EMPLOYMENT EQUITY ACT

[Updated to 1 August 2014]

Act 55 of 1998 (Notice 1323, G. 19370),
Proc. R55, G. 20057,
Proc. R83, G. 20339,
Proc. R115, G. 20626,
Act 65 of 2002 (GoN 1236, G. 24390, c.i.o 20 February 2003 [Proc. 10, G. 24475]),
Act 68 of 2002 (GoN 189, G. 24356, c.i.o 28 February 2003 [Proc. 17, G. 25003]),
Act 52 of 2003 (GoN 83, G. 25961, c.i.o 28 February 2003),
Act 47 of 2013 (GoN 16, G. 37238, c.i.o 1 August 2014 [Proc. 50, G. 37871]).

[Commencement: Chapter IV (ss 28 to 33): **14 May 1999**; Chapter II (ss 5 to 11) and ss 1, 2, 3, 4, 34, 47, 48, 49, 50, 51, 52, 54, 55, 56, 57, 59, 60, 61, 62, 63 and 64 and Schs 2 and 3: **9 August 1999**; Chapter III (ss 12 to 27) and ss 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 58, 65 and Schs 1 and 4: **1 December 1999**]

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 SECTIONS

CHAPTER I
DEFINITIONS, PURPOSE, INTERPRETATION AND APPLICATION

CHAPTER II
PROHIBITION OF UNFAIR DISCRIMINATION

CHAPTER III
AFFIRMATIVE ACTION

CHAPTER IV
COMMISSION FOR EMPLOYMENT EQUITY

CHAPTER V
MONITORING, ENFORCEMENT AND LEGAL PROCEEDINGS

Part A
Monitoring

Enforcement

Part B
Legal proceedings

CHAPTER I
DEFINITIONS, PURPOSE, INTERPRETATION AND APPLICATION

1. Definitions

In this Act, unless the context otherwise indicates—

"Basic Conditions of Employment Act" means the Basic Conditions of Employment Act, 1997 (Act 75 of 1997);

"black people" is a generic term which means Africans, Coloureds and Indians;

“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;

“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

(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 108 of 1996);

“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;

(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 the National Defence Force, the National Intelligence Agency and the South African Secret Service; and

[“designated employer” para (d) subs by s 1(a) of Act 47 of 2013.]

(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;

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

(a) are citizens of the Republic of South Africa by birth or descent; or

(b) became citizens of the Republic of South Africa by naturalisation—

(i) before 27 April 1994; or

(ii) after 26 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date but who were precluded by apartheid policies;

["designated groups" subs by s 1(b) of Act 47 of 2013.]

"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;

"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

(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 30 of 1966);

(b) the Guidance and Placement Act, 1981 (Act 62 of 1981);

(c) the Manpower Training Act, 1981 (Act 56 of 1981);

(d) the Occupational Health and Safety Act, 1993 (Act 85 of 1993);

(e) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993);

(f) the Labour Relations Act, 1995 (Act 66 of 1995);

(g) the Basic Conditions of Employment Act, 1997 (Act 75 of 1997);

(h) any other Act, whose administration has been assigned to the Minister;

"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;

(e) job assignments;

(f) the working environment and facilities;

(g) training and development;

(h) performance evaluation systems;

(i) promotion;

(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;

"HIV" means the Human Immunodeficiency Virus;

"labour inspector" means a person appointed in terms of section 63 of the Basic Conditions of Employment Act;

["labour inspector" subs by s 1(c) of Act 47 of 2013.]

"Labour Relations Act" means the Labour Relations Act, 1995 (Act 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;

"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 35 of 1994);

"organ of state" means an organ of state as defined in section 239 of the Constitution;

"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;

"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 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—

(a) the National Defence Force;

(b) the National Intelligence Agency;

["public service" paragraph (b) am by s 26 (Sch 1) of Act 68 of 2002.]

(c) the South African Secret Service;

(d) the South African National Academy of Intelligence;

["public service" para (d) ins by s 40(1) (Item 1 Sch) of Act 65 of 2002.]

(e) Comsec;

["public service" para (d) (second para (d) ins by s 26 (Item 1 Sch 1) of Act 68 of 2002; renumbered as para (e) by s 25(2) (Item 1 Sch 2) of Act 52 of 2003.]

"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;

"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;

"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;

“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—

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

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

(c) to send or transmit it in any other prescribed manner;

[“serve” or “submit” subs by s 1(d) of Act 47 of 2013.]

“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 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.

[Commencement of s 1: 9 August 1999.]

2. Purpose of this Act

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 employment experienced by designated groups, in order to ensure their equitable representation in all occupational levels in the workforce.

[Commencement of s 2: 9 August 1999; s 2(b) subs by s 2 of Act 47 of 2013.]

3. Interpretation of this Act

This Act must be interpreted—

(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 particular those contained in the International Labour Organisation Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation.

[Commencement of s 3: 9 August 1999.]

4. Application of this Act

(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, the South African Secret Service or the South African National Academy of Intelligence or to the directors and staff of Comsec*.

* 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.

[Commencement of s 4: 9 August 1999; s 4(3) subs by s 40(1) (Item 2 Sch) of Act 65 of 2002, s 26 (Item 2 Sch 1) of Act 68 of 2002, s 25(2) (Item 2 Sch 2) of Act 52 of 2003.]

CHAPTER II
PROHIBITION OF UNFAIR DISCRIMINATION

5. Elimination of unfair discrimination

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

[Commencement of s 5: 9 August 1999.]

6. Prohibition of unfair discrimination

(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, birth or on any other arbitrary ground.

[S 6(1) subs by s 3(a) of Act 47 of 2013.]

(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.

(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).

(4) A difference in terms and conditions of employment between employees of the same employer performing the same or substantially the same work or work of equal value that is directly or indirectly based on any one or more of the grounds listed in subsection (1), is unfair discrimination.

[S 6(4) ins by s 3(b) of Act 47 of 2013.]

(5) The Minister, after consultation with the Commission, may prescribe the criteria and prescribe the methodology for assessing work of equal value contemplated in subsection (4).

[Commencement of s 6: 9 August 1999; s 6(5) ins by s 3(b) of Act 47 of 2013.]

7. Medical testing

(1) Medical testing of an employee is prohibited, unless—

(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.

[Commencement of s 7: 9 August 1999.]

8. Psychological testing and other similar assessments

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;

[S 8(b) am by s 4 of Act 47 of 2013.]

(c) is not biased against any employee or group; and

[S 8(c) am by s 4 of Act 47 of 2013.]

(d) has been certified by the Health Professions Council of South Africa established by section 2 of the Health Professions Act, 1974 (Act 56 of 1974), or any other body which may be authorised by law to certify those tests or assessments.

[Commencement of s 8: 9 August 1999; s 8(d) ins by s 4 of Act 47 of 2013.]

9. Applicants

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

[Commencement of s 8: 9 August 1999.]

10. Disputes concerning this Chapter

(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.

(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

(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;

[S 10(6)(a) am by s 5(a) of Act 47 of 2013.]

(aA) an employee may refer the dispute to the CCMA for arbitration if—

(i) the employee alleges unfair discrimination on the grounds of sexual harassment; or

(ii) in any other case, that employee earns less than the amount stated in the determination made by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act; or

[S 10(6)(aA) ins by s 5(a) of Act 47 of 2013.]

(b) any party to the dispute may refer it to the CCMA for arbitration if all the parties to the dispute consent to arbitration of the dispute.

[S 10(6)(b) subs by s 5(b) of Act 47 of 2013.]

(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.

(8) A person affected by an award made by a commissioner of the CCMA pursuant to a dispute contemplated in subsection (6)(aA) may appeal to the Labour Court against that award within 14 days of the date of the award, but the Labour Court, on good cause shown, may extend the period within which that person may appeal.

[Commencement of s 10: 9 August 1999; s 10(8) ins by s 5(c) of Act 47 of 2013.]

11. Burden of proof

(1) If unfair discrimination is alleged on a ground listed in section 6(1), the employer against whom the allegation is made must prove, on a balance of probabilities, that such discrimination—

(a) did not take place as alleged; or

(b) is rational and not unfair, or is otherwise justifiable.

(2) If unfair discrimination is alleged on an arbitrary ground, the complainant must prove, on a balance of probabilities, that—

(a) the conduct complained of is not rational;

(b) the conduct complained of amounts to discrimination; and

(c) the discrimination is unfair.

[Commencement of s 11: 9 August 1999; s 11 subs by s 6 of Act 47 of 2013.]

CHAPTER III
AFFIRMATIVE ACTION

12. Application of this Chapter

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

[Commencement of s 12: 1 December 1999.]

13. Duties of designated employers

(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—

(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.

[Commencement of s 13: 1 December 1999.]

14. Voluntary compliance with this Chapter

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.

[Commencement of s 14: 1 December 1999.]

15. Affirmative action measures

(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 levels in the workforce of a designated employer.

[S 15(1) subs by s 7(a) of Act 47 of 2013.]

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

(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;

(d) subject to subsection (3), measures to—

(i) ensure the equitable representation of suitably qualified people from designated groups in all occupational levels in the workforce; and

[S 15(2)(d)(i) subs by s 7(b) of Act 47 of 2013.]

(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.

(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.

[Commencement of s 15: 1 December 1999.]

16. Consultation with employees

(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

(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—

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

[S 16(2)(a) subs by s 8 of Act 47 of 2013.]

(b) employees from designated groups; and

(c) employees who are not from designated groups.

(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.

[Commencement of s 16: 1 December 1999.]

17. Matters for consultation

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

(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.

[Commencement of s: 1 December 1999.]

18. Disclosure of information

(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 16* of the Labour Relations Act, with the changes required by context, apply to disclosure of information.

* 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.

[Commencement of s 18: 1 December 1999.]

19. Analysis

(1) A designated employer must collect information and conduct an analysis, as prescribed, of its employment policies, practices, procedures and the working 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 level in order to determine the degree of

underrepresentation of people from designated groups in various occupational levels in that employer's workforce.

[Commencement of s 19: 1 December 1999; s 19(2) subs by s 9 of Act 47 of 2013.]

20. Employment equity plan

(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.

(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);

(c) where underrepresentation of people from designated groups has been identified by the analysis, the numerical goals* to achieve the equitable representation of suitably qualified people from designated groups within each occupational level in the workforce, the timetable within which this is to be achieved, and the strategies intended to achieve those goals;

* 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.

[S 20(2)(c) subs by s 10(a) of Act 47 of 2013.]

(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;

(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

(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;

(b) prior learning;

(c) relevant experience; or

(d) capacity to acquire, within a reasonable time, the ability to do the job.

(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) 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.

(7) The Director-General may apply to the Labour Court to impose a fine in accordance with Schedule 1, if a designated employer fails to prepare or implement an employment equity plan in terms of this section.

[Commencement of s 20: 1 December 1999; s 20(7) ins by s 10(b) of Act 47 of 2013.]

21. Report*

* 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.

(1) A designated employer must submit a report to the Director-General once every year, on the first working day of October or on such other date as may be prescribed.

[S 21(1) subs by s 11(a) of Act 47 of 2013.]

(2) …

[S 21(2) rep by s 11(b) of Act 47 of 2013.]

(3) Despite subsection (1), an employer that becomes a designated employer on or after the first working day of April but before the first working day of October, must only submit its first report on the first working day of October in the following year or on such other date contemplated in subsection (1).

[S 21(3) subs by s 11(c) of Act 47 of 2013.]

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

[S 21(4) subs by s 11(c) of Act 47 of 2013.]

(4A) An employer that is not able to submit a report to the Director-General by the first working day of October in terms of subsection (1) must notify the Director-General in writing before the last working day of August in the same year giving reasons for its inability to do so.

[S 21(4A) ins by s 11(d) of Act 47 of 2013.]

(4B) The Director-General may apply to the Labour Court to impose a fine in accordance with Schedule 1, if an employer—

(a) fails to submit a report in terms of this section;

(b) fails to notify and give reasons to the Director-General in terms of subsection (4A); or

(c) has notified the Director-General in terms of subsection (4A) but the reasons are false or invalid.

[S 21(4B) ins by s 11(d) of Act 47 of 2013.]

(5) …

[S 21(5) rep by s 11(e) of Act 47 of 2013.]

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

[Commencement of s 21: 1 December 1999.]

[**Editor Note:** Act 47 of 2013, s 29 says—

"**29. Transitional provision**

An employer who is a designated employer in terms of the principal Act immediately before section 11 of this Act takes effect (which is 1 August 2014), must report for the duration of the designated employer's current employment equity plan as if section 21 of the principal Act has not been amended by this Act."]

22. Publication of report

(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.

[Commencement of s 21: 1 December 1999.]

23. Successive employment equity plans

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

[Commencement of s 23: 1 December 1999.]

24. Designated employer must assign manager

(1) Every designated employer must—

(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.

(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.

[Commencement of s 24: 1 December 1999.]

25. Duty to inform

(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 Act*.

* 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.

(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

(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.

[Commencement of s 25: 1 December 1999.]

26. Duty to keep records

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.

[Commencement of s 26: 1 December 1999.]

27. Income differentials and discrimination

[Section heading subs by s 12(a) of Act 47 of 2013.]

(1) Every designated employer, when reporting in terms of section 21(1), 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 level of that employer's workforce.

[S 27(1) subs by s 12(b) of Act 47 of 2013.]

(2) Where disproportionate income differentials, or unfair discrimination by virtue of a difference in terms and conditions of employment contemplated in section 6(4), are reflected in the statement contemplated in subsection (1), a designated employer must take measures to progressively reduce such differentials subject to such guidance as may be given by the Minister as contemplated in subsection (4).

[S 27(2) subs by s 12(b) of Act 47 of 2013.]

(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;

(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.

(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.

(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.

[Commencement of s 27: 1 December 1999.]

CHAPTER IV
COMMISSION FOR EMPLOYMENT EQUITY

28. Establishment of Commission for Employment Equity

The Commission for Employment Equity is hereby established.

[Commencement of s 27: 14 May 1999.]

29. Composition of Commission for Employment Equity

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

(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;

(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.

(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;

(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.

(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.

[Commencement of s 29: 14 May 1999.]

30. Functions of Commission for Employment Equity

(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.

[Commencement of s 30: 14 May 1999.]

31. Staff and expenses

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

[Commencement of s 31: 14 May 1999.]

32. Public hearings

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.

[Commencement of s 32: 14 May 1999.]

33. Report by Commission for Employment Equity

The Commission must submit an annual report to the Minister.

[commencement of s 32: 14 May 1999.]

CHAPTER V
MONITORING, ENFORCEMENT AND LEGAL PROCEEDINGS

Part A
Monitoring

34. Monitoring by employees and trade union representatives

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;

(d) a workplace forum;

(e) a labour inspector;

(f) the Director-General; or

(g) the Commission.

[Commencement of s 34: 9 August 1999.]

Enforcement

35. Powers of labour inspectors

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.

[Commencement of s 35: 1 December 1999.]

36. Undertaking to comply

(1) A labour inspector may request and obtain a written undertaking from a designated employer to comply with paragraph (a), (b), (f), (h), (i) or (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;

(c) …

(d) …

(e) …

(f) publish its report as required by section 22;

(g) …

(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.

(2) If a designated employer does not comply with a written undertaking within the period stated in the written undertaking, the Labour Court may, on application by the Director-General, make the undertaking, or any part of the undertaking, an order of the Labour Court.

[Commencement of s 36: 1 December 1999; s 36 subs by s 13 of Act 47 of 2013.]

37. Compliance order

(1) A labour inspector may issue a compliance order to a designated employer if that employer has failed to comply with section 16, 17, 19, 22, 24, 25 or 26 of this Act.

[S 37(1) subs by s 14(a) of Act 47 of 2013.]

(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;

(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;

(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 copy of the compliance order must be served on the employer named in it.

[S 37(3) subs by s 14(b) of Act 47 of 2013.]

(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.

[S 37(5) subs by s 14(c) of Act 47 of 2013.]

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

[Commencement of s 37: 1 December 1999; s 37(6) subs by s 14(c) of Act 47 of 2013.]

38. Limitations

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.

[Commencement of s 38: 1 December 1999.]

39. …

[S 39 rep by s 15 of Act 47 of 2013.]

40. …

[S 40 rep by s 15 of Act 47 of 2013.]

41. Register of designated employers

(1) The Minister must keep a register of designated employers that have submitted the reports required by section 21.

(2) The register referred to in subsection (1) is a public document.

[Commencement of s 40: 1 December 1999.]

42. Assessment of compliance

(1) 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 may, in addition to the factors stated in section 15, take the following into account—

(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 economically active population;

(b) reasonable steps taken by a designated employer to train suitably qualified people from the designated groups;

(c) reasonable steps taken 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;

(dA) reasonable steps taken by an employer to appoint and promote suitably qualified people from the designated groups; and

(e) any other prescribed factor.

(2) The Minister, after consultation with NEDLAC, may issue a regulation in terms of section 55 which must be taken into account by any person who is required to determine whether a designated employer is implementing employment equity in compliance with this Act.

(3) Without limiting subsection (1)(a), the regulation made in terms of subsection (2) may specify the circumstances under which an employer's compliance should be determined with reference to the demographic profile of either the national economically active population or the regional economically active population.

(4) In any assessment of its compliance with this Act or in any court proceedings, a designated employer may raise any reasonable ground to justify its failure to comply.

[Commencement of s 42: 1 December 1999; s 42 subs by s 16 of Act 47 of 2013.]

43. Review by Director-General

(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;

(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

(d) request a meeting with any—

(i) employee or trade union consulted in terms of section 16;

(ii) workplace forum; or

(iii) other person who may have information relevant to the review.

[Commencement of s 43: 1 December 1999.]

44. Outcome of Director-General's review

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—

(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.

[Commencement of s 44: 1 December 1999.]

45. Failure to comply with Director-General's request or recommendation

(1) 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 apply to the Labour Court—

(a) for an order directing the employer to comply with the request or recommendation; or

(b) if the employer fails to justify the failure to comply with the request or recommendation, to impose a fine in accordance with Schedule 1 on the employer.

(2) If an employer notifies the Director-General in writing within the period specified in a request or recommendation that it does not accept the request or recommendation, the Director-General must institute proceedings in terms of subsection (1) within—

(a) 90 days of receiving the employer's notification, in the case of a request; or

(b) 180 days of receiving the employer's notification, in the case of a recommendation.

(3) If the Director-General does not institute proceedings within the relevant period contemplated in subsection (2), the request or recommendation, as the case may be, lapses.

(4) Any challenge to the validity of the Director-General's request or recommendation may only be made in the proceedings contemplated in subsection (1).

[Commencement of s 44: 1 December 1999; s 45 subs by s 17 of Act 47 of 2013.]

Part B
Legal proceedings

46. Conflict of proceedings

(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.

(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.

[Commencement of s 46: 1 December 1999.]

47. Consolidation of proceedings

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

[Commencement of s 47: 9 August 1999.]

48. Powers of commissioner in arbitration proceedings

(1) 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.

[S 48 numbered as s 48(1) by s 18 of Act 47 of 2013.]

(2) An award made by a commissioner of the CCMA hearing a matter in terms of section 10(6)(aA) or (b) may include any order referred to in section 50(2)(a) to (c), read with the changes required by the context, but an award of damages referred to in section 50(2)(b) may not exceed the amount stated in

the determination made by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act.

[Commencement of s 48: 9 August 1999; s 48(2) ins by s 18 of Act 47 of 2013.]

49. Jurisdiction of Labour Court

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

[Commencement of s 49: 9 August 1999.]

50. Powers of Labour Court

(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;

(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;

(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;

(h) reviewing an administrative action in terms of this Act on any grounds that are permissible in law;

[S 50(1)(h) subs by s 19(a) of Act 47 of 2013.]

(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

(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—

(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;

(d) an order directing an employer, other than a designated employer, to comply with Chapter III as if it were a designated employer;

(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.

(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;

(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.

(5) A fine payable in terms of this Act must be paid into the National Revenue Fund referred to in section 213 of the Constitution.

[Commencement of s 50: 9 August 1999; s 50(5) ins by s 19(b) of Act 47 of 2013.]

Part C

51. Protection of employee rights

(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—

(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;

(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.

(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.

[Commencement of s 51: 9 August 1999.]

52. Procedure for disputes

(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.

(3) 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 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.

[Commencement of s 52: 9 August 1999.]

CHAPTER VI
GENERAL PROVISIONS

53. State contracts

(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—

(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

(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.

(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.

(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 agreement*.

* 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.

(5) The Minister may in the code of good practice set out factors that must be taken into account by any person assessing whether an employer complies with Chapter II or Chapter III.

[Commencement of s 53: not in force; s 53(5) ins by s 20 of Act 47 of 2013.]

54. Codes of good practice

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

(a) issue any code of good practice*; and

* 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) 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*.

[Commencement of s 54: 9 August 1999.]

55. Regulations

(1) The Minister may, by notice in the *Gazette* and on the advice of the Commission, make any regulation regarding—

(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 may by notice in the *Gazette* make a regulation providing for separate and simplified forms and procedures in respect of the obligations created by sections 19, 20, 21, 25 and 26 for employers that employ fewer than 150 employees.

[Commencement of s 55: 9 August 1999; s 55(2) subs by s 21 of Act 47 of 2013.]

56. Delegations

(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 sections 29(1), (5) and (7), 54, 55, 59(4) and 61(4).

[S 56(1) subs by s 22 of Act 47 of 2013.]

(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

(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.

(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).

[Commencement of s 56: 9 August 1999.]

57. Temporary employment services

(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 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.

[Commencement of s 57: 9 August 1999.]

58. Designation of organs of state

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.

[Commencement of s 58: 1 December 1999.]

59. Breach of confidentiality

(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

(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 R30 000,00.

[S 59(3) subs by s 23 of Act 47 of 2013.]

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

[Commencement of s 59: 9 August 1999; s 59(4) subs by s 23 of Act 47 of 2013.]

60. Liability of employers

(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 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 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.

[Commencement of s 60: 9 August 1999.]

61. Obstruction, undue influence and fraud

(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.

(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 R30 000,00.

[S 61(3) subs by s 24 of Act 47 of 2013.]

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

[Commencement of s 61: 9 August 1999; s 61(4) subs by s 24 of Act 47 of 2013.]

62. This Act binds State

This Act binds the State.

[Commencement of s 62: 9 August 1999.]

63. Application of Act when in conflict with other laws

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.

[Commencement of s 63: 9 August 1999.]

64. Repeal of laws and transitional arrangements

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.

[Commencement of 64: 9 August 1999.]

64A. Amendment of annual turnover thresholds in Schedule 4

The Minister may, after consultation with the Commission, by notice in the *Gazette*, amend the total annual turnover thresholds in Schedule 4 in order to counter the effect of inflation.

[S 64A ins by s 26 of Act 47 of 2013.]

65. Short title and commencement

(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 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

(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.

[Commencement of s 65: 1 December 1999.]

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 (read with 17), 19, 22, 24, 25, 26 and 43(2)***	***Contravention of any Provision of sections 20, 21, 23 and 44(b)***
No previous contravention	R1 500 000	The greater of R1 500 000 or 2% of the employer's turnover
A previous contravention in respect of the same provision	R1 800 000	The greater of R1 800 000 or 4% of the employer's turnover
A previous contravention within the previous 12 months or two previous contraventions in respect of the same provision within three years	R2 100 000	The greater of R2 100 000 or 6% of the employer's turnover
Three previous contraventions in respect of the same provision within three years	R2 400 000	The greater of R2 400 000 or 8% of the employer's turnover
Four previous contraventions in respect of the same provision within three years	R2 700 000	The greater of R2 700 000 or 10% of the employer's turn-over.

[Commencement of Sch 1: 1 December 1999; Sch 1 subs by s 27 of Act 47 of 2013.]

Schedule 2
LAWS REPEALED

Number and year of law	Short title	Extent of repeal
Act 66 of 1995	Labour Relations Act, 1995	Item 2(1)(a), 2(2) and 3(4)(a) of Schedule 7

[Commencement of Sch 2: 9 August 1999.]

Schedule 3
TRANSITIONAL ARRANGEMENTS

1. Definitions

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.

2. Disputes arising before commencement of this Act

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.

3. Courts

(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.

[Commencement of Sch 3: 9 August 1999.]

Schedule 4
TURNOVER THRESHOLD APPLICABLE TO DESIGNATED EMPLOYERS

Sector or subsectors in accordance with the Standard Industrial Classification	**Total annual turnover**
Agriculture	R6,00 m
Mining and Quarrying	R22,50 m
Manufacturing	R30,00 m
Electricity, Gas and Water	R30,00 m
Construction	R15,00 m
Retail and Motor Trade and Repair Services	R45,00 m
Wholesale Trade, Commercial Agents and Allied Services	R75,00 m
Catering, Accommodation and other Trade	R15,00 m
Transport, Storage and Communications	R30,00 m
Finance and Business Services	R30,00 m
Community, Social and Personal Services	R15,00 m

[Commencement of Sch 4: 1 December 1999; Sch 4 subs by s 28 of Act 47 of 2013.]