

## Employment Equity Bill passed by Parliament – what are the implications?

The Employment Equity Amendment Bill has now been passed by both houses of Parliament and is awaiting the signature of the president. Once the president has signed the Bill, it will be gazetted and become law and a date for its coming into law will be determined.

The Amendment Bill provides that the Minister of Employment and Labour will be able to determine numerical targets to be met for any economic sector. These sectoral targets may differentiate between occupational levels, subsectors, regions or other relevant factors. Prior to identifying national economic sectors or setting numerical targets the minister will consult with the Employment Equity Commission on the proposed sectors and sectoral targets and publish any proposals for public comment.

Once the minister has determined targets for a sector, all employers within that sector will have to align their targets with these prescribed targets. Should a designated employer fail to meet these targets or to provide reasonable grounds for its failure, the employer will be deemed to be non-compliant with the Act. Fines can be issued for non-compliance. Fines will only be imposed only after certain enforcement measures are adopted.

Such enforcement measures include, inter alia, written undertakings and compliance orders. The director general may apply to the Labour Court to impose a fine if a designated employer fails to comply with sectoral numerical targets. Moreover, non-compliance with this legislation will impact negatively on any state contracts that a business may want to enter into, as state contracts may only be issued to employers that have been certified as being in compliance with their obligations under the Act.

The Department of Labour and Employment has already started engaging the agricultural sector on the prescribed targets. The targets that the department seems to have in mind, are very ambitious and will be very difficult to attain. Further engagements are likely to follow.

A positive change is that Chapter 3 of the Act, which required small businesses with fewer than 50 employees, but with a turnover of more than R2 million to prepare employment equity plans will no longer apply to small business regardless of their turnover. Small businesses with fewer than 50 employees will therefore no longer be regarded as designated employers, regardless of their turnover. This means that these small employers will not be required to have an employment equity plans or submit reports.

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