra mfumo a humesile xiviko hi ku ya hi xiyenge xa 21, Holobyte loyi a nga na vutihlamuleri eka muthori wo tano u fanela ku va a andlala xiviko xo tano ePalamende.

5. Xiviko xo sungula xi ta kongomisa eka nhluvukiso wo sungula wa na ku vonisana ehenhleri ka pulani ya ndzingano wa mintirho/vuthori. Swiviko leswi swi nga ta landzela swi ta nyika vuxokoxoko bya ku ya emahlweni loku nga va kona mayelana na ku simeka pulani ya ndzingano wa mintirho/vuthori.]

Successive employment equity plans

23. Before the end of the term of its current employment equity plan, a designated employer must prepare a subsequent employment equity plan.

Designated employer must assign manager

24. (1) Every designated employer must— 5
- (a) assign one or more senior managers to take responsibility for monitoring and implementing an employment equity plan;
 - (b) provide the managers with the authority and means to perform their functions; and
 - (c) take reasonable steps to ensure that the managers perform their functions. 10
- (2) The assignment of responsibility to a manager in terms of subsection (1) does not relieve the designated employer of any duty imposed by this Act or any other law.

Duty to inform

25. (1) An employer must display at the workplace where it can be read by employees a notice in the prescribed form, informing them about the provisions of this Act⁶. 15
- (2) A designated employer must, in each of its workplaces, place in prominent places that are accessible to all employees—
- (a) the most recent report submitted by that employer to the Director-General;
 - (b) any compliance order, arbitration award or order of the Labour Court concerning the provisions of this Act in relation to that employer; and 20
 - (c) any other document concerning this Act as may be prescribed.
- (3) An employer who has an employment equity plan, must make a copy of the plan available to its employees for copying and consultation.

Duty to keep records

26. An employer must establish and, for the prescribed period, maintain records in respect of its workforce, its employment equity plan and any other records relevant to its compliance with this Act. 25

Income differentials

27. (1) Every designated employer, when reporting in terms of section 21(1) and (2), must submit a statement, as prescribed, to the Employment Conditions Commission established by section 59 of the Basic Conditions of Employment Act, on the remuneration and benefits received in each occupational category and level of that employer's workforce. 30
- (2) Where disproportionate income differentials are reflected in the statement contemplated in subsection (1), a designated employer must take measures to 35

6. Regulations may, under section 55, be made containing a standard notice, in all official languages, summarising the provisions of this Act, which all employers should display in every workplace.

Makungu ya ndzingano wa vuthori ya ndzandzelelano

23. Loko ku nga si fikiwa emakumu ka nkarhi wo hela ka makungu ya ndzingano wa vuthori bya nkarhi lowu nga si helaka, muthori loyi a hlawuriweke u fanela ku lulamisa pulani ya ndzingano wa vuthori ya nkarhi lowu taka.

5 Muthori loyi a nga hlawuriwa u fanela ku hlawula mininjere

24. (1) Muthori un'wana ni un'wana loyi a nga hlawuriwa u fanela—
- (a) ku hlawula mininjere un'we kumbe vo tala va swiyimo swa le henhla leswaku va ta va ni vutihlamuleri byo lawula no tirhisa makungu kumbe pulani ya ndzingano eka vuthori/ntirho;
 - 10 (b) ku nyiketa matimba eka timininjere ni leswi swi nga ta kota ku va tirha mintirho ya vona; na
 - (c) ku teka magoza lama amukelekaka yo vonisisa leswaku timininjere ti tirha mintirho ya tona;
- (2) Ku nyiketa vutihlamuleri eka mininjere hi ku ya hi xiyengenyana xa (1) a swi
15 ntshuxi muthori loyi a nga hlawuriwa eka ntirho wihi ni wihi lowu kombisiweke hi Nawu lowu, kumbe nawu wihi ni wihi.

Ntirho wo tivisa

25. (1) Muthori u fanela ku vekela xitiviso eka ndhawu ya ntirho laha xi nga ta koteka ku va xi hlava hi vathoriwa/vatirhi naswona xitiviso xi fanele ku va xi tsariwile
20 hi ndlela leyi hlamuseriweke, laha xi va tivisaka hi mayelana na makungu ya Nawu lowu⁶.

(2) Muthori loyi a hlawuriweke u fanela ku va eka ndhawu yin'wana ni yin'wana ya ntirho, a veka xitiviso eka tindhawu leti vonakaka kahle no kota ku fikeleriwa hi vatirhi hinkwavo—

- 25 (a) xiviko lexi xa ha ku humesiwaka hi muthori yoloze, lexi naswona a nga xi rhumela eka Mulawuri-Jenerala;
- (b) xileriso xihhi ni xihhi xo komba ku tixaxameta swin'we kumbe ku landzelela, nyiko kumbe sagwadi ro lamula no khongotela kumbe xileriso xa Khoto ya Mintirho mayelana na makungu ya Nawu lowu malunghana ra muthori
30 yoloze; na
- (c) tsalwa rihi na rihi rin'wana mayelana na Nawu lowu tani hi laha swi nga ha vaka swi hlamuseriwile ha kona.

(3) Muthori loyi a nga na makungu ya ndzingano eka vuthori kumbe ntirho, u fanela ku va a endla kopi ya makungu ya kona leswaku vatirhi va ta va na kopi laha va nga
35 kopaka no endlela ku va na vuhlanganisi na mhaka yo tsundzuxana.

Ntirho wo hlayisa tirhekodo

26. Muthori u fanela ku va na tirhekodo naswona eka nkarhi lowu hlamuseriweke u fanela ku hlayisa tirhekodo mayelana na ntlawa wa vatirhi va yena, makungu ya ndzingano wa ntirho wa yena na tirhekodo tihi na tihi leti yelanaka na ku landzelela
40 Nawu lowu.

Ku hambana ka miholo kumbe mali leyi yi ngenaka

27. (1) Muthori un'wana ni un'wana loyi a hlawuriweke, loko a nyika xiviko hi ku landza xiyenge xa 21(1) na xa (2), u fanele ku nyiketa xitatimende, tani hi laha xi vekiweke, eka Khomixini ya ta Matshamelo ya ta le Mintirhweni leyi simekiweke hi
45 xiyenge xa 59 xa Nawu wa Matshamelo ya Xisungu-sungu ya le Mintirhweni, eka mahakelelo na mimpfuno leyi amukeriweke eka nkhetakanyo wun'wana ni wun'wana wa ntirho na xiyimo xa vatirhi va muthori yaloze.

(2) Laha ku hambana ka miholo kumbe mali leyi yi ngenaka ku vonakalaka ku tlula mpimo eka xitatimende lexi ringanyetiwa eka xiyengenyana xa (1), muthori loyi a

6. Swinawana swi nga ha va, ehansi ka xiyenge xa 55, xi endlwa no va xi ri na xitiviso xa mpimo, hi tindzimi hinkwato ta ximfumo, laha ku endlwa natsakanyo wa makungu ya Nawu lowu, laha vathori hinkwavo va fanelaka ku wu veka eka ndhawu yin'wana ni yin'wana ya ntirho naswona laha xi vonakaka kahle.

progressively reduce such differentials subject to such guidance as may be given by the Minister as contemplated in subsection (4).

(3) The measures referred to in subsection (2) may include—

- (a) collective bargaining;
- (b) compliance with sectoral determinations made by the Minister in terms of section 51 of the Basic Conditions of Employment Act; 5
- (c) applying the norms and benchmarks set by the Employment Conditions Commission;
- (d) relevant measures contained in skills development legislation;
- (e) other measures that are appropriate in the circumstances. 10

(4) The Employment Conditions Commission must research and investigate norms and benchmarks for proportionate income differentials and advise the Minister on appropriate measures for reducing disproportional differentials.

(5) The Employment Conditions Commission may not disclose any information pertaining to individual employees or employers. 15

(6) Parties to a collective bargaining process may request the information contained in the statement contemplated in subsection (1) for collective bargaining purposes subject to section 16(4) and (5) of the Labour Relations Act.

CHAPTER IV

COMMISSION FOR EMPLOYMENT EQUITY 20

Establishment of Commission for Employment Equity

28. The Commission for Employment Equity is hereby established.

Composition of Commission for Employment Equity

29. (1) The Commission consists of a chairperson and eight other members appointed by the Minister to hold office on a part-time basis. 25

(2) The members of the Commission must include—

- (a) two people nominated by those voting members of NEDLAC who represent organised labour;
- (b) two people nominated by those voting members of NEDLAC who represent organised business; 30
- (c) two people nominated by those voting members of NEDLAC who represent the State; and
- (d) two people nominated by those voting members of NEDLAC who represent the organisations of community and development interests in the Development Chamber in NEDLAC. 35

(3) A party that nominates persons in terms of subsection (2) must have due regard to promoting the representivity of people from designated groups.

(4) The Chairperson and each other member of the Commission—

- (a) must have experience and expertise relevant to the functions contemplated in section 30; 40
- (b) must act impartially when performing any function of the Commission;
- (c) may not engage in any activity that may undermine the integrity of the Commission; and
- (d) must not participate in forming or communicating any advice on any matter in respect of which they have a direct financial interest or any other conflict of interest. 45

hlawuriweke u fanele ku teka magoza yo hunguta ku hambana koloko hi ku ya hi swiletelo swo tano tani hi laha swi nga nyikiwaka hi Holoby tani hi laha swi ringanyetiwa eka xiyengenyana xa (4).

- (3) Magoza lama ku vuriwaka wona eka xiyengenyana xa (2) ma nga ha katsa-
- 5 (a) xikatsa xa mimbukuto;
 - (b) ku landzelela swiboho swa mintlawe leswi endlwaka hi Holoby hi ku landza xiyenge xa 51 xa Nawu wa Matshamelo ya Xisungu-sungu ya le Mintirhweni;
 - (c) ku tirhisiwa ka swipimelo na mimpimo leyi simekiweke hi Khomixini ya ta Matshamelo ya ta le Mintirhweni;
 - 10 (d) magoza lama faneleke lama kumekaka eka milawu ya nhluvukiso wa vutshila;
 - (e) magoza man'wana lama faneleke eka matshamelo ya timhaka.
- (4) Khomixini ya ta Matshamelo ya ta le Mintirhweni yi fanele ku endla mbalango
- 15 no lavisisa swipimelo na mimpimo ya ku endla leswaku ku hambana ka miholo kumbe mali leyi yi ngenaka ku nga tluli mpimo na ku tsundzuxa Holoby hi magoza lama faneleke yo hunguta ku hambana loku tlulaka mpimo.
- (5) Khomixini ya ta Matshamelo ya ta le Mintirhweni yi nga ka yi nga humeseri erivaleni mahungu lama fambelanaka na mutirhi kumbe muthori wo karhi.
- 20 (6) Mintlawe leyi nga eka endlele ra xikatsa xa mimbukuto yi nga ha kombela mahungu lama kumekaka eka xitatimende lexi ringanyetiwa eka xiyengenyana xa (1) hi swikongomelo swa xikatsa xa mimbukuto ku ya hi xiyenge xa 16(4) na xa (5) xa Nawu wa Vuxaka bya le Mintirhweni.

KAVANYISA KA IV

25 KHOMIXINI YA NDZINGANO WA VUTHORI/NTIRHO

Ku tumbuluxiwa ka Khomixini ya Ndzingano wa Vuthori/Ntirho

28. Khomixini ya Ndzingano wa Vuthori/Ntirho yi simekisiwile xisweswo.

Xivumbeko xa Khomixini ya Ndzingano wa Vuthori/Ntirho

29. (1) Khomixini yi na swirho leswi ku nga na mutshami wa xitulu na swirho
- 30 swin'wana swo ringana nhungu leswi hlawuriweke hi Holoby leswaku swirho leswi swi tirha hi tirhele leri ro ka ri nga ri ra nkarhi hinkwawo.
- (2) Swirho swa Khomixini swi fanela ku katsa—
- (a) vanhu vambirhi lava nga hlawula hi swirho swa vavhoti swa NEDLAC/HIRNM lava yimelaka ntirho lowu kondleteriweke;
 - 35 (b) vanhu vambirhi lava nga hlawula hi swirho swa vavhoti swa NEDLAC/HIRNM lava yimelaka mabindzu lama kondleteriweke;
 - (c) vanhu vambirhi nga hlawuriwa hi lava va swirho leswi vhotaka swa NEDLAC/HIRNM lava yimelaka Mfumo; na
 - 40 (d) vanhu vambirhi lava nga hlawula hi swirho leswi vhotaka swa NEDLAC/HIRNM lava yimelaka minhlangano wa vaaki va ndhawu ni swinavelo swa nhluvuko eka Huvo ya Nhluvuko ya NEDLAC/HIRNM.
- (3) Ntlawa lowu hlawulaka vanhu hi ku ya hi xiyengenyana xa (2) wu fanela ku lemuka mhaka yo hluvukisa kumbe ku tlakusa vuyimeri bya vahu lava humaka eka mintlawe leyi hlawuriweke.
- 45 (4) Mutshami wa xitulu na xirho xin'wana ni xin'wana xa Khomixini—
- (a) va fanela ku va na ntokoto na vutivi lebyi yelanaka na mintirho leyi nga hlamuseriwa eka xiyenge xa 30;
 - (b) va fanela ku tirha hi ndlela leyi enetisaka leyi nga yi ki hi ngohe loko va tirha ntirho wihi na wihi wa Khomixini;
 - 50 (c) a va fanelanga ku endla migingiriko yihi na yihi leyi nga ha vangaka ku tsanwa vutshembeki bya Khomixini; na
 - (d) ku va va nga fanelanga ku va va ti katsa eka ku vumba kumbe ku vulavula xitsundzuxo xa muxaka wihi na wihi eka mhaka yihi na yihi mayelana na timhaka leti khumbaka ku kongomana na swa timali kumbe ntlimbo wihi na
 - 55 wihi lowu kombaka ku tsakeriwa.
- (5) Holoby u fanela ku thola kumbe ku hlawula xirho xa Khomixini ku tirha tani

(5) The Minister must appoint a member of the Commission to act as chairperson whenever the office of chairperson is vacant.

(6) The members of the Commission must choose from among themselves a person to act in the capacity of chairperson during the temporary absence of the chairperson.

(7) The Minister may determine—

- (a) the term of office for the chairperson and for each member of the Commission, but no member's term of office may exceed five years;
- (b) the remuneration and allowances to be paid to members of the Commission with the concurrence of the Minister of Finance; and
- (c) any other conditions of appointment not provided for in this section.

(8) The chairperson and members of the Commission may resign by giving at least one month's written notice to the Minister.

(9) The Minister may remove the chairperson or a member of the Commission from office for—

- (a) serious misconduct;
- (b) permanent incapacity;
- (c) that person's absence from three consecutive meetings of the Commission without the prior permission of the chairperson, except on good cause shown; or
- (d) engaging in any activity that may undermine the integrity of the Commission.

Functions of Commission for Employment Equity

30. (1) The Commission advises the Minister on—

- (a) codes of good practice issued by the Minister in terms of section 54;
- (b) regulations made by the Minister in terms of section 55; and
- (c) policy and any other matter concerning this Act.

(2) In addition to the functions in subsection (1) the Commission may—

- (a) make awards recognising achievements of employers in furthering the purpose of this Act;
- (b) research and report to the Minister on any matter relating to the application of this Act, including appropriate and well-researched norms and benchmarks for the setting of numerical goals in various sectors; and
- (c) perform any other prescribed function.

Staff and expenses

31. Subject to the laws governing the public service, the Minister must provide the Commission with the staff necessary for the performance of its functions.

Public hearings

32. In performing its functions, the Commission may—

- (a) call for written representations from members of the public; and
- (b) hold public hearings at which it may permit members of the public to make oral representations.

Report by Commission for Employment Equity

33. The Commission must submit an annual report to the Minister.

hi mutshami wa xitulu nkarhi wihi na wihi loko xivandla xa mutshami wa xitulu xi nga pfuleka/vangeka.

- (6) Swirho swa Khomixini swi fanela ku hlalwula swirho hi xivona laha ku fanelaka ku va ku ri na loyi a nga ta khomela eka xivandla xo va mutshami wa xitulu eka 5 nkarhinyana lowu mutshami wa xitulu a nga ri ki kona, ku ringana nkarhinyana ntsena.

(7) Holobye a nga ha boha—

- (a) ku leha ka nkarhi wa ntirho wa mutshami wa xitulu na nkarhi lowu xirho xin'wana na xin'wana xi fanelaka ku tirha wona xikarhi ka lava va nga swirho swa Khomixini, kambe ku hava xirho lexi nga ta tirha nkarhi wo tlula 10 ntlanu wa malembe;

(b) swihanano na swiengetelo leswi hakeriwaka swirho swa Khomixini hi tlhelo ro va swi endliwa hi ku tirhisana swin'we na Holobye wa Timali; na

(c) swiboho swihi na swihi mayelana no thola leswi nga hlamuseriwangiki eka xiyenge lexi.

- 15 (8) Mutshami wa xitulu na swirho swa Khomixini va nga ha tshika ntirho hi tlhelo ro sungula va endla xitviso xo tano xa nothisi ya nkarhi wo ringana nhweti hi ku tsala kunene papila leri kongomisiwaka eka Holobye.

(9) Holobye a nga ha susa mutshami wa xitulu kumbe xirho xa Khomixini eka ntirho hikwalaho ka—

- 20 (a) ku ti khoma hi ndlela yo biha swinene;

(b) vutsandzeki bya nkarhi hinkwawo;

(c) ku tsandzeka ka munhu wo tano eka ku nghena tinhlangeletano hi ku landzelelana ka tona ta Khomixini handle ko va ku sungule ku kumiwa mpfumelelo wa mutshami wa xitulu, handle ka loko ku lo kombisiwa xivangelo lexinene lexi amukelekaka; 25

kumbe

(d) ku tikatsa eka migingiriko yihi na yihi leyi nga tsanwaka vutshembeki bya Khomixini.

Mintirho ya Khomixini eka Ndzingano wa Vuthori/Ntirho

- 30 30. (1) Khomixini yi tsundzuxa Holobye hi mayelana na—

(a) milawu ya matirhele lamanene leyi humesiwaka hi Holobye hi ku ya hi xiyenge xa 54;

(b) swinawana leswi endliweke hi Holobye hi ku ya hi xiyenge xa 55; na

(c) nawu wa mafambisele na mhaka yihi na yihi mayelana na Nawu lowu.

- 35 (2) Ku engetelela eka mintirho eka xiyengenyana xa (1) Khomixini yi nga ha—

(a) nyika masagwadi hi tlhelo ro lemuka ku humelela ka vathori ehenhla ko yisa emahlweni ka xikongomelo xa Nawu lowu;

(b) ku endla swilavisiso no vika eka Holobye mhaka yihi na yihi mayelana na matirhisele ya Nawu lowu, ku katsa maendlele lamanene na swilavisiso leswi nga endliwa kahle swa mimpimo kun'we ni nkongomiso eka tipakani leti ku 40 tirhisiwaka tona eka ku lulamisa swikongomelo swa xinyumeresi eka mintlawa kumbe matihelo yo hambana-hambana; na

(c) ku tirha ntirho wihi na wihi lowu hlamuseriweke.

Vatirhi na Timali leti tirhisiweke

- 45 31. Hi ku ya hi milawu leyi lawulaka mintirho ya mfumo, Holobye u fanela ku nyiketa Khomixini leyi nga na vatirhi lava faneleke eka ku tirha mintirho ya yona.

Ku tengisiwa/tenga ka mani na mani

32. Eka ku tirha mintirho ya yona, Khomixini yi nga ha—

(a) rhamba tinhlamuselo leti tsariweke ti huma hi le ka vanhu va tiko; no

- 50 (b) khoma tihuvo to tengisa milandzu ya mani na mani laha eka tona ku nga ha va ku pfumeleriwa vanhu va tiko ku nyika vumborni hi ku hlamusela hi nomo.

Xiviko hi Khomixini ya Ndzingano wa Vuthori/Mintirho

33. Khomixini yi fanela ku rhumela xiviko xa lembe eka Holobye.

CHAPTER V

MONITORING, ENFORCEMENT AND LEGAL PROCEEDINGS

Part A

*Monitoring***Monitoring by employees and trade union representatives** 5

34. Any employee or trade union representative may bring an alleged contravention of this Act to the attention of—

- (a) another employee;
- (b) an employer;
- (c) a trade union; 10
- (d) a workplace forum;
- (e) a labour inspector;
- (f) the Director-General; or
- (g) the Commission.

Enforcement 15**Powers of labour inspectors**

35. A labour inspector acting in terms of this Act has the authority to enter, question and inspect as provided for in sections 65 and 66 of the Basic Conditions of Employment Act.

Undertaking to comply 20

36. A labour inspector must request and obtain a written undertaking from a designated employer to comply with paragraphs (a) to (j) within a specified period, if the inspector has reasonable grounds to believe that the employer has failed to—

- (a) consult with employees as required by section 16;
- (b) conduct an analysis as required by section 19; 25
- (c) prepare an employment equity plan as required by section 20;
- (d) implement its employment equity plan;
- (e) submit an annual report as required by section 21;
- (f) publish its report as required by section 22;
- (g) prepare a successive employment equity plan as required by section 23; 30
- (h) assign responsibility to one or more senior managers as required by section 24;
- (i) inform its employees as required by section 25; or
- (j) keep records as required by section 26.

Compliance order 35

37. (1) A labour inspector may issue a compliance order to a designated employer if that employer has—

- (a) refused to give a written undertaking in terms of section 36, when requested to do so; or
- (b) failed to comply with a written undertaking given in terms of section 36. 40

(2) A compliance order issued in terms of subsection (1) must set out—

- (a) the name of the employer, and the workplaces to which the order applies;

KAVANYISA KA V**KU LAWULA, KU TIRHISA NA MAFAMBISELE YA LE NAWINI****Xiphemu xa A*****Ku lawula*****5 Ku lawula hi vatirhi na vayimeri vo yimela nhlangoano wa vatirhi**

34. Mutirhi wihi na wihi kumbe muyimeri wa nhlangoano yo yimela vatirhi a nga ha yisa mpumbe wo tlula ka Nawu lowu, laha ku pumba ka kona ku lemuxiwaka lava—

- (a) mutirhi un'wana;
- (b) muthori;
- 10 (c) nhlangoano wo yimela vatirhi;
- (d) foramu ya le ka ndhawu ya ntirho;
- (e) xipikitere xa ntirho;
- (f) Mulawuri-Jenerala; kumbe
- (g) Khomixini.

15

Ku tirhisiwa**Matimba ya swipikitere kumbe vakamberi va mintirho**

35. Xipikitere xa ntirho lexi tirhaka hi ku ya hi Nawu lowu xi na matimba yo nghena, ku vutisa no kambela tani hi laha swi hlamuseriweke ha kona eka swiyenge swa 65 na 66 mayelana na Nawu wa Swiboho swa Masungulo ya Ntirho.

20 Ku endla xihlambanyo xo landzelela

36. Xipikitere xa ntirho xi fanela ku kombela no kuma papila ra xitshembhiso ro huma hi le ka muthori loyi a hlawuriweke ehenhla ko endlela ku landzelela tindzimana ta (a) ku fikela eka (j) hi nkarhi lowu nga vekiwa, loko ku ri hi leswaku xipikitere xi na vumbhoni lebyi twalaka eka ku kholwa leswaku munyiki wa ntirho u tsandzekile

25 ku—

- (a) tihlanganisa no tsundzuxana na vatirhi tani hi laha swi lavekaka ha kona eka xiyenge xa 16;
- (b) endla ntlhantlho/vuxopaxopi tani hi laha swi lavekaka ha kona eka xiyenge xa 19;
- 30 (c) lulamisa pulani ya ndzingano eka vuthori tani hi laha swi lavekaka ha kona eka xiyenge xa 20;
- (d) tirhisa pulani ya ndzingano wa vuthori;
- (e) yisa xiviko xa lembe tani hi laha swi laviwaka ha kona hi xiyenge xa 21;
- (f) tivisa kumbe ku hangalasa xiviko tani hi laha swi lavekaka ha kona eka xiyenge xa 22;
- 35 (g) lulamisa pulani ya ndzingano wa vuthori kumbe ntirho wa ndzandzelelano tani hi laha swi laviwaka ha kona hi xiyenge xa 23;
- (h) hlawula vutihlamuleri bya mininjere wun'we kumbe vo tala va swiyimo swa le henhla tani hi laha swi laviwaka ha kona eka xiyenge xa 24;
- 40 (i) tivisa vatirhi tani hi laha swi lavekaka ha kona eka xiyenge xa 25;
- (j) hlayisa tirhekodo tani hi laha swi lavekaka ha kona eka xiyenge xa 26.

Xileriso xo landzelela

37. (1) xipikitere xa ntirho xi nga ha humesa xileriso xo landzelela eka muthori loyi a hlawuriweke loko ku ri hi leswaku muthori wo tano u—

- 45 (a) arile ku nyika xihlambanyo xo tsariwa kunene hi ku ya hi xiyenge xa 36, loko a komberiwele ku endla tano; kumbe
- (b) tsandzekile ku landzelela xiboho lexi tsariweke lexi nyikiweke hi ku ya hi xiyenge xa 36.

(2) Xileriso xa xihlambanyo xi humesiwa hi ku ya hi xiyengenyana xa (1) lexi fanelaka ku kombisa—

- 50 (a) vito ra muthori, na tindhawu ta mintirho laha xihlambanyo xi tirhaka kona;

- (b) those provisions of Chapter III of this Act which the employer has not complied with and details of the conduct constituting non-compliance;
- (c) any written undertaking given by the employer in terms of section 36 and any failure by the employer to comply with the written undertaking;
- (d) any steps that the employer must take and the period within which those steps must be taken; 5
- (e) the maximum fine, if any, that may be imposed on the employer in terms of Schedule 1 for failing to comply with the order; and
- (f) any other prescribed information.

(3) A labour inspector who issues a compliance order must serve a copy of that order on the employer named in it. 10

(4) A designated employer who receives a compliance order served in terms of subsection (3) must display a copy of that order prominently at a place accessible to the affected employees at each workplace named in it.

(5) A designated employer must comply with the compliance order within the time period stated in it, unless the employer objects to that order in terms of section 39. 15

(6) If a designated employer does not comply with an order within the period stated in it, or does not object to that order in terms of section 39, the Director-General may apply to the Labour Court to make the compliance order an order of the Labour Court.

Limitations

20

38. A labour inspector may not issue a compliance order in respect of a failure to comply with a provision of Chapter III of this Act if—

- (a) the employer is being reviewed by the Director-General in terms of section 43; or
- (b) the Director-General has referred an employer's failure to comply with a recommendation to the Labour Court in terms of section 45. 25

Objections against compliance order

39. (1) A designated employer may object to a compliance order by making written representations to the Director-General within 21 days after receiving that order.

(2) If the employer shows good cause at any time, the Director-General may permit the employer to object after the period of 21 days has expired. 30

(3) After considering the designated employer's representations and any other relevant information, the Director-General—

- (a) may confirm, vary or cancel all or any part of the order to which the employer objected; and 35
- (b) must specify the time period within which that employer must comply with any part of the order that is confirmed or varied.

(4) The Director-General must, after making a decision in terms of subsection (3), and within 60 days after receiving the employer's representations, serve a copy of that decision on that employer. 40

(5) A designated employer who receives an order of the Director-General must either—

- (a) comply with that order within the time period stated in it; or
 - (b) appeal against that order to the Labour Court in terms of section 40.
- (6) If a designated employer does not comply with an order of the Director-General, 45

- (b) Makungu lama kumekaka eka Kavanyisa ka III ka Nawu lowu laha muthoriwa a tsandzekeke ku tixaxameta na kona na vuxokoxoko bya mukhuva lowu kombaka ku va ku ri hava vulandzeleri;
- 5 (c) xihlambanyo xihhi na xihhi lexi tsariweke lexi nyikiweke hi muthori hi ku ya hi xiyenge xa 36 ni ku tsandzeka kwihi na kwihi hi munyiki wa ntirho mayelana na ku landzelela xihlambanyo lexi tsariweke;
- (d) magoza waha na waha la fanelaka ku tekiwa hi muthori na nkarhi lowu magoza ya kona ya fanelaka ku tekiwa ha wona;
- 10 (e) ndziho wa maksimamu, loko wo va kona, lowu nga ha vekiwaka eka muthori hi ku ya hi Xitandzhaku xa 1 eka ku tsandzeka ku landzelela xileriso; na
- (f) marungula man'wana ni man'wana lama nga ha hlamuseriwaka.
- (3) Xipikitere kumbe mukamberi wa ntirho loyi a humeseka xileriso xo landzelela u fanela ku yisa kopi ya xileriso eka muthori loyi a tsariweke eka xona.
- (4) Muthori loyi a hlawuriweke loyi a amukelaka xileriso xo landzelela lexi yisiweke
- 15 hi ku ya hi xiyengenyana xa (3) u fanela ku va kopi a yi veka eka ndhawu leyi vonakaka kahle laha vatirhi lava khumbekaka va nga ta yi vona eka ndhawu yin'wana ni yin'wana ya ntirho leyi vuriweke eka xileriso xo tano.
- (5) Muthori loyi a hlawuriweke u fanela ku va a landzelela xileriso xo tixaxameta swin'we na xona eka nkarhi lowu kombisiweke eka xona, handle ka loko muthori o
- 20 kaneta xileriso hi ku ya hi xiyenge xa 39.
- (6) Loko muthori loyi a hlawuriweke wihi na wihi o ka a nga landzeleri xileriso ku ringana nkarhi lowu kombisiweke eka xona, kumbe loko o ka a nga kaneti eka xileriso xo tano hi ku ya hi xiyenge xa 39, Mulawuri-Jenerala a nga ha endla xikombelo eka Khoto ya Mintirho eka ku endlela leswaku xileriso xo landzelela xi va xileriso xa
- 25 Khoto ya Mintirho.

Swipimelo

38. Xipikitere xa ntirho swi nga ha endleka ku va xi nga rhumeli xileriso xo landzelela mayelana no tsandzeka ku landzelela hi makungu ya Kavanyisa ka III ka Nawu lowu loko—
- 30 (a) muthori a ri eku kambisisiweni hi Mulawuri-Jenerala hi ku ya hi xiyenge xa 43; kumbe
- (b) Mulawuri-Jenerala a kongomisile vutsandzeki bya muthori eka ku landzelela ku ri na xibumabumelo lexi kongomaka eka Khoto ya Mintirho hi ku ya hi xiyenge xa 45.
- 35 **Minkaneto ehenhla ka ku landzelela xileriso**
39. (1) Muthori loyi a hlawuriweke a nga ha kaneta xileriso xo landzelela hi tlhelo ro endla/nyika nhlamuselo hi ku tsala kunene swi kongomisiwa eka Mulawuri-Jenerala ku nga si hela 21 wa masiku endzhaku ka ku amukela xileriso xexo.
- (2) Loko muthori o komba xivangelo lexi twalaka swinene eka nkarhi wihi na wihi,
- 40 Mulawuri-Jenerala a nga ha pfumelela muthori leswaku a kaneta endzhaku ka loko nkarhi wa 21 wa masiku wy hundzile.
- (3) Endzhaku ka ku kambisisa tinhlamuselo ta muthori loyi a hlawuriweke kun'we na marungula waha na waha man'wana lama yelanaka, Mulawuri-Jenerala—
- 45 (a) a nga ha tiyisisa, hambana kumbe a khansela hinkwaswo kumbe xiphemu xihhi na xihhi xa xileriso lexi kanetiweke hi muthori; naswona
- (b) u fanela ku kombisa nkarhi lowu muthori a fanelaka ku landzelela xiphemu xihhi na xihhi xa xileriso xo tano lexi tiyisisiweke kumbe ku komba ku hambana.
- (4) Mulawuri-Jenerala u fanele ku va, endzhaku ka loko a endlile xiboho hi ku ya hi
- 50 xiyengenyana xa (3), naswona loko ku nga si hela 60 wa masiku a ha ku kuma tinhlamuselo to huma hi le ka muthori, ku ta yisiwa kopi ya xiboho xexo eka muthori yoloye.
- (5) Muthori loyi a nga hlawuriwa loyi a amukelaka xileriso xa Mulawuri-Jenerala a nga ha va kumbe—
- 55 (a) a landzelela leswi xileriso xi vulaka swona ni hi nkarhi lowu nga vekiwa eka xona; kumbe
- (b) a endla apili yo kaneta xileriso xo tano eka Khoto ya Mintirho hi ku ya hi xiyenge xa 40.
- (6) Loko muthori loyi a hlawuriweke ha nga landzeleri xileriso xa Mulawuri-

or does not appeal against that order, the Director-General may apply to the Labour Court for that order to be made an order of the Labour Court.

Appeal from compliance order

40. (1) A designated employer may appeal to the Labour Court against a compliance order of the Director-General within 21 days after receiving that order. 5
- (2) The Labour Court may at any time permit the employer to appeal after the 21-day time limit has expired, if that employer shows good cause for failing to appeal within that time limit.
- (3) If the designated employer has appealed against an order of the Director-General, that order is suspended until the final determination of— 10
- (a) the appeal by the Labour Court; or
 - (b) any appeal against the decision of the Labour Court in that matter.

Register of designated employers

41. (1) The Minister must keep a register of designated employers that have submitted the reports required by section 21. 15
- (2) The register referred to in subsection (1) is a public document.

Assessment of compliance

42. In determining whether a designated employer is implementing employment equity in compliance with this Act, the Director-General or any person or body applying this Act must, in addition to the factors stated in section 15, take into account all of the following: 20
- (a) The extent to which suitably qualified people from and amongst the different designated groups are equitably represented within each occupational category and level in that employer's workforce in relation to the—
 - (i) demographic profile of the national and regional economically active population; 25
 - (ii) pool of suitably qualified people from designated groups from which the employer may reasonably be expected to promote or appoint employees;
 - (iii) economic and financial factors relevant to the sector in which the employer operates; 30
 - (iv) present and anticipated economic and financial circumstances of the employer; and
 - (v) the number of present and planned vacancies that exist in the various categories and levels, and the employer's labour turnover;
 - (b) progress made in implementing employment equity by other designated employers operating under comparable circumstances and within the same sector; 35
 - (c) reasonable efforts made by a designated employer to implement its employment equity plan;
 - (d) the extent to which the designated employer has made progress in eliminating employment barriers that adversely affect people from designated groups; and 40
 - (e) any other prescribed factor.

Jenerala, kumbe loko o ka a nga endli apili ya xileriso lexi khumbekaka, Mulawuri-Jenerala a nga ha endla xikombelo eka Khoto ya Mintirho hi tlhelo ro endlela leswaku xileriso xo tano xi ta endliwa ku va xi ri xileriso xa Khoto ya Mintirho.

Ku apila eka xileriso xo landzelela/vulandzeleri

- 5 **40.** (1) Muthori loyi a hlawuriweke a nga ha apila eka Khoto ya Mintirho hi mayelana na xileriso xa vulandzeleri xa Mulawuri-Jenerala ku nga si hundza 21 wa masiku endzhaku ka ku amukela xileriso xo tano.
- (2) Khoto ya Mintirho nkarhi wihi na wihi yi nga ha pfumelela muthori ku endla apili endzhaku ka nkarhi wa xipimelo xa 21 wa masiku loko ma hundzile, loko muthori wo
10 tano a komba vutsandzeki lebyinene byo va a tsandzekile ku apila ku nga si hundza nkarhi wa xipimelo.
- (3) Loko muthori loyi a hlawuriweke a endlile apili ehenhla ka xileriso xa Mulawuri-Jenerala, xileriso xexo xi hayekiwiile ku fikela xiboho xo hetelela xa—
- (a) apili hi Khoto ya Mintirho; kumbe
15 (b) apili yihi na yihi ehenhla ka xiboho xa Khoto ya Mintirho eka mhaka yaleyo.

Rijistara ra vathori lava nga hlawuriwa

- 41.** (1) Holobye u fanela ku hlayisa rijistara ra vathori lava hlawuriweke lava nga rhumela swiviko leswi lavekaka eka xiyenge xa 21.
- (2) Rijistara leri ku kongomisiwaka eka rona eka xiyengenyana xa (1) i tsalwa ra
20 mani na mani.

Ku pimanyisa ka vulandzeleri

- 42.** Eka ku endlela ku kumisisa loko muthori loyi a hlawuriweke a tirhisa ndzingano wa vuthori/ntirho eka mhaka ya vulandzeleri ni Nawu lowu, Mulawuri-Jenerala kumbe munhu wihi ni wihi kumbe nhlango lowu tirhisaka Nawu lowu wu/u fanele, ku
25 engetela eka timhaka leti vuriweke eka xiyenge xa 15, a lemuka hinkwaswo leswi landzelaka:
- (a) Xiyimo xa hi laha vanhu lava nga na tidyondzo leti faneleke kahle naswona va ri lava humaka hi le ka mintlawe leyi hlawuriweke yo hambana va yimeriweke hi ndzingano lowu ringaneleke kahle eka khetekanyo wun'wana
30 ni wun'wana wa ntirho na xiyelo eka ntlawa wa vatirhi va muthori loyi a khumbekaka mayelana na—
- (i) xiyimeko xa matshamelo ya nhlayo ya vanhu ku komba ntalo no hunguteka ka rixaka na migingiriko ya ikhonomi ya vanhu eka xifundza;
- 35 (ii) ndhawu leyi nga na vanhu lava nga dyondzeka kahle naswona va ri vanhu lava humaka hi le ka mintlawe leyi hlawuriweke, laha eka yona muthori a nga ha kota ku va a languteriwa ku tlakusa kumbe ku thola vatirhi hi ndlela leyinene;
- 40 (iii) timhaka ta ikhonomi/vuhlayisa-rifuwo na mali leti yelanaka na vanhu lava muthori a tirhelaka kumbe ku bindzurisela kona;
- (iv) swiyimo swa nkarhi wa sweswi ni leswi languteriwaka eka nkarhi lowu taka swa ikhonomi na timali ta muthori; na
- (v) nhlayo ya swivandla swa/mintirho ya nkarhi wa sweswi ni leswi swi pulaniweke leswi nga kona eka mikhetekanyo yo hambana-hambana na swiyelo, na vuyelo bya ntirho wa muthori;
45
- (b) nhluvuko lowu endlweke eka ku tirhisa ndzingano wa vuthori hi vathori van'wana lava hlawuriweke lava endlaka vubindzurisi eka matshamelo lama pimanyisekaka naswona e xikarhi ka vanhu va ndhawu yoleyo;
- 50 (c) matshalatshala lamanene lama endleke hi muthori loyi a hlawuriweke eka ku tirhisa nkungu ra yena ra ndzingano eka vutorhi/ntirho;
- (d) xiyimo lexi muthori wo hlawuriwa a nga xi endla eka nhluvuko wo herisa mindzilikana ya vuthori yi nga mhaka leyi nga khumba ngopfu vanhu lava humaka eka mintlawe leyi hlawuriweke hi ndlela leyi nga amukelekiki; na
- (e) mhaka yihi na yihi leyi nga hlamuseriwa.

Review by Director-General

43. (1) The Director-General may conduct a review to determine whether an employer is complying with this Act.

(2) In order to conduct the review the Director-General may—

- (a) request an employer to submit to the Director-General a copy of its current analysis or employment equity plan; 5
- (b) request an employer to submit to the Director-General any book, record, correspondence, document or information that could reasonably be relevant to the review of the employer's compliance with this Act;
- (c) request a meeting with an employer to discuss its employment equity plan, the implementation of its plan and any matters related to its compliance with this Act; or 10
- (d) request a meeting with any—
 - (i) employee or trade union consulted in terms of section 16;
 - (ii) workplace forum; or 15
 - (iii) other person who may have information relevant to the review.

Outcome of Director-General's review

44. Subsequent to a review in terms of section 43, the Director-General may—

- (a) approve a designated employer's employment equity plan; or
- (b) make a recommendation to an employer, in writing, stating— 20
 - (i) steps which the employer must take in connection with its employment equity plan or the implementation of that plan, or in relation to its compliance with any other provision of this Act; and
 - (ii) the period within which those steps must be taken; and
 - (iii) any other prescribed information. 25

Failure to comply with Director-General's recommendation

45. If an employer fails to comply with a request made by the Director-General in terms of section 43(2) or a recommendation made by the Director-General in terms of section 44(b), the Director-General may refer the employer's non-compliance to the Labour Court. 30

Part B***Legal proceedings*****Conflict of proceedings**

46. (1) If a dispute has been referred to the CCMA by a party in terms of Chapter II and the issue to which the dispute relates also forms the subject of a referral to the Labour Court by the Director-General in terms of section 45, the CCMA proceedings must be stayed until the Labour Court makes a decision on the referral by the Director-General. 35

(2) If a dispute has been referred to the CCMA by a party in terms of Chapter II against an employer being reviewed by the Director-General in terms of section 43, there may not be conciliation or adjudication in respect of the dispute until the review has been completed and the employer has been informed of the outcome. 40

Vukambisisi hi Mulawuri-Jenerala

43. (1) Mulawuri-Jenerala a nga ha endla vukambisisi eka ku endlela ku kumisisa loko muthori a ri eku landzeleleni ka Nawu lowu.

(2) Eka ku endlela ku kota ku endla vukambisisi Mulawuri-Jenerala a nga ha—

- 5 (a) kombela muthori ku rhumela kopi ya ntlhantlho kumbe vuxopaxopi bya nkarhi wa sweswi kumbe kungu ra ndzingano wa vuthori eka Mulawuri-Jenerala;
- (b) kombela muthori ku rhumela eka Mulawuri-Jenerala buku yihi na yihi, rhekodo, mapapila, tsalwa kumbe marungula lama nga ha vaka ma yelana
- 10 (c) kahle na vukambisisi vulandzeleri bya muthori eka Nawu lowu;
- (c) ku kombela ku khoma nhlengeletano na muthori leswaku ku kaneriwa nkungu ra ndzingano wa vuthori, ku tirhisiwa ka kungu ra kona ni timhaka tin'wana ni tin'wana leti yelanaka na ku tixaxameta swin'we ni Nawu lowu; kumbe
- 15 (d) ku kombela ku khoma nhlengeletano na un'wana wa—
 - (i) mutirhi kumbe nhlango yo yimela vatirhi lava ku nga va na ku tihlanganisa no tsundzuxana na vona hi ku ya hi xiyenge xa 16;
 - (ii) foramu ya le ka ndhawu ya ntirho; kumbe
 - 20 (iii) munhu wun'wana loyi a nga ha vaka a ri na marungula lama yelanaka na vukambisisi.

Mbuyelo wa vukambisisi bya Mulawuri-Jenerala

44. Endzhaku ka vukambisisi hi ku ya hi xiyenge xa 43, Mulawuri-Jenerala a nga ha—

- (a) amukela nkungu ra ndzingano wa vuthori ra munyiki wa ntirho; kumbe
- 25 (b) endla xibumabumelo eka muthori, hi ku tsala kunene, ku hlamuseriwa—
 - (i) magoza lama fanelaka ku va ma teka hi muthori mayelana na pulani ya ndzingano wa vuthori kumbe matirhisele ya nkungu rero/ro tano, kumbe hi mayelana no landzeleriwa ka nkungu ni nkungu rihi kumbe rihi rin'wana ra Nawu lowu; na
 - 30 (ii) nkarhi lowu magoza ya fanelaka ku tekiwa; na
 - (iii) marungula waha na waha lama nga hlamuseriwa.

Ku tsandzeka ku landzelela xibumabumelo xa Mulawuri-Jenerala

45. Loko muthori a tsandzeka ku landzelela xikombelo lexi nga endla hi Mulawuri-Jenerala hi ku ya hi xiyenge xa 43(2) kumbe xibumabumelo lexi nga endla hi

35 Mulawuri-Jenerala hi ku ya hi xiyenge xa 44(b), Mulawuri-Jenerala a nga ha kongomisa muthori eka Khoto ya Mintirho, hi tlhelo ro va muthori a tsandzekile ku tixaxameta swin'we na nkungu.

Xiphemu xa B***Mafambisele ya le nawini*****40 Ntlimbo wa mafambisele**

46. (1) Loko nkanetano wu kongomisiwile eka Khomixini yo Hlanganisa, ku Lamula no Ahlula (CCMA/KLHA) hi xirho/ntlawu hi ku ya hi Kavanyisa ka II naswona mhaka ya leyi yelanaka na nkanetano yi ri leyi vumbaka nhlokomhaka ya ku hundziseriwa ka yona eka Khoto ya Mintirho hi Mulawuri-Jenerala hi ku ya hi xiyenge xa 45,

45 mafambisele ya (CCMA/KLHA) ma fanela ku yimisiwa ku kondza loko Khoto ya Mintirho yi ta endla xiboho eka mhaka leyi hundziseriweke emahlweni hi Mulawuri-Jenerala.

(2) Loko nkanetano wu kongomisiwile eka (CCMA/KLHA) hi ntlawa hi ku ya hi Kavanyisa ka II hi mpumbo lowu pumbiwaka muthori, laha naswona mhaka ya kona

50 ya ha kambisisiwa hi Mulawuri-Jenerala hi ku ya hi xiyenge xa 43, ku kondza loko nkambisiso wu fikile makumu na muthori a tivisiwile hi mbuyelo wa kona, swi nga ha endleka leswaku ku nga ha vi na ku hlanganisiwa kumbe ku lamuriwa hi mayelana na nkanetano.

Consolidation of proceedings

47. Disputes concerning contraventions of this Act by the same employer may be consolidated.

Powers of commissioner in arbitration proceedings

48. A commissioner of the CCMA may, in any arbitration proceedings in terms of this Act, make any appropriate arbitration award that gives effect to a provision of this Act. 5

Jurisdiction of Labour Court

49. The Labour Court has exclusive jurisdiction to determine any dispute about the interpretation or application of this Act, except where this Act provides otherwise.

Powers of Labour Court

10

50. (1) Except where this Act provides otherwise, the Labour Court may make any appropriate order including—

- (a) on application by the Director-General in terms of section 37(6) or 39(6) making a compliance order an order of the Labour Court;
- (b) subject to the provisions of this Act, condoning the late filing of any document with, or the late referral of any dispute to, the Labour Court; 15
- (c) directing the CCMA to conduct an investigation to assist the Court and to submit a report to the Court;
- (d) awarding compensation in any circumstances contemplated in this Act;
- (e) awarding damages in any circumstances contemplated in this Act; 20
- (f) ordering compliance with any provision of this Act, including a request made by the Director-General in terms of section 43(2) or a recommendation made by the Director-General in terms of section 44(b);
- (g) imposing a fine in accordance with Schedule 1 for a contravention of certain provisions of this Act; 25
- (h) reviewing the performance or purported performance of any function provided for in this Act or any act or omission of any person or body in terms of this Act on any grounds that are permissible in law;
- (i) in an appeal under section 40, confirming, varying or setting aside all or part of an order made by the Director-General in terms of section 39; and 30
- (j) dealing with any matter necessary or incidental to performing its functions in terms of this Act.

(2) If the Labour Court decides that an employee has been unfairly discriminated against, the Court may make any appropriate order that is just and equitable in the circumstances, including— 35

- (a) payment of compensation by the employer to that employee;
- (b) payment of damages by the employer to that employee;
- (c) an order directing the employer to take steps to prevent the same unfair discrimination or a similar practice occurring in the future in respect of other employees; 40
- (d) an order directing an employer, other than a designated employer, to comply with Chapter III as if it were a designated employer;

Ku hlanganisiwa ka Mafambisele

47. Mikanetano ya mayelana ni ku tlula Nawu lowu hi muthori yoloye wo sungula, swi nga ha endleka ku va yi hlanganisiwa.

Matimba ya khomixinara eka mafambisele ya vulamuleri

- 5 48. Khomixinara wa KHLA/CCMA a nga swi kota ku va eka vulamuleri bya vuahluri byihi ni byihi lebyinene a nyika sagwadi leri tiyisisaka makungu ya Nawu lowu.

Vulawuri bya Khoto ya Mintirho

- 10 49. Khoto ya Mintirho yi na vulawuri byo hambana eka ku kumisisa nkanetano wihi na wihi mayelana na nhlamuselo kumbe ku tirhisiwa ka Nawu lowu, handle ka laha Nawu lowu wu vulaka no pfumelela swin'wana leswi hambaneke.

Matimba ya Khoto ya Mintirho

50. (1) Handle ka laha Nawu lowu wu vulaka swin'wana, Khoto ya Mintirho yi nga ha nyika xileriso xihi na xihi lexi faneleke ku katsa—
- 15 (a) hi xikombelo xa Mulawuri-Jenerala hi ku ya hi xiyenge xa 37(6) kumbe 39(6) eka ku nyika xileriso xo landzelela xi va xi ri xileriso xa Khoto ya Mintirho;
- (b) hi ku ya hi makungu ya Nawu lowu, ndzivalelo eka ku hlwela ka ku ngenisiwa ka tsalwa rihi na rihi leri nga ni leswi kongomisiwaka kumbe ni
- 20 loko swi nga ri tano hi tlhelo ro va swi hlwerile swa mayelana na nkanetano wihi na wihi eka Khoto ya Mintirho;
- (c) ku lerisa CCMA/KLHA eka ku endla swilavisiso hi tlhelo ro endlela ku pfuna Khoto no rhumela xiviko eKhoto;
- (d) ku nyika ndziriso eka matshamelo waha ni waha lama hlamuseriweke eka
- 25 Nawu lowu;
- (e) ku nyika ndziriso eka ku onhekeriwa eka matshamelo waha ni waha lama hlamuseriweke eka Nawu lowu,
- (f) ku lerisa vulandzeleri bya kungu rihi na rihi ra Nawu lowu, ku katsa na xikombelo lexi nga endla hi Mulawuri-Jenerala hi ku ya hi xiyenge xa 43(2)
- 30 kumbe xibumabumelo lexi nga endla hi Mulawuri-Jenerala hi ku ya hi xiyenge xa 44(b);
- (g) ku veka ndziho hi ku ya hi Xitandzhaku xa 1 eka ku tlula milawu ya makungu man'wana ya Nawu lowu;
- (h) ku kambisisa tirhele kumbe xikongomelo xa tirhele ra ntirho wihi ni wihi
- 35 lowu lulamiseriweke eka nawu lowu kumbe nawu wihi na wihi kumbe ku susiwa ka munhu wihi na wihi kumbe nhlango hi ku ya hi Nawu lowu eka swikongomelo swihi na swihi leswi pfumeleriwaka hi nawu;
- (i) eka apili eka xiyenge xa 40, ku tiyisisa, ku hambana kumbe ku bakanyela etlhelo hinkwaswo kumbe xiphemu xa xileriso lexi nga ta hi le ka
- 40 Mulawuri-Jenerala hi ku ya hi xiyenge xa 38; na hi xileriso lexi nga endla hi Mulawuri-Jenerala hi ku ya hi xiyenge xa 39; na
- (j) ku tirhana na mhaka yihi na yihi leyi nga fanela kumbe leyi yelanaka ni ku tirhiwa ka mintirho ya kona hi ku ya hi Nawu lowu.
- (2) Loko Khoto ya Mintirho yo boha leswaku mutirhi u tirhiseriwile xihlawu-hlawu
- 45 hi ndlela leyi nga riki leyinene, Khoto yi nga ha endla xileriso lexi faneleke kahle lexi tekiwaka xi ri lexinene no va ni vundzinganelo kumbe ku ringanana eka matshamelo ya swilo, ku katsa—
- (a) ku hakela ndziriso hi muthori eka mutirhi loyi a khumbekaka;
- (b) ku hakelela ku onhekeriwa hi muthori eka mutirhi wo tano;
- 50 (c) xileriso lexi lerisaka muthori, ku teka magoza hi tlhelo ro endlela ku papalata kumbe ku sivela xihlawu-hlawu xo fana na xona lexi nga ri ki kahle kumbe ku endlela ku sivela ku engeta xihoxo xo fana na xona eka nkarhi lowu taka mayelana na vatirhi lavan'wana;
- (d) xileriso lexi lerisaka muthori, kambe a nga ri muthori wo hlawuriwa, leswaku
- 55 a landzelela Kavanyisa ka III laha swi tekiwaka wonge i muthori loyi a nga hlawuriwa;

- (e) an order directing the removal of the employer's name from the register referred to in section 41; and
 - (f) the publication of the Court's order.
- (3) The Labour Court, in making any order, may take into account any delay on the part of the party who seeks relief in processing a dispute in terms of this Act. 5
- (4) If the Labour Court declares that the medical testing of an employee as contemplated in section 7 is justifiable, the court may make any order that it considers appropriate in the circumstances, including imposing conditions relating to—
- (a) the provision of counselling;
 - (b) the maintenance of confidentiality; 10
 - (c) the period during which the authorisation for any testing applies; and
 - (d) the category or categories of jobs or employees in respect of which the authorisation for testing applies.

Part C

Protection of employee rights 15

Protection of employee rights

51. (1) No person may discriminate against an employee who exercises any right conferred by this Act.
- (2) Without limiting the general protection conferred by subsection (1), no person may threaten to do, or do any of the following: 20
- (a) Prevent an employee from exercising any right conferred by this Act or from participating in any proceedings in terms of this Act; or
 - (b) prejudice an employee because of past, present or anticipated—
- (i) disclosure of information that the employee is lawfully entitled or required to give to another person; 25
 - (ii) exercise of any right conferred by this Act; or
 - (iii) participation in any proceedings in terms of this Act.
- (3) No person may favour, or promise to favour, an employee in exchange for that employee not exercising any right conferred by this Act or not participating in any proceedings in terms of this Act. 30
- (4) Nothing in this section precludes the parties to a dispute arising out of an alleged breach of any right conferred by this Part, from concluding an agreement to settle the dispute.
- (5) For the purposes of this section "employee" includes a former employee or an applicant for employment. 35

Procedure for disputes

52. (1) If there is a dispute about the interpretation or application of this Part, any party to the dispute may refer it in writing to the CCMA.
- (2) The CCMA must attempt to resolve a dispute referred to it in terms of this Part through conciliation. 40
- (3) If the dispute remains unresolved after conciliation—
- (a) any party to the dispute may refer it to the Labour Court for adjudication; or

- (e) xileriso lexi lerisaka ku susiwa ka vito ra muthori eka rijistara leri kongomisiweke eka xiyenge xa 41; na
- (f) ku hangalasiwa ka xileriso xa Khoto.
- (3) Khoto ya Mintirho, loko yi endla/nyika xileriso, yi nga ha tekela enhlonkweni kumbe ku lemuka mhaka yihi na yihi yo hlwela hi tlhelo ra loyi a lavaka ku ntshuxeka eka swa mafambisele ya nkanetano hi ku ya hi Nawu lowu.
- (4) Loko Khoto ya Mintirho yo tivisa leswaku swikambelo swa vutshunguri eka mutirhi tani hi laha swi hlamuseriweke ha kona eka xiyenge xa 7 hi leswi swi nga swa ntiyiso, khoto yi nga ha endla xileriso xihi na xihi lexi yi xi vonaka xi fanerile hi ku ya hi matshamelo ya mhaka ya kona, ku katsa no vekela swiboho mayelana na—
- (a) makungu yo khanseriwa;
- (b) ku hlayisa swihundla;
- (c) nkarhi lowu mpfumelelo wo endla swikambelo swihi na swihi wa tirhisiwa; na
- (d) khetekanyo kumbe mikhetekanyo ya mintirho kumbe vatirhi mayelana na mpfumelelo wo endla swikambelo i mhaka leyi fanelaka ku tirhisiwa.

Xiphemu xa C

Ku sirhelela timfanelo ta mutirhi

Ku sirhelela timfanelo ta mutirhi

51. (1) Ku hava munhu loyi a nga endlaka xihlawu-hlawu eka mutirhi loyi a tirhisaka mfanelo yihi na yihi leyi nyikiweke mpfumelelo hi Nawu lowu.
- (2) Handle ko va ku endlile swipimelo, swa vusirhelelo hi ku angarhela tani hi laha ku nyikiweke pfumelelo hi xiyengenyana xa (1), ku hava munhu loyi a nga chavisaka ku va a ta endla, kumbe ku endla xihi na xihi eka leswi landzelaka:
- (a) Ku sivela mutirhi eka ku tirhisa mfanelo yihi na yihi leyi nga nyikiwa mpfumelelo hi Nawu lowu kumbe eka ku nghena eka swa mafambisele man'wana ni man'wana hi ku ya hi Nawu lowu; kumbe
- (b) ku vangela vuxaniseki eka mutirhi hikwalaho ka swivangelo swa nkarhi lowu nga hundza, nkarhi wa sweswi kumbe leswi swa ha languteriwaka eka nkarhi lowu taka—
- (i) ku paluxa marungula lama mutirhi hi nawu a fanelaka ku va a ma fikelela kumbe a fanela ku va a ma nyika eka munhu un'wana;
- (ii) ku tirhisa mfanelo yihi na yihi leyi nyikiweke mpfumelelo hi Nawu lowu; kumbe
- (iii) ku ngenela eka swa mafambisele man'wana ni man'wana hi ku ya hi Nawu lowu.
- (3) ku hava munhu loyi a nga ha kombaka ku tsakela eka tlhelo rin'we eka mutirhi, kumbe ku tshembisa ku voyamela eka tlhelo rin'we ro komba ku tsakela, eka muthori laha mutirhi na yena a fanelaka ku endla tano hi ndlela ya xitlhelelo kambe ku nga tirhisiwi mfanelo yihi na yihi leyi nga nyikiwa mpfumelelo hi Nawu lowu kumbe ku va a nga ngeneli eka swa mafambisele waha na waha hi ku ya hi Nawu lowu.
- (4) Ku hava nchumu eka xiyenge lexi lowu sivelaka mintlawe eka mhaka ya nkanetano lowu tumbulukeke hikwalaho ka mpumbo wo tlula nawu wa mfanelo yihi na yihi leyi nyikiweke mpfumelelo hi Xiphemu lexi, hi tlhelo ro katsa ntwanano eka ku ololoxa xiphiqo kumbe nkanetano.
- (5) Hikwalaho ka swikongomelo swa xiyenge lexi, "mutirhi" swi katsa na loyi khale a ri mutirhi kumbe loyi a nga mukomberi wo kombela ntirho/ku thoriwa.

Ndlela ya mafambisele ya minkanetano

52. (1) Loko ko va na nkanetano mayelana na hlamuselo kumbe ku tirhisiwa ka Xiphemu lexi, ntlawa wihi na wihi lowu khumbiwaka hi nkanetano (wihi na wihi loyi a khumbekaka) wu nga ha wu kongomisa eka CCMA/KLHA hi ku tsala kunene.
- (2) CCMA/KLHA yi fanela ku ringeta ku herisa nkanetano lowu wu kongomisiweke hi ku ya hi Xiphemu lexi hi ndlela yo lamulela.
- (3) Loko nkanetano wo ka wu nga ahluriwi endzhaku ka vulamuleri—
- (a) un'wana ni un'wana loyi a nga xiphemu xa ntlawa a nga ha kongomisa mhaka ya yena eka Khoto ya Mintirho leswaku ku ta endlwa vuahluri kona; kumbe

(b) all the parties to the dispute may consent to arbitration of the dispute by the CCMA.

(4) In respect of a dispute in terms of this Part, the relevant provisions of Part C and D of Chapter VII of the Labour Relations Act apply, read with the changes required by the context.

5

CHAPTER VI

GENERAL PROVISIONS

State contracts

53. (1) Every employer that makes an offer to conclude an agreement with any organ of state for the furnishing of supplies or services to that organ of state or for the hiring or letting of anything— 10

(a) must—

(i) if it is a designated employer, comply with Chapters II and III of this Act; or

(ii) if it is not a designated employer, comply with Chapter II of this Act; and 15

(b) attach to that offer either—

(i) a certificate in terms of subsection (2) which is conclusive evidence that the employer complies with the relevant Chapters of this Act; or

(ii) a declaration by the employer that it complies with the relevant Chapters of this Act, which, when verified by the Director-General, is conclusive evidence of compliance. 20

(2) An employer referred to in subsection (1) may request a certificate from the Minister confirming its compliance with Chapter II, or Chapters II and III, as the case may be.

(3) A certificate issued in terms of subsection (2) is valid for 12 months from the date of issue or until the next date on which the employer is obliged to submit a report in terms of section 21, whichever period is the longer. 25

(4) A failure to comply with the relevant provisions of this Act is sufficient ground for rejection of any offer to conclude an agreement referred to in subsection (1) or for cancellation of the agreement⁷. 30

Codes of good practice

54. (1) The Minister may, on the advice of the Commission—

(a) issue any code of good practice⁸; and

7. Regulations under section 13 of the State Tender Board Act, No. 86 of 1986, may provide that supplies and services shall not be procured for and on behalf of the State, unless an employer has attached to its offer a certificate in terms of section 53(1)(b)(i) or a declaration in terms of section 53(1)(b)(ii) of the Employment Equity Act.

8. This is an enabling Act. The codes of good practice are intended to provide employers with information that may assist them in implementing this Act, particularly Chapter III. Issues that are likely to be the subject of codes include the following—

- the preparation of employment equity plans;
- advertising, recruitment procedures and selection criteria;
- special measures to be taken in relation to persons with disabilities including benefit schemes;
- special measures to be taken in relation to persons with family responsibilities;
- sexual harassment and racial harassment;
- internal procedures to resolve disputes about the interpretation or application of this Act; and
- sector-specific issues;
- guidelines for employees on the prioritisation of certain designated groups.

(b) mintlawa hinkwayo leyi khumbiwaka hi nkanetano hinkwawo va nga ha nyika pfumelelo wo va vuahluri bya nkanetano byi endlwa hi CCMA/KLHA.

(4) Hi mayelana na nkanetano hi ku ya hi Xiphemu lexi, makungu lama yelanaka ya Xiphemu xa C na D eka Kavanyisa ka VII ka Nawu wa Vuxaka bya le Mintirhweni wa tirhisiwa, wu hlayiwa swin'we na mihundzuluxo leyi lavekaka eka nkatsakanyo wa nhlamuselo.

KAVANYISA KA VI

MAKUNGU MAN'WANA NI MAN'WANA

10 Tikontraka ta mfumo/Mintwanano ya mfumo

53. (1) Mutirhi wun'wana ni wun'wana loyi a endlaka xikombelo xo tinyiketa ehenhla ka ku hetisisa ntwanano ni xirho xihi ni xihi xa mfumo eka ku yisa nhundu kumbe mintirho eka xirho xa mfumo kumbe eka ku hirisa kumbe ku nyika mpfumelelo wo tirhisa xin'wana ni xin'wana—

15 (a) u fanela—

(i) loko a ri muthori loyi a hlawuriweke, u fanela ku ti xaxameta swin'we na Kavanyisa ka II na III ka Nawu lowu; kumbe

(ii) loko a nga ri muthori wo hlawuriwa, u fanela ku ti xaxameta swin'we na Kavanyisa ka II ka Nawu lowu; naswona

20 (b) a khomanisa eka xikombelo xo tano kumbe—

(i) setifikheti hi ku ya hi xiyengenyana xa (2) yi nga mhaka leyi kombaka vumbhoni lebyi heleleke byo komba leswaku muthori u landzelela na Kavanyisa loku yelanaka na Nawu lowu; kumbe

(ii) xitiviso hi muthori xa leswaku u landzelela leswi kumekaka eka Kavanyisa loku yelanaka eka Nawu lowu, laha loko xitiviso xi sungule xi kambisisiwa hi Mulawuri-Jenerala, xi tekiwaka yi ri mhaka leyi nga na vumbhoni lebyi heleleke bya leswaku ku'ni ku tixaxameta swin'we na nawu.

(2) Muthori loyi a kongomisiwaka eka xiyengenyana xa (1) a nga ha kombela setifikheti eka Holoby e leyi tiyisisaka vulandzeleri eka Kavanyisa ka II, kumbe Kavanyisa ka II na III, ku ya hi laha mhaka yi nga ha va yi yimise xiswona.

(3) Setifiketi leyi nyikiwaka hi ku ya hi xiyengenyana xa (2) yi tirha ku ringana 12 wa tinhweti ku sukela eka siku leri yi nga humesiwa kumbe ku fikela eka siku leri muthori a bohekaka ku ngenisa xiviko hi ku ya hi xiyenge xa 21, ku ya hi nkarhi lowu

35 leheke eka leyimbirhi.

(4) Ku tsandzeka ku landzelela makungu lama yelanaka na Nawu lowu i vumbhoni lebyi nga tiya ku ringana eka ku alela ku amukela xikombelo xihi na xihi ehenhla ko hetisa/eneta ntwanano lowu kongomisiweke eka xiyengenyana xa (1) kumbe ku khansela/herisa ntwanano⁷.

40 Milawu ya maendlele lamanene

54. (1) Holoby e nga ha, ku ya hi switsundzuxo swa Khomixini—

(a) humesa milawu yihi na yihi ya matirhele lamanene⁸; na

7. Swinawana eka xiyenge xa 13 xa Nawu wa Huvo yo Thendara ya Mfumo, No. 86 wa 1986, wu nga ha pfumelela leswaku leswi rhumeriwaka na mintirho swi ngaka swi nga humeleri/koteki, naswona hi tlhelo ro yimela Mfumo, handle ka loko muthori a lo khomanisa setifikheti eka xikombelo xa yena hi ku ya hi xiyenge xa 53(1)(b)(i) kumbe xitiviso hi ku ya hi xiyenge xa 53(1)(b)(ii) xa Nawu wa Ndzingano eka Vuthori/Ntirho.

8. Lowu i Nawu lowu nyikaka matimba. Milawu ya tirhele lerinene yi na xikongomelo xo kota leswaku vathori va nyikiwa marungula lama nga ha kotaka ku va pfuna eka ku tirhisa Nawu lowu, ngopfu-ngopfu Kavanyisa ka III. Timhaka leti nga ha talaka ku va nhlokomhaka ya milawu ti katsa leti landzelaka—

— ndzulamiso wa makungu ya ndzingano eka vuthori/ntirho;

— swinavetiso, milawu ya maendlele ya vugalachi na tindlela ta mahlawulele;

— magoza yo hlawuleka ya fanela ku tekiwa, mayelana na vanhu lava nga vatsoniwa ku katsa swikimi swa mpindzulo;

— magoza yo hlawuleka ya fanela ku tekiwa mayelana na vanhu lava nga na vutihlamuleri bya ndyangu;

- (b) change or replace any code of good practice.
- (2) Any code of good practice, or any change to, or replacement of, a code of good practice must be published in the *Gazette*.

Regulations

55. (1) The Minister may, by notice in the *Gazette* and on the advice of the Commission, make any regulation regarding— 5
- (a) any matter that this Act requires or permits to be prescribed; and
- (b) any administrative or procedural matters that may be necessary or expedient to achieve the proper and effective administration of this Act.
- (2) The Minister must by notice in the *Gazette* make a regulation providing for 10 separate and simplified forms and procedures in respect of the obligations created by sections 19, 20, 21, 25 and 26 for employers that employ 150 or fewer employees.

Delegations

56. (1) The Minister may delegate any power conferred, or assign any duty imposed, upon the Minister in terms of this Act, except the powers and duties contemplated in 15 sections 29(1), (5) and (7), 53(2), 54, 55, 59(4) and 61(4).
- (2) A delegation or assignment must be in writing and may be subject to any conditions or restrictions determined by the Minister.
- (3) The Minister may at any time—
- (a) withdraw a delegation or assignment made in terms of subsection (1); and 20
- (b) withdraw or amend any decision made by a person exercising a power or performing a duty delegated or assigned in terms of subsection (1).
- (4) The Director-General may delegate any power conferred, or assign any duty imposed, upon the Director-General in terms of this Act, to any employee in the Department. 25
- (5) Subsections (2) and (3) apply with the changes required by the context to any delegation or assignment by the Director-General under subsection (4).

Temporary employment services

57. (1) For purposes of Chapter III of this Act, a person whose services have been procured for, or provided to, a client by a temporary employment service is deemed to 30 be the employee of that client, where that person's employment with the client is of indefinite duration or for a period of three months or longer.
- (2) Where a temporary employment service, on the express or implied instructions of a client, commits an act of unfair discrimination, both the temporary employment service and the client are jointly and severally liable. 35

- (b) hundzuluxa kumbe ku siva nawu wihi na wihi wa tirhele lerinene.
 (2) Nawu wihi na wihi wa tirhele lerinene, kumbe hundzuluxo wun'wana eka sweswo, kumbe ku siviwa ka, nawu wa matirhele lamanene, wu fanela ku tivisiwa eka *Gazete* ya mfumo.

5 Swanawana

55. (1) Holobye a nga ha endla xinawana xihi na xihi, naswona ku ya hi switsundzuxo swa Khomixini, hi tlhelo ro swi tivisa eka *Gazete* ya mfumo mayelana na—
 (a) mhaka yihi na yihi leyi laviwaka hi Nawu lowu kumbe ku nyika mpfumelelo wo hlamusela; na
 (b) mafambiselele waha na waha kumbe timhaka ta nawu wa malulamisele ni mafambiselele lama nga ha va ma fanerile kumbe yi ri mhaka leyi pfunaka eka ku fikelela vukahle na mafambiselele lamanene ya Nawu lowu.
 (2) Holobye a nga swi kota loko a vona swi fanerile ku ya a endla xitiviso eka *Gazete* xo endla xinawana lexi nyikaka swiyimo swo hambana hi ndlela yo olovisela kun'we ni tindlela ta mafambiselele mayelana na vutiyimiseri lebyi nga tumbuluxiwa hi swiyenge swa 19, 20, 21, 25 na 26 leswi khumbaka vathori laya tholaka 150 wa vatirhi kumbe lava nga talangiki.

Vurhumiwa

56. (1) Holobye a nga ha nyiketa matimba waha na waha lama nyikiweke, kumbe ku nyika ntirho wihi na wihi lowu nga ka vutihlamuleri bya Holobye hi ku ya hi Nawu lowu, handle ka matimba na mintirho leyi hlamuseriweke eka swiyenge swa 29(1), (5) na (7), 53(2), 54, 55, 59(4) na 61(4).
 (2) Ku rhumiwa kumbe ku nyikiwa ntirho swi fanela ku endliwa hi ku swi tsala kunene naswona swi nga ha va swi endliwa hi tlhelo ro va ku ri na swiboho swihi na swihi kumbe ku siveriwa ni ku tshimbisiwa kun'wana ni kun'wana tani hi laha Holobye a nga ha bohaka no anakanya ha kona.
 (3) Holobye a nga swi kota ku va eka nkarhi wihi ni wihi a—
 (a) herisa vurhumiwa kumbe ntirho leswi endliweke hi ku ya hi xiyengenyana xa (1); na
 (b) ku herisa kumbe ku endla hundzuluxo eka xiboho xihi na xihi lexi endliweke/bohiweke hi munhu loyi a tirhisaka matimba kumbe ku tirha ntirho lowu nyiketiweke kumbe lowu averiweke eka munhu hi ku ya hi xiyengenyana xa (1).
 (4) Mulawuri-Jenerala a nga ha nyiketa matimba wahi na wahi lawa ya averiweke, kumbe ku nyika ntirho wihi ni wihi lowu vekeraweke, Mulawuri-Jenerala hi ku landza Nawu lowu, eka mutirhi wihi na wihi wa Ndzawulo.
 (5) swiyengenyana swa (2) na (3) swi tirha na ku cinca loku laviwaka hi leswi swi fambaka swin'we na ku nyiketiwa matimba kumbe ntirho wihi na wihi hi Mulawuri-Jenerala ehansi ka xiyengenyana xa (4).

Vutirheli bya Mintirho/Vuthori bya Nkarhinyana

57. (1) Hikwalaho ka swikongomelo swa Kavanyisa ka III ka Nawu lowu, munhu loyi vutirhi bya yena byi nga kumeriwa, kumbe ku nyikiwa eka, muxavi hi vutirheli bya mintirho/vuthori bya nkarhinyana u tekiwa a ri mutirhi wa muxavi yaloye, laha ku thoriwa ka munhu yoloye hi muxavi ku nga ka nkarhi wo ke makumu kumbe ka nkarhi wa tin'hweti tinharhu kumbe ku tlula.
 (2) Laha vutirheli bya mintirho/vuthori bya nkarhinyana, hi ku ya hi swileriso swa nomo kumbe leswi kombisaka tano swa muxavi, byi endlaka swiendlo swa xihlawu-hlawu leswi nga ri ki kahle, havumbirhi vutirheli bya mintirho/vuthori bya nkarhinyana na muxavi va hlanganile va voniwa nandzu.

- ku dunga-dungiwa eka vuxaka bya swa rimbewu, kun'we ni ku dunga-dungiwa eka timhaka ta ku ya hi swa rixaka;
 — milawu ya maendlele ya xikaya leyi ololoxaka minkanetano mayelana na nhlamuselo kumbe ku tirhisiwa ka Nawu lowu; na timhaka leti kongomaka vanhu lava khumbekaka; swiletelo swa vathori ehenhleri ka ku rhangisiwa ka mintlawu leyi hlawuriweke yo karhi.
 — swiletelo swa va thori ehenhleri ka ku rhangisiwa ka mintlawu leyi hlawuriweke yo karhi.

Designation of organs of state

58. The President must, within six months after the commencement of this Act, and after consultation with the Minister responsible for the Public Service and Administration, publish a notice in the *Gazette* listing every designated employer within any organ of state.

5

Breach of confidentiality

59. (1) Any person who discloses any confidential information acquired in the performance of a function in terms of this Act, commits an offence.

(2) Subsection (1) does not apply if the information—

(a) is disclosed to enable a person to perform a function in terms of this Act; or 10

(b) must be disclosed in terms of this Act, any other law or an order of court.

(3) A person convicted of an offence in terms of this section may be sentenced to a fine not exceeding R10 000,00.

(4) The Minister may, with the concurrence of the Minister of Justice and by notice in the *Gazette*, amend the maximum amount of the fine referred to in subsection (3) in 15 order to counter the effect of inflation.

Liability of employers

60. (1) If it is alleged that an employee, while at work, contravened a provision of this Act, or engaged in any conduct that, if engaged in by that employee's employer, would constitute a contravention of a provision of this Act, the alleged conduct must 20 immediately be brought to the attention of the employer.

(2) The employer must consult all relevant parties and must take the necessary steps to eliminate the alleged conduct and comply with the provisions of this Act.

(3) If the employer fails to take the necessary steps referred to in subsection 2, and it is proved that the employee has contravened the relevant provision, the employer must 25 be deemed also to have contravened that provision.

(4) Despite subsection (3), an employer is not liable for the conduct of an employee if that employer is able to prove that it did all that was reasonably practicable to ensure that the employee would not act in contravention of this Act.

Obstruction, undue influence and fraud

30

61. (1) No person may—

(a) obstruct or attempt to improperly influence any person who is exercising a power or performing a function in terms of this Act; or

(b) knowingly give false information in any document or information provided to the Director-General or a labour inspector in terms of this Act. 35

(2) No employer may knowingly take any measure to avoid becoming a designated employer.

(3) A person who contravenes a provision of this section commits an offence and may be sentenced to a fine not exceeding R10 000,00.

(4) The Minister may, with the concurrence of the Minister of Justice and by notice in the *Gazette*, amend the maximum amount of the fine referred to in subsection (3) in 40 order to counter the effect of inflation.

This Act binds State

62. This Act binds the State.

Ku hlawuriwa ka swirho/marhavi ya mfumo

58. Presidente u fanela, ku va loko ku nga si hela ntsevu wa tinhweti endzhaku ka ku sungula ku tirha ka Nawu lowu, naswona endzhaku ka ku tihlanganisa na Holobye loyi a nga na vutihlamuleri eka Ntirho wa Mfumo ni Mafambisele, a tivisa xitiviso eka
- 5 *Gazete* a longoloxa muthori wun'wana ni wun'wana loyi a hlawuriweke eka nhlangano wihi na wihi wa mfumo.

Ku tlula nawu wo hlayisa swihundla

59. (1) Munhu wihi na wihi loyi a paluxaka marungula waha na waha ya swihundla lama kumekaka eka endlele ra ntirho hi ku ya hi Nawu lowu, u tlula nawu.
- 10 (2) Xiyengenyana xa (1) a xi tirhi loko ku ri hi leswaku marungula—
- (a) ya paluxiwele hi tlhelo ro endlele leswaku swi endla leswaku munhu a tirha ntirho hi ku ya hi Nawu lowu; kumbe
- (b) ya fanela ku paluxiwa hi ku ya hi Nawu lowu, ni nawu wihi na wihi kumbe xileriso xa khoto.
- 15 (3) Munhu loyi a kumekaka a tlule nawu hi ku ya hi xiyenge lexi a nga ha gweviwa ndzhiho lowu nga tluriki R10 000,00.
- (4) Holobye, a nga ha va hi tlhelo ro tirhisana swin'we na Holobye wa Vululami na hi tlhelo ra xitiviso eka *Gazete*, a hundzuluxa nhlayo leyi ya le henhla swinene ya ndziho leyi kongomisiweke eka xiyengenyana xa (3) hi tlhelo ro endlele ku papalata
- 20 mhaka leyi khumbaka ku wa ka nkoka wa nxavo wa mali.

Nandzu wa vathori

60. (1) Loko ku pumbiwa leswaku mutirhi, loko a ri entirhweni, u tlule kungu ra Nawu lowu, kumbe u tikhomile hi ndlela yihi ni yihi leyi, loko muthori wa mutirhi yaloye a tikhomile ha yona, a yi ta tekiwa yi ri ku tlula kungu ra Nawu lowu,
- 25 matikhomelo lawa ya pumbiwaka ya fanele xikan'we-kan'we ya tivisiwa muthori.
- (2) Muthori u fanele ku vonisana na mintlawo hinkwayo leyi faneleke naswona u fanele ku teka magoza lama faneleke ku herisa matikhomelo lawa ya pumbiwaka no landzelela makungu ya Nawu lowu.
- (3) Loko muthori a tsandzeka ku teka magoza lama faneleke lama vuriweke eka
- 30 xiyengenyana xa 2, naswona ku kumeka vumbhoni bya leswaku mutirhi u tlurile kungu leri fambelanaka, muthori u fanele ku tekiwa na yena a tlurile kungu rero.
- (4) Hambu xiyengenyana xa (3) xi ri tano muthori a nga na nandzu ehenhlani ka matikhomelo ya mutirhi loko muthori yaloye a swi kota ku humesa vumbhoni bya leswaku u endlile hinkwaswo leswi a swi koteka ku vonisisa leswaku muthori a nga
- 35 endlile swiendlile leswi swi tlulaka Nawu lowu.

Ku sivela, ku kucetela ko hamboloka na vukanganyisi

61. (1) ku hava munhu loyi a nga ha—
- (a) sivelaka kumbe ku ringeta ku kucetela hi ndlela leyi yi nga fanelangiki eka munhu wihi na wihi loyi a tirhisaka matimba kumbe ku tirha ntirho hi ku ya
- 40 hi Nawu lowu; kumbe
- (b) a nyika marungula ya mavun'wa kambe a ri karhi a swi tiva hi vomu eka tsalwa rihi na rihi kumbe marungula lama nyikiwaka Mulawuri-Jenerala kumbe mukamberi wa ntirho hi ku ya hi Nawu lowu.
- (2) Ku hava muthori loyi a nga tekaka goza ro papalata ku va muthori loyi a nga
- 45 hlawuriwa, laha a nga swi endlaka hi vomu a ri karhi a swi tiva leswaku ntiyiso wu kwihi.
- (3) Munhu loyi a tlulaka kungu ra xiyenge lexi u tlula nawu naswona a nga ha gweviwa ndziho lowu nga tluriki R10 000,00.
- (4) Holobye hi tlhelo ro tirhisana xikan'we swin'we na Holobye wa Vululami na hi
- 50 tlhelo ro endla xitiviso eka *Gazete*, va nga ha endla hundzuluxo wa xigwevo lexi xa le henhla swinene xa ndziho lowu kongomisiweke eka xiyengenyana xa (3) hi tlhelo ra xikongomelo xo endlele ku papalata mhaka ya ku wa ka nxavo wa nkoka wa mali.

Nawu lowu wu boha Mfumo

62. Nawu lowu wu boha Mfumo.

Application of Act when in conflict with other laws

63. If any conflict relating to a matter dealt with in this Act arises between this Act and the provisions of any other law other than the Constitution or an Act of Parliament expressly amending this Act, the provisions of this Act prevail.

Repeal of laws and transitional arrangements

5

64. Each of the laws referred to in the first two columns of Schedule 2 is repealed to the extent specified opposite that law in the third column of that Schedule.

Short title and commencement

65. (1) This Act is called the Employment Equity Act, 1998.

(2) This Act takes effect on a date to be determined by the President by proclamation 10 in the *Gazette*. The President may determine different dates in respect of different provisions of this Act.

(3) If, in terms of subsection (2), different dates are determined for particular provisions of this Act—

- (a) Schedule 2 must take effect at the same time as section 6(1) takes effect; and 15
- (b) a reference in a provision of this Act to a time when this Act took effect must be construed as a reference to the time when that provision takes effect.

Ku tirhisiwa ka Nawu loko ku ri na ntlimbo kumbe dzolonga ni milawu yin'wana

63. Loko ko tshuka ku vile na ntlimbo kumbe dzolonga mayelana na mhaka leyi ku nga tirhaniwa na yona eka Nawu lowu na makungu ya nawu wihi na wihi handle ka Vumbiwa kumbe Nawu wa Palamende lowu hlamuselaka ku hundzuluxiwa ka Nawu lowu, makungu ya Nawu lowu ma ta ya mahlweni no tirha.

Ku herisiwa ka milawu na mindzulamiso ya nkarhinyana

64. Nawu wun'wana ni wun'wana wa milawu leyi kongomisiweke eka minxaxamelo yimbirhi yo sungula ya Xitandzhaku xa 2 yi herisiwile tani hi laha swi kombisiweke ha kona eka tlhelo lerinwana ra nawu eka rixaxa ra vunharhu ra Xitandzhaku xexo.

10 Nhlokomhaka hi ku Komisa na siku ro sungula ku tirha

65. (1) Nawu lowu wu vuriwa Nawu wa Ndzingano wa Mintirho/Vuthori, 1998.

(2) Nawu lowu wu ta sungula ku tirha eka siku leri nga ta boha hi Presidente hi xitiviso eka *Gazete*. Presidente a nga ha boha masiku yo hambana hi mayelana na makungu yo hambana-hambana ya Nawu lowu.

15 (3) Loko, hi ku ya ka xiyengenyana xa (2), ko bohiwa masiku yo hambana eka makungu yo karhi ya Nawu lowu—

(a) Xitandzhaku xa 2 xi fanela ku tirha xikan'we na tani hi xiyenge xa 6(1) xi fanela ku tirha; na

20 (b) kongomiso eka nkungu ra Nawu lowu ku fikela eka nkarhi lowu Nawu lowu wu sunguleke ku tirha swi fanela ku tekiwa tani hi nkongomiso wa nkarhi wa loko nkungu ri sungula ku tirha.

SCHEDULE 1***Maximum permissible fines that may be imposed for contravening this Act***

This Schedule sets out the maximum fine that may be imposed in terms of this Act for the contravention of certain provisions of this Act.

PREVIOUS CONTRAVENTION	CONTRAVENTION OF ANY PROVISION OF SECTIONS 16, 19, 20, 21, 22 AND 23
No previous contravention	R500 000
A previous contravention in respect of the same provision	R600 000
A previous contravention within the previous 12 months or two previous contraventions in respect of the same provision within three years	R700 000
Three previous contraventions in respect of the same provision within three years	R800 000
Four previous contraventions in respect of the same provision within three years	R900 000

SCHEDULE 2***Laws repealed***

Number and year of law	Short title	Extent of repeal
Act No. 66 of 1995	Labour Relations Act, 1995	Item 2(1)(a), 2(2) and 3(4)(a) of Schedule 7

SCHEDULE 3***Transitional arrangements*****Definitions**

1. In this Schedule, unless the context indicates otherwise—
“pending” means existing immediately before this Act came into operation; and
“repealed provisions of the Labour Relations Act” means the provisions of the Labour Relations Act repealed by Schedule 2.

Disputes arising before commencement of this Act

2. Any dispute contemplated in item (2)(1)(a) of Schedule 7 of the Labour Relations Act that arose before the commencement of this Act, must be dealt with as if the repealed provisions of the Labour Relations Act had not been repealed.

XITANDZHAKU XA 1

Vugima-nkulu/maksimamu wa mindziho leyi pfumele riwaka leyi nga ha hakeri-waka eka ku tlula Nawu lowu

Xitandzhaku lexi xi kombisa ndziho wa vugima-nkulu wa ndziho lowu nga ha hakeriwaka hi ku ya hi Nawu lowu eka ku tlula makungu man'wana ya Nawu lowu.

KU TLULA NAWU KA NKARHI LOWU NGA HUNDZA	KU TLULA NAWU KA KUNGU RIHI NA RIHI EKA SWIYENGE SWA 16, 19, 20, 21, 22 NA 23
A ku vanga ni ku tlula ka nawu eka nkarhi lowu nga hundza.	R500 000
Ku tlula ka nawu ka nkarhi lowu nga hundza mayelana na nkungu ro fana ni lero sungula.	R600 000
Ku tlula ka nawu ka nkarhi lowu nga hundza hi nkarhi lowu nga tluriki 12 wa tinhweti kumbe ku tlula nawu minkarhi yo ringana yimbirhi mayelana na nkungu ro fana ni le ka nkarhi wo sungula hi nkarhi lowu ku nga si hundzaka malembe manharhu.	R700 000
Ku tlula nawu eka nkarhi lowu nga hundza, minkarhi yo ringana yinharhu mayelana na nkungu ro fana ni le ka nkarhi lowu nga hundza ku nga si hela nkarhi wo hundza malembe manharhu.	R800 000
Ku tlula nawu minkarhi yo ringana ka mune mayelana na kungu ro fana ni le ka nkarhi lowu nga hundza ku nga si hela nkarhi wo hundza malembe manharhu.	R900 000

XITANDZHAKU XA 2

Milawu leyi nga herisiwa susiwa

Nomboro na lembe ra nawu	nhlokomhaka hi ku komisa	Laha wu susiweke kona
Nawu wa No. 66 wa 1995	Nawu wa Vuxaka bya le Mintirhweni, 1995	Iyitheme, ya 2(1)(a), 2(2) na 3(4)(a) ya Xitandzhaku xa 7

XITANDZHAKU XA 3

Mindzulamiso ya nkarhinyana

Tihlamuselo

1. Eka Xitandzhaku lexi, handle ka loko nhlamuselo ya vundzeni bya mhaka yo komba xiyimo xin'wana—

“ku ya hi” swi vula leswi nga va kona xikan'wekan'we loko Nawu lowu wu nga si sungula ku tirha; naswona “ku herisiwa ka makungu ya Nawu wa Vuxaka bya le Mintirhweni” swi vula leswaku makungu ya Nawu wa Vuxaka bya le Mintirhweni ya susiwile hi Xitandzhaku xa 2.

Minkanetano leyi tumbulukeke eka nkarhi lowu Nawu lowu a wu nga si sungula ku tirha

2. Nkanetano wihi na wihi lowu hlamuseriweke eka ayitheme ya (2)(1)(a) ya Xitandzhaku xa 7 eka Nawu wa Vuxaka bya le Mintirhweni lowu nga tumbuluka loko Nawu lowu wu nga wu nga si sungula ku tirha, wufanela ku tirhaniwa na wong ingi hi loko makungu lama nga susiwa ya Nawu wa Vuxaka bya le Mintirhweni a ya nga si susiwa.

Courts

3. (1) In any pending dispute contemplated in item (2)(1)(a) of Schedule 7 of the Labour Relations Act in respect of which the Labour Court or the Labour Appeal Court had jurisdiction and in respect of which proceedings had not been instituted before the commencement of this Act, proceedings must be instituted in the Labour Court or Labour Appeal Court (as the case may be) and dealt with as if the repealed provisions of the Labour Relations Act had not been repealed.

(2) Any dispute contemplated in item (2)(1)(a) of Schedule 7 of the Labour Relations Act in respect of which proceedings were pending in the Labour Court or Labour Appeal Court must be proceeded with as if the repealed provisions of the Labour Relations Act had not been repealed.

(3) Any pending appeal before the Labour Appeal Court must be dealt with by the Labour Appeal Court as if the repealed provisions of the Labour Relations Act had not been repealed.

(4) When acting in terms of subitems (1) to (3), the Labour Court or Labour Appeal Court may perform or exercise any function or power that it had in terms of the repealed provisions of the Labour Relations Act.

SCHEDULE 4

Turnover threshold applicable to designated employers

Sector or subsectors in accordance with the Standard Industrial Classification	Total annual turnover
Agriculture	R 2,00 m
Mining and Quarrying	R 7,50 m
Manufacturing	R10,00 m
Electricity, Gas and Water	R10,00 m
Construction	R 5,00 m
Retail and Motor Trade and Repair Services	R15,00 m
Wholesale Trade, Commercial Agents and Allied Services	R25,00 m
Catering, Accommodation and other Trade	R 5,00 m
Transport, Storage and Communications	R10,00 m
Finance and Business Services	R10,00 m
Community, Social and Personal Services	R 5,00 m

Tikhoto

3. (1) Eka nkanetano wihi na wihi lowu nga si ahluriwaka no hlamuseriwa eka ayitheme ya (2)(1)(a) eka Xitandzhaku xa 7 eka Nawu wa Vuxaka bya le Mintirhweni laha mayelana na wona Khoto ya Mintirho kumbe Khoto ya Apili ya Mintirho yi nga ni vulawuri laha mayelana na swona ndlela ya mafambisele yi nga si nyiketiwa loko Nawu lowu wu nga si sungula ku tirha, mafambisele ya fenele ku va ma nyiketiwa eka Khoto ya Mintirho kumbe eka Khoto ya Apili ya Mintirho (tani hi laha mhaka yi nga ha va yi yime ha kona) no tirhana na yona ingi hi loko makungu lama susiweke ya Nawu wa Vuxaka bya le Mintirhweni a ma nga susiwanga.

(2) Dzolonga kumbe nkanetano wihi na wihi lowu hlamuseriweke eka ayitheme ya (2)(1)(a) ya Xitandzhaku xa 7 xa Nawu wa Vuxaka bya le Mintirhweni laha hi mayelana na swona Khoto ya Mintirho kumbe Khoto ya Apili ya Mintirho a yi ri na matimba ya vulawuri kutani eka mayelana na sweswo mhaka ya mafambisele i mhaka leyi fanelaka ku nyiketiwa eka Khoto ya Mintirho kumbe eka Khoto ya Apili ya Mintirho (tani hi laha mhaka yi nga va yi yime ha kona) kutani ku tirhaniwa na mhaka leyi wonge hi loko makungu lama nga susiwa ya le ka Nawu wa Vuxaka bya le Mintirhweni a ma nga si susiwa.

(3) Mhaka yihi na yihi ya apili leyi ya ha yimeke eka Khoto ya Apili ya Mintirho yi fanela ku va ku tirhaniwa na yona hi Khoto ya Apili ya Mintirho ingi hi loko makungu lama nga susiwa/herisiwa ya Nawu wa Vuxaka bya le Mintirhweni a ya si susiwa.

(4) Loko ku tirhiwa hi ku ya hi swiyengenyana swa (1) ku fikela eka (3), Khoto ya Mintirho kumbe Khoto ya Apili ya Mintirho yi nga ha tirha kumbe ku endla ntirho kumbe matimba lama yi nga na wona hi ku ya hi makungu lama susiweke ya Nawu wa Vuxaka bya le Mintirhweni.

XITANDZHAKU XA 4

Laha ku sungulaka vuyelo lebyi tirhaka eka vathori lava hlawuriweke

Vandla kumbe vandlanyana ku ya hi nkhetakanyo wa mintirho lowu pimiweke (standard Industrial classification)	Ntsengo wa vuyelo wa lembe
Vurimi	R2,00m
Migodi na Swicelwa	R7,50m
Vumaki	R10,00m
Gezi, Gasi na Mati	R10,00m
Vuaki	R5,00m
Nxaviso na Bindzu ra Timovha na Vutirheli byo Lapa	R15,00m
Bindzu ra holisele, Mavandla ma swa nxaviselano na Vutirheli bya Nhlangelano	R25,00m
Mphamelo wa Swakudya, Ndhawu yo tshama na Mabindzu man'wana	R5,00m
Swifambo, Vuhlayiselo na Mimbavurisano	R10,00m
Timali na Vutirheli bya swa Mabindzu	R10,00m
Vutirheli bya Vuaki-tiko, ku Hanyisana na bya munhu	R5,00m

