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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF LABOUR

NO. 393

28 APRIL 2017

Employment Equity Act, 1998 (Act No.55 of 1998) as amended

**Code of Good Practice on the Preparation, Implementation and Monitoring of the
Employment Equity Plan**

Notice is hereby given under Section 54 (2) of the Employment Equity Act No. 55, 1998, that the Minister of Labour, having been advised by the Commission for Employment Equity, has issued a Code of Good Practice on the Preparation, Implementation and Monitoring of Employment Equity Plan, as outlined in this schedule.

SCHEDULE**CODE OF GOOD PRACTICE ON THE PREPARATION, IMPLEMENTATION AND MONITORING OF THE EMPLOYMENT EQUITY PLAN (EE PLAN)****CONTENTS**

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1. OBJECTIVE

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

- a) This Code applies to all employers that are required to prepare and implement an EE Plan in terms of the Act.
- b) Designated employers should, in consultation with their employees, apply the guidelines as set out in this Code to prepare, implement and monitor their EE Plans.
- c) Their employment equity plans, taking into account the specific circumstances of their organization(s).
- d) An EE Plan prepared in line with this Code would enable employers to ensure that their human resource policies, procedures and practices are based on non-discrimination and reflect employment equity principles for accessing and commencing employment, during employment and upon termination of employment.
- e) This Code is intended to guide employers in the preparation, implementation and monitoring of their EE Plans. It is intended to provide guidelines to employers to consider and apply appropriately to their circumstances.

2. LEGAL FRAMEWORK

- 2.1 This Code is issued in terms of section 54 of the Employment Equity Act and must be read in conjunction with the Act and other Codes issued in terms of the Act¹.
- 2.2 The Code should also be read in conjunction with the Constitution of South Africa and all relevant legislation, including the:
 - 2.2.1 Employment Equity Act, No. 55, of 1998;
 - 2.2.2 Employment Equity Amendment Act, No. 47 of 2013;

¹Code of Good Practice on the Integration of Employment Equity into Human Resources Policies and Practices, Code of Good Practice on the Handling of Sexual Harassment Cases; Code of Good Practice on the Employment of Persons with Disabilities and Code of Good Practice on HIV and AIDS and the World of Work; Code of Good Practice on Equal Pay/Remuneration for Work of Equal Value.

- 2.2.3 Employment Equity Regulations of 2014 as amended;
- 2.2.4 Labour Relations Act, No. 66 of 1995 as amended;
- 2.2.5 Basic Conditions of Employment Act, No.75 of 1997 as amended;
- 2.2.6 Skills Development Act, No. 97 of 1998 as amended;
- 2.2.7 Skills Development Levies Act, No. 9 of 1999 as amended;
- 2.2.8 Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000 as amended;
- 2.2.9 Employment Services Act, Act No. 4 of 2014 as amended; and
- 2.2.10 Broad Based Black Economic Empowerment Act, No. 53 of 2003 as amended.

3. SCOPE

- 3.1 This Code is relevant to all employers that are regarded as designated employers in terms of the Act, including those employers who choose to voluntarily comply.
- 3.2 Designated employers and their employees should apply the guidelines set out in this Code to prepare, implement and monitor their EE Plans, taking into account the specific circumstances of their organizations.

4. PURPOSE AND RATIONALE OF THE EE PLAN

- 4.1 The EE Plan is a designated employer's implementation programme to achieve equitable representation and fair treatment of the designated groups (i.e. Black people, women and persons with disabilities) in the workplace across all occupational levels.
- 4.2 The EE Plan addresses the barriers to fair employment practices, i.e. access and treatment in the policies and procedures identified in the consultation and the employment equity analysis process through remedial measures in terms of policies, procedures and practices and the working environment to ensure the equitable representation of the designated groups in the workplace within set timeframes.

5. STRUCTURE OF THE EE PLAN

- 5.1 The EE Plan must meet all the requirements of Section 20 of the Act.
- 5.2 The EE Plan must be developed using the EEA13 form contained in the Employment Equity Regulations of 2014, as amended.
- 5.3 The EE Plan must be informed by the analysis (EEA12) and as a minimum contain all the information required by EEA13 form in the regulations.

6. PROCESS FOR CONSTRUCTING PLAN

- a) The development of an EE Plan must be an inclusive process that involves consultation and is informed by:
 - i) an analysis of the workforce;
 - ii) analysis of the policies, procedures and practices; and
 - iii) analysis of the work environment and diversity management experience.
- b) Three phases are usually involved in relation to the EE Plan, i.e. the preparation phase, the implementation phase and the monitoring phase.

6.1 PREPARATION PHASE

6.1.1 INITIATOR TO STEER THE PROCESS, INCLUDING THE ASSIGNMENT OF ONE OR MORE SENIOR MANAGERS

- a) An employer must initiate and steer the process for the preparation of an EE Plan, which could be assigning such responsibility to a permanent employee that reports directly to the Chief Executive Officer² (CEO) / Accounting Officer.
- b) Notwithstanding the CEO / Accounting Officer is deemed to be the accounting officer for the implementation of the Act, the board may nevertheless agree on employment equity outcomes for the CEO / Accounting Officer.
- c) The CEO / Accounting Officer may, particularly in the case involving a small workforce, assume the responsibility to initiate and steer the process for the development, implementation and monitoring of the EE Plan.

² The CEO is the accounting officer who could also be a Director General, Municipal Manager, etc.

- d) The CEO / Accounting Officer may, particularly in the case involving a large workforce, assign the responsibility for initiating the process for the development, implementation and monitoring of the EE Plan to senior managers.
- e) One or more senior managers who are assigned the responsibility for the implementation and monitoring of EE Plans should be included from the preparation phase of the process.
- f) The employer must -
 - i. provide the assigned managers with the necessary authority and means, such as an appropriate budget, to perform their allocated functions; and
 - ii. take reasonable steps to ensure that these managers perform their allocated functions by incorporating key employment equity outcomes in their performance contracts.

6.1.2 COMMUNICATION, AWARENESS AND CONSULTATION

When communicating on matters concerning employment equity, it is important to take special care that the content is communicated in clear and easily understood language to provide the entire workforce reasonable opportunity to grasp the content and subsequent rights.

6.1.2.1 All employees should be made aware and informed of –

- a) The objectives, content and application of the Act, its regulations and Codes of good practice in preparation for their participation, including consultation.
- b) Matters relating to the identification, prohibition and elimination of unfair discrimination and affirmative action to achieve equality and diversity in the workplace.
- c) The proposed process to be followed by the employer.
- d) The advantages to employees for participation in the process.
- e) The need for the involvement of all stakeholders in order to promote positive outcomes.

6.1.2.2 Employers must consult with employees, both from designated and non-designated groups at all occupational levels in the organization, when conducting an analysis, preparing and implementing a plan and when submitting employment equity reports to the Department of Labour.

6.1.2.3 Managers should be informed of their obligations in terms of the Act, and training should be provided to them where particular skills do not exist, e.g. diversity management, coaching and mentoring.

6.1.2.4 Communication on employment equity should focus on positive outcomes, including the better utilization of all of the employer's human resources and the creation of a diverse and more productive workforce.

6.1.2.5 Consultation with employees should commence as early as possible in the process, which should involve:

- a) An employer establishing a consultative forum or using an existing forum to consult with employees on employment equity matters.
- b) Employee representatives and trade unions reflecting the interests of employees from both designated and non-designated groups and across all occupational levels of the workforce.
- c) Where the employer does not have representatives from a specific group, a member of the forum can be assigned to represent the interest of such groupings/ constituency until such time a representative is nominated.
- d) Representative trade unions, where these exist, or representatives nominated by such trade unions must be included in the consultation process.
- e) The employer should be represented by one or more members of senior management in the forum.

6.1.2.6 Consultation would include-

- a) Reasonable opportunity for employee representatives to meet with the employer to consult on the conducting of an analysis, development of a plan and the submitting of reports to the Department of Labour.
- b) The opportunity for both employer and employee representatives to provide feedback to their respective constituencies.
- c) The request, receipt and consideration of relevant information.
- d) The allocation of adequate time for each of the steps to be completed.

6.1.2.7 Regular (at least quarterly), structured and scheduled meetings must be held and the deliberations properly recorded to ensure a constructive and well-informed process.

6.1.2.8 Employee representatives must be allowed time to effectively participate in the consultation process.

6.1.2.9 The disclosure of relevant information by designated employers is vital for the successful implementation of the EE Plan, which should include-

- (a) the extent to which suitably qualified people from and amongst the different designated groups are equitably represented within each occupational level in that employer's workforce in relation to the demographic profile of the national and regional (provincial) economically active population.
- (b) steps taken by a designated employer to train suitably qualified people from the designated groups.
- (c) steps to be taken by a designated employer to recruit and promote persons from the designated groups to implement its EE Plan.
- (d) the extent to which the designated employer has made progress in eliminating employment barriers that adversely affect people from designated groups.
- (e) steps taken by an employer to appoint and retain suitably qualified people from the designated groups.
- (f) steps taken by the designated employer to provide reasonable accommodation for suitably qualified people from the designated groups.

6.1.2.10 Where a representative or trade union refuses to take part in the consultation process, the employer should record the circumstances in writing and a copy of this document should be provided to the representative or trade union concerned.

6.1.3 CONDUCTING AN ANALYSIS (*contained in EEA12 of regulations*)

Conducting of an analysis must be done in accordance with the EEA12 form of the Employment Equity Regulations of 2014, as amended. All areas of the EEA12 form template must remain, but the employer may add other areas, including columns and rows, in order to meet the objectives of the Act.

6.1.3.1 The purpose of the analysis is –

- a) To determine the extent of under-representation of employees, i.e. both permanent and temporary³ workers, from the designated groups in the

³ Section 57 of the Act states:

different occupational levels of the employer's workforce in terms of race, gender and disability.

- b) To assess all employment policies, procedures and practices, and the working environment in order to –
 - (i) Identify any barriers that may contribute to the under-representation or under-utilization of employees from the designated groups;
 - (ii) Identify any barriers or factors that may contribute to the lack of Affirmation of diversity in the workplace;
 - (iii) Identify other employment conditions that may adversely affect designated groups; and
 - (iv) Identify practices or factors that positively promote employment equity and diversity in the workplace, including reasonable accommodation.

6.1.3.2 Workforce profile

- a) The first step in conducting an analysis of the workforce profile is to differentiate between employees of the various groups, both in terms of the designated (i.e. Blacks, women and persons with disabilities) and non-designated groups by using the EEA1 form, contained in the regulations, for employees to declare their status.
- b) Existing and/or historical information may be used to assist to verify an employee's status.
- c) An analysis of the workforce profile should provide a comparison of designated groups using up-to-date demographic data in terms of their economically active population and their representation at the various occupational levels, which is contained in the regulations as Form EEA8 for demographic information and EEA9 form for information distinguishing between the various occupational levels.

(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 be the employee of that client, where that person's employment with the client is of indefinite duration or for a period three months or longer.

(2) Where a temporary employment service, on the express or implied instruction of a client, commits an act of unfair discrimination, both the temporary employment service and the client are jointly and severally liable

- d) The analysis of the workforce profile must be based on a snapshot of each occupational level on a particular date in terms of race, gender and disability, and per occupational level on a particular date.
- e) The under-representation or over-representation of a particular group, whether designated or non-designated, must be captured in the analysis and used to inform and prioritize strategies in the EE plan to address the under-representation.
- f) Recruitment strategies may vary depending upon the level of responsibility and the degree of specialization of the occupation, usually the higher the degree of responsibility or specialization required for the job, the broader the recruitment strategy.

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

The review should include a critical examination of all established policies, practices, procedures and the working environment to identify barriers that directly or indirectly impede one or more of the designated groups' equitable representation in the workplace, including those relating to -

- a) Recruitment, selection, pre-employment testing and induction, promotion, development and retention.
- b) Succession and experience planning, promotions and transfers.
- c) Job assignments and training opportunities.
- d) Performance and remuneration, including equal pay for work of equal value⁴.
- e) Discipline and dispute resolution.

⁴ Section 16 (3) (4) (5) of the LRA states that:

Subject to subsection (5), whenever an employer is consulting or bargaining with a representative trade union, the employer must disclose to the representative trade union all relevant information that will allow the representative trade union to engage effectively in consultation or collective bargaining. The employer must notify the trade union representative or the representative trade union in writing if any information disclosed in terms of subsection (2) or (3) is confidential. An employer is not required to disclose information that is legally privileged;

- (a) that the employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of any court;
- (b) that is confidential and, if disclosed, may cause substantial harm to an employee or the employer; or
- (c) that is private personal information relating to an employee, unless that employee consents to the disclosure of that information.

If there is a dispute about what information is required to be disclosed in terms of this section, any party to the dispute may refer the dispute in writing to the Commission.

- f) Working conditions, including the accommodation of cultural, religious and other diversity differences.
- g) Reasonable accommodation, including for persons with disabilities
- h) Corporate culture.
- i) Any other policy, procedure or practice that may arise from the consultation process.

7. DEVELOPING THE EE PLAN

The employer must consult and attempt to reach consensus on the development of the EE Plan (EEA13) by taking the following into account-

- a) Analysis report (EEA12).
- b) National and provincial Economically Active Population (EAP)
- c) Determining the duration of the EE Plan.
- d) Determining the annual objectives of the EE Plan.
- e) Corrective measures formulated, including goals and targets.
- f) Time frames established.
- g) The EE Plan drawn up in terms of section 20 of the Act.
- h) Resources identified and allocated for the implementation of the EE Plan.
- i) The EE Plan communicated.

7.1 Analysis Report

- 7.1.1 An employer must consult and attempt to reach reasonable consensus on the under-representation of the designated groups and the barriers they identified in the analysis report. The analysis report must be used to prioritize the targeted designated groups in accordance with their representation.
- 7.1.2 The analysis report must be used to determine and inform the affirmative action measures, including strategies, which would be included in the EE Plan as a response to barriers identified in policies, procedures and practices.

7.2 Duration of EE Plan

An employer should take the following into consideration when determining the duration of an EE Plan:

- a) the EE Plan must not be shorter than one year and not longer than five years.
- b) workforce size.
- c) nature and location of workplace, including geographic spread.
- d) the time needed to implement affirmative measures to achieve numerical and non-numerical goals as outlined in the EE Plan.

- e) the start and end date of the EE Plan must be specific in terms of the day, month and the year.
- f) An employer's business/strategic plan.

7.3 Objectives of the EE Plan

In determining the annual objectives for the EE Plan, the following must be taken into account:

- a) The purpose or overall objective of the Act is to achieve equitable representation of the designated groups in the workplace that is free from unfair discrimination.
- b) The objectives in the EE Plan must be specific, measurable, achievable, relevant and time bound (SMART).
- c) Broader objectives of the business.
- d) Prioritizing and resource availability and allocation.

7.4 Numerical goals and numerical targets

- a) **Numerical goals** are the entire workforce profile in terms of race, gender and disability, and **not** the difference between the current workforce profile and the projected workforce profile the employer seeks to achieve at the end employment equity plan (EE Plan).
- b) The **numerical targets** are the entire workforce profile in terms of race, gender and disability, and **not** the difference between the current workforce profile and the projected workforce profile the employer seeks to achieve by the next reporting period.
- c) The numerical goals and the annual numerical targets must be informed by the outcome of the analysis and prioritized and weighted more towards the designated groups that are most under-represented in terms of the national and provincial economically active population, in terms of section 42 of the Act.
- d) Planned vacancies and natural attrition (such as resignations, promotions and retirements) must be taken into consideration when determining numerical goals and targets.

7.5 Affirmative action measures

- 7.5.1 An employer must implement affirmative action measures in response to barriers identified in the analysis report (EEA12) to ensure that suitably qualified people from the designated groups have equal employment opportunities and are equitably represented in all occupational levels in the workforce, including

- (a) measures to identify and eliminate employment barriers that adversely affect people from designated groups, directly or indirectly.
- (b) measures to further diversity and the management of diversity in the workplace.
- (c) reasonable accommodation for suitably qualified people from designated groups, including for persons with disabilities.
- (d) measures to recruit, promote, retain and develop people from designated groups, including skills development and skills transfer.
- (e) measures that include preferential treatment, numerical goals and measures other than numerical goals, but exclude quotas or the creation of absolute barriers.

7.5.2 All corrective measures to eliminate any barriers identified during the analysis must be specified in the EE Plan.

7.6 Consensus

- a) The employer must consult and attempt to reach consensus on the annual objectives and corrective measures contained in the EE Plan.
- b) Where consensus is not reached on a particular item in the EE Plan, the reasons related thereto must be recorded and attempts must be made to resolve them through the dispute resolution mechanisms outlined in the EE Plan.

7.7 Resources

Resources must be appropriately allocated, including human resources, financial resources and material resources.

7.8 Assignment of responsibility

The person in the workforce, including senior managers, responsible for monitoring and implementing the EE Plan must take into account:

- a) The size of the organization.
- b) Line functions.
- c) Geographic location and spread.
- d) Feedback requirements.
- e) Responsibility and authority of the person.

7.9 Dispute Resolution

- a) Internal procedures for resolving any dispute about the interpretation and implementation of the EE Plan should be agreed and specified in the EE Plan.

- b) The last point of call for the resolving of any disputes about the interpretation and implementation of the EE Plan should be the Chief Executive Officer (CEO) / Accounting Officer of the organization.
- c) Existing dispute resolution procedures could be used or tailored to resolve disputes concerning the interpretation and implementation of the EE Plan.
- d) Where a dispute still remains after the internal dispute resolution processes were followed, a party to the dispute may make an application to the Commission for Conciliation, Mediation and Arbitration (CCMA) or the Labour Court.
- e) Procedures must be time-bound, cost effective and simple for designated and non-designated employees to follow.

7.10 Monitoring and Evaluating the EE Plan

- a) The person(s) responsible for the monitoring and evaluation of the EE Plan and the process to be followed, including the CEO / Accounting Officer and the Board, must be outlined in the EE Plan.
- b) Regular meetings must be held and records of progress reports must be kept to effectively monitor and evaluate the implementation of the EE Plan, which where applicable should include the CEO / Accounting Officer and the Board.
- c) Indicators for the monitoring and evaluation of the EE Plan must be predefined and agreed upon prior to the implementation of the EE Plan.
- d) The outcome of the monitoring and evaluation process must inform strategies to implement the EE Plan and for the preparation of successive plans to start at least six months prior to the expiry of the current EE Plan.
- e) The EE Plan may only be reviewed if there is a major event or restructuring during its duration.

7.11 Communication

Communication of the EE Plan must be informed by a communication strategy that takes the following into account:

- a) The mechanisms available to communicate, including print and electronic.
- b) Various ways to communicate with different target groups, e.g. persons with disabilities.
- c) The content of the EE Plan.
- d) The persons responsible for implementing the EE Plan.
- e) The manner in which disputes on the implementation and interpretation of the EE Plan would be managed.
- f) Availability and accessibility of the EE Plan, including to persons with disabilities.

8. REPORTING

- a) A designated employer is expected to submit their employment equity report to the Department of Labour annually on the first working day of October or by a prescribed date for online reporting.
- b) The employer must consult with its employees or employee representatives and union representatives through established forum(s) prior to submitting their EE Report to the Department of Labour.
- c) The EE Report must be used as a monitoring and evaluation tool to inform future implementation strategies and the preparation of successive plans.
- d) EE Reports must reflect the progress made against the employer's current EE Plan.
- e) EE Reports must be completed by employers using the EEA2 and EEA4 form contained in the regulations.
- f) Public companies must include their workforce profile in their financial report using the EEA10 form format contained in the regulations.

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