

DEPARTMENT OF LABOUR

EMPLOYMENT EQUITY

Summary of the Employment Equity Act, 55 of 1998, issued in terms of Section 25 (1)

1. Chapter I – Definition, purpose, interpretation and application

1.1 Definitions: Section 1

- (a) Designated groups mean black people, women and people with disabilities who are citizens of the Republic of South Africa by birth or descent, or became citizens of the Republic of South Africa by naturalisation: before 27 April 1994 or after 26 April 1994 and who would have been entitled to acquire citizenship by naturalization prior to that date but were precluded by apartheid policies.
- (b) Designated employer means an employer who employs 50 or more employees, or an employer who employs fewer than 50 employees, but has a total annual turnover as reflected in Schedule 4 of the Act; municipalities and organs of State. Employers can also volunteer to become designated employers.
- (c) Temporary employees are employees who are employed for less than three months.

1.2 Purpose of the Act: Section 2

The purpose of this Act is to achieve equity in the workplace by –

- (a) Promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and
- (b) Implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups to ensure their equitable representation in all occupational levels in the workforce.

1.3 Application of the Act: Section 4

- (a) Chapter II applies to all employers and employees. Chapter III applies to designated employers and people from designated groups.
- (b) The South African National Defence Force, National Intelligence Agency, and South African Secret Services are excluded from this Act.

2. Chapter II – prohibition of unfair discrimination

- (a) 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.
- (b) It is not unfair discrimination to promote affirmative action consistent with the Act or to prefer or exclude any person on the basis of an inherent job requirement.

2.1. Equal pay for work of equal value: Section 6 (4)

- (a) Employers may not unfairly discriminate against employees by providing different 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 grounds listed in subsection 6 (1) or on any other arbitrary ground.

2.2. Medical testing: Section 7

- (a) Medical testing of an employee is permissible only when legislation requires testing or when this is justifiable for various reasons.
- (b) HIV testing is prohibited unless such testing is determined to be justifiable by the Labour Court.

2.3. Psychometric testing: Section 8

Psychometric testing and other similar assessments of an employee are prohibited unless the test or assessment being used has been scientifically shown to be valid and reliable, can be applied fairly to all employees, is not biased against any employee; and has been certified by the Health Professions Council of South Africa (HPCSA) established under the Health Professions Act, No. 56 of 1974 or any other body which may be authorized by law to certify such tests or assessments.

2.4. Disputes concerning Chapter 2: Section 10

- (a) An employee, or applicant for employment, may refer a dispute concerning alleged unfair discrimination, medical or psychological testing to the CCMA for conciliation. This must be done within six months of the alleged discrimination or testing.
- (b) If a dispute is not resolved after conciliation, any party to the dispute may refer it to the Labour Court for adjudication. The parties to a dispute may also agree to refer the dispute for arbitration.
- (c) Unfair dismissal disputes in which unfair discrimination is alleged must be dealt with in terms of the Labour Relations Act. The dismissal must be referred to the CCMA within 30 days.
- (d) An employee may refer a dispute to the CCMA for arbitration if –
- (i) the employee alleges sexual harassment; and

- (ii) in any other case, where the employee earns less than the amount prescribed by the Minister in terms of section 6 (3) of the Basic Conditions of Employment Act; or
- (e) Any party may refer the dispute to the CCMA for arbitration.

3. Chapter III – Affirmative Action

3.1. Duties of a designated employer: Section 13

- (a) A designated employer must implement affirmative action measures for designated groups to achieve employment equity.
- (b) In order to implement affirmative action measures, a designated employer must –
- (i) Consult with employees;
- (ii) Conduct analysis;
- (iii) Prepare an Employment Equity Plan; and
- (iv) Report to the Director-General on progress made in the implementation of the plan.

3.2. Affirmative action measures: Section 15

- (a) Affirmative action measures are measures intended to ensure that suitably qualified employees from designated groups have equal employment opportunities and are equitably represented in all occupational levels of the workforce.
- (b) Such measures must include:
- (i) Identification and elimination of barriers with an adverse impact on designated groups;
- (ii) Measures which promote diversity;
- (iii) Making reasonable accommodation for people from designated groups;
- (iv) Retention, development and training of designated groups (including skills development); and
- (v) Preferential treatment and numerical goals to ensure equitable representation, which exclude quotas.
- (c) Designated employers are not required to take any decision regarding an employment policy or practice that would establish an absolute barrier to prospective or continued employment or advancement of people not from designated groups.

3.3. Consultation: Sections 16 and 17

- (a) A designated employer must consult with its employees and their representatives on employment equity matters.
- (b) Designated employers should consult with employees both from designated and non-designated groups, and employees representing the interests of individuals from the various occupational levels.
- (c) Matters for consultation must include issues relating to the conducting of an analysis, preparing and implementing an Employment Equity Plan and preparation and submission of employment equity reports.

3.4. Disclosure of information: Section 18

To ensure meaningful consultation, the employer must disclose relevant information to the consulting parties, subject to section 16 of the Labour Relations Act 66 of 1995.

3.5. Analysis: Section 19

A designated employer must conduct an analysis of employment policies, practices, procedures and the work environment so as to identify employment barriers that adversely affect members of the designated groups. The analysis must also include the development of a workforce profile to determine to what extent designated groups are under-represented in the workplace.

3.6. Employment Equity Plan: Section 20

- (a) A designated employer must prepare and implement an Employment Equity Plan, which must not be shorter than one year and not longer than five years, and should include a timetable for the achievement of goals and objectives for each year of the plan.
- (b) The Director-General may apply to the Labour Court to impose a fine in terms of Schedule 1 for failure to prepare and implement an Employment Equity Plan.

3.7. Report: Section 21

- (a) A designated employer must submit a report to the Director-General annually on the first working day of October or by 15 January of the following year in the case of electronic reporting.
- (b) The Labour Court may, on application by the Director-General, impose a fine contemplated in Schedule 1 of this Act for failure to report.

3.8. Designated employer must assign a manager: Section 24

A designated employer must assign one or more senior managers to ensure implementation and monitoring of the Employment Equity Plan and must make available necessary resources for this purpose.

3.9. Income Differentials: Section 27

- (a) A statement of remuneration and benefits received in each occupational level of that employer's workforce must be submitted by a designated employer to the Employment Conditions Commission (ECC).
- (b) Where disproportionate income differentials or unfair discrimination in terms and conditions of employment as contemplated by section 6 (4) of the Act are reflected in the statement contemplated in sub-regulation (a), a designated employer must take measures to progressively reduce such differentials subject to guidance as may be given by the Minister as contemplated in the regulations.

4. Chapter V – Monitoring, Enforcement and Legal Proceedings

4.1. Monitoring: Section 34

Employees or trade union representatives can monitor the implementation of the Act and report any contraventions to the relevant bodies.

4.2. Powers of the Labour Inspector: Section 35

Labour Inspectors are authorised to conduct an inspection as provided for in section 65 and 66 of the Basic Conditions of Employment Act, 1997.

4.3. Undertaking to comply: Section 36

- (a) If the inspector has reasonable grounds to believe a designated employer has failed to comply with its obligations in terms of the Act, the inspector may request and obtain a written undertaking to comply within a specified period.
- (b) If an employer fails to comply with an undertaking, the Director-General may apply to the Labour Court to make such an undertaking an order of the Labour Court.

4.4. Compliance Order: Section 37

- (a) A labour inspector may issue a compliance order to a designated employer if that employer has failed to comply with sections 16, 17, 19, 22, 24, 25, or 26 of this Act.
- (b) If an employer fails to comply with an undertaking, the Director-General may apply to the Labour Court to make such an undertaking an order of the Labour Court.

4.5. Review by Director-General: Section 43, 44 and 45

- (a) The Director-General may conduct a review to determine whether an employer is complying with the Act.
- (b) The outcome of the review may result in the Director-General approving the designated employers' Employment Equity Plan; or may make recommendations to fulfil the requirements of the Act.
- (c) 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 for an order directing the employer to comply with the request or recommendation or to impose a fine in terms of Schedule 1 of this Act.

4.6. Powers of the Labour Court: Section 50

The Labour Court has the powers to make any appropriate orders, award compensation or impose fines.

4.7. Protection of Employee Rights: Section 51

The Act protects employees who exercise their rights and obligations under the Act against victimisation, obstruction and undue influence.

5. Chapter VI – General Provisions

5.1. State contracts: Section 53

Designated employers and employers who voluntarily comply with Chapter III, and who seek to do business with any organ of state, will have to apply for a certificate from the Minister confirming their compliance with Chapters II and III of the Act. Non-designated employers' compliance certificate will pertain to Chapter II.

5.2. Liability of Employers: Section 60

Should employees contravene any provision of this Act while performing their duties; the employer will be liable, unless the employer can prove that it did everything in its power to prevent the undesired act.

BASIC CONDITIONS OF EMPLOYMENT ACT, 1997

Summary to be kept by an employer in terms of section 30

[From BCEA 1A substituted by GN 1068 of 2002, by GN 167 of 12 March 2010, by GN 946 of 26 August 2014 and by GN 1068 of 25 November 2014, corrected by GN 1010 of 11 December 2014 and substituted by GN 1042 of 14 December 2014.]

The following is a summary of the provisions of the most important sections of the Basic Conditions of Employment Act, 1997, as amended.

1. APPLICATION OF THE ACT, SECTION 3

The Act applies to all employees and employers except members of the State Security Agency and unpaid volunteers working for an organisation with a charitable purpose.

The basic conditions of employment contained in the Act form part of the contract of employment of employees covered by the Act. Some, but not all, basic conditions of employment may be varied by individual or collective agreements in accordance with the provisions of the Act (See paragraph 7 below).

2. REGULATION OF WORKING TIME, CHAPTER TWO

2.1 Application

This chapter does not apply to senior managerial employees, employees engaged as casual staff who travel and employees who work less than 24 hours a month.

2.2 Ordinary hours of work, Section 9 and 9A

2.2.1 No employer shall require or permit an employee to work more than—

- (a) 45 hours in any week;
- (b) nine hours in any day if an employee works for five days or less in a week; or
- (c) eight hours in any day if an employee works on more than five days in a week.

2.2.2 Employees working less than the threshold, who work for less than four hours on any day must be paid for four hours on that day.

2.3 Overtime, Section 10

2.3.1 An employer may not require or permit an employee—

- (a) to work overtime except by an agreement;
- (b) to work more than ten hours' overtime a week.

2.3.2 An agreement may not require or permit an employee to work more than 12 hours on any day.

2.3.3 A collective agreement may increase overtime to fifteen hours per week for up to two months in any period of 12 months.

2.3.4 Overtime must be paid at 1.5 times the employee's normal wage or an employee may agree to receive paid time off.

2.4 Compressed working week, Section 11

2.4.1 An employee may agree in writing to work up to 12 hours in a day without receiving overtime pay.

2.4.2 This agreement may not require or permit an employee to work—

- (a) more than 45 ordinary hours in any week;
- (b) more than ten hours' overtime in any week; or
- (c) more than five days in any week.

2.5 Averaging of hours of work, Section 12

2.5.1 A collective agreement may permit the hours of work to be averaged over a period of up to four months.

2.5.2 An employee who is bound by such a collective agreement may not work more than—

- (a) an average of 45 ordinary hours in a week over the agreed period;
- (b) an average of five hours' overtime in a week over the agreed period.

2.6 Meal intervals, Section 14

2.6.1 An employee must have a meal interval of 30 minutes after five hours work.

2.6.2 A written agreement may—

- (a) reduce the meal interval to 20 minutes;
- (b) dispense with the meal interval for employees who work fewer than six hours on a day.

2.7 Daily and weekly rest periods, Section 15

An employee must have a daily rest period of 12 consecutive hours and a weekly rest period of 35 consecutive hours, which, unless otherwise agreed, must include Sunday.

2.8 Pay for work on Sundays, Section 16

2.8.1 An employee who occasionally works on a Sunday must receive double pay.

2.8.2 An employee who ordinarily works on a Sunday must be paid at 1.5 times the normal wage.

2.8.3 Paid time off in return for working on a Sunday may be agreed upon.

2.9 Night work, Section 17

2.9.1 Employees who work at night between 19:00 and 05:00 must be compensated by payment of an allowance or by a reduction of working hours and transport must be available.

2.9.2 Employees who work regularly after 20:00 and before 05:00 the next day must be informed—

- (a) of any health and safety hazards; and
- (b) the right to undergo a medical examination.

2.10 Public holidays, Section 18

2.10.1 Employees must be paid their ordinary pay for any public holiday that falls on a working day.

2.10.2 Work on a public holiday is by agreement and paid at double the rate.

2.10.3 A public holiday may be exchanged with another day by agreement.

3. LEAVE, CHAPTER THREE

3.1 Application

This chapter on leave does not apply to an employee who works less than 24 hours a month for an employer and to leave granted in excess of the leave entitlement under this chapter.

3.2 Annual leave, Sections 20 & 21

3.2.1 Employees are entitled to 21 consecutive days' annual leave or, by agreement, one day for every 17 days worked or one hour for every 17 hours worked.

3.2.2 Leave must be granted not later than six months after the end of the annual leave cycle.

3.2.3 An employer must not pay an employee instead of granting leave except on termination of employment.

3.3 Sick leave, Sections 22 - 24

3.3.1 An employee is entitled to six weeks' paid sick leave in a period of 36 months.

3.3.2 During the first six months an employee is entitled to one day's paid sick leave for every 26 days worked.

3.3.3 An employer may require a medical certificate before paying an employee who is absent for more than two consecutive days or who is frequently absent.

3.4 Maternity leave, Sections 25 & 26

3.4.1 A pregnant employee is entitled to four consecutive months' maternity leave.

3.4.2 A pregnant employee or employee nursing her child is not allowed to perform work that is hazardous to her or her child.

3.5 Family responsibility leave, Section 27

3.5.1 Full time employees are entitled to three days paid family responsibility leave per year, or, as agreed, when the employee's child is born or sick, or in the event of the death of the employee's spouse or his partner, or the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

3.5.2 An employer may require reasonable proof.

4. PARTICULARS OF EMPLOYMENT AND REMUNERATION, CHAPTER FOUR

4.1 Application

This chapter does not apply to an employee who works less than 24 hours a month for an employer.

4.2 Written particulars of employment, Section 29

4.2.1 An employer must supply an employee when the employee commences employment, with the following particulars in writing—

- (a) full name and address of the employer;
- (b) name and occupation of the employee, or a brief description of the work;
- (c) various places of work;
- (d) date of employment;
- (e) ordinary hours of work and days of work;
- (f) wage or the rate and method of calculating;
- (g) rate for overtime work;
- (h) any other cash benefits;
- (i) any payment in kind and the value thereof;
- (j) frequency of remuneration;
- (k) any deductions;
- (l) leave entitlement;
- (m) period of notice or period of contract;
- (n) description of any council or sectoral determination which covers the employer's business;
- (o) period of employment with a previous employer that counts towards the period of employment;
- (p) list of any other documents that form part of the contract, indicating a place where a copy of each may be obtained.

4.2.2 Particulars must be revised if the terms of employment change.

4.3 Informing employee of their rights, Section 30

A statement of employee's rights must be displayed at the workplace in official language used at the workplace.

4.4 Keeping of records, Section 31

Every employer must keep a record containing the following information—

- (a) employee's name and occupation;
- (b) time worked;
- (c) remuneration paid;
- (d) date of birth if under 18 years of age; and
- (e) any other prescribed information.

4.5 Information about remuneration, Section 32

The following information must be given in writing when the employee is paid—

- (a) employee's name and address;
- (b) employee's name and occupation;
- (c) period of payment;
- (d) remuneration in money;
- (e) any deduction made from the remuneration;
- (f) the actual amount paid; and
- (g) if relevant to the calculation of that employee's remuneration—
 - (i) employee's rate of remuneration and overtime rate;
 - (ii) number of ordinary and overtime hours worked during the period of payment;
 - (iii) number of hours worked on a Sunday or public holiday during that period; and
 - (iv) if an agreement to average working time has been concluded, the total number of ordinary and overtime hours worked in the period of averaging.

4.6 Deductions and other acts concerning remuneration, Sections 34 and 35A

4.6.1 An employer may not deduct money from an employee's remuneration unless—

- (a) The employee agrees in writing to the deduction of a specific debt;
- (b) The deduction is made in terms of a collective agreement, law, court order or arbitration award.

4.6.2 A deduction in respect of damage or loss caused by the employee may only be made with agreement and after the employer has followed a fair procedure.

4.6.3 Employers must pay deductions and employer contributions to benefit funds to the fund within seven days.

4.7 Calculation of remuneration and wages, Section 36

4.7.1 Wages are calculated by the number of hours ordinarily worked.

4.7.2 Monthly remuneration or wage is four and one-third times the weekly wage.

- (a) It is calculated on a week other than five, or if the employee's remuneration or wage fluctuates significantly from period to period, any payment must be calculated by reference to remuneration or wage during—
 - (i) the preceding 10 weeks; or
 - (ii) if employed for a shorter period, that period.

(Gazetted Notice Numbering as per original Government Gazette)

4.7.3 Employers and employees should consult a schedule published in the Government Gazette to determine whether a particular category of payment forms part of an employee's remuneration for the purpose of calculations made in terms of the Act.

5. TERMINATION OF EMPLOYMENT, CHAPTER FIVE

5.1 Application

This chapter does not apply to an employee who works less than 24 hours in a month for an employer.

5.2 Notice of termination of employment, Section 37

5.2.1 A contract of employment may be terminated on notice of not less than—

- (a) one week, if the employee has been employed for six months or less;
- (b) two weeks, if the employee has been employed for more than six months but not more than one year;
- (c) four weeks, if the employee has been employed for one year or more, or if a farm worker or domestic worker has been employed for more than six months.

5.2.2 A collective agreement may shorten the four weeks notice period to not less than two weeks.

5.2.3 Notice must be given in writing except when it is given by an illiterate employee.

5.2.4 The notice on termination of employment by an employee in terms of the Act does not prevent the employee challenging the fairness or lawfulness of the dismissal in terms of the Labour Relations Act, 1994, or any other law.

5.3 Severance pay, Section 41

An employee dismissed for operational requirements or whose contract of employment is terminated in terms of section 34 of the Incentive Act, 1988 is entitled to one week's severance pay for every year of service.

5.4 Certificate of Service, Section 42

On termination of employment an employee is entitled to a certificate of service.

6. PROHIBITION OF EMPLOYMENT OF CHILDREN AND FORCED LABOUR, SECTIONS 43 - 48

6.1 It is a criminal offence to employ a child under 16 years of age.

6.2 Children under 16 may not be employed to do work inappropriate for their age or the places them at risk.

6.3 Coercing, demanding or requiring forced labour is a criminal offence.

7. VARIATION OF BASIC CONDITIONS OF EMPLOYMENT, SECTIONS 49 - 52

7.1 A collective agreement concluded by a bargaining council may replace or exclude any basic condition of employment except the following—

- (a) the duty to average working time with regard to the health and safety and family responsibility of employees (S. 7.3 and 10);
- (b) reduce the protection afforded to employee who perform night work (S. 17 (d) and 32);
- (c) reduce annual leave to less than two weeks (S. 20);
- (d) reduce entitlement to maternity leave (S. 25);
- (e) reduce entitlement to sick leave to the extent permitted (S. 22 (a)); and
- (f) prohibition of child and forced labour (S. 44).

7.2 Collective agreements and individual agreements may only replace or exclude basic conditions of employment to the extent permitted by the Act or a sectoral determination (S. 45).

7.3 The Minister of Labour may make a determination to vary or exclude a basic condition of employment. This can also be done on application by an employer or employer organisation (S. 46).

7.4 A determination may not be granted unless a trade union representing the employees has consented to the variation or has had the opportunity to make representations to the Minister. A copy of any determination must be displayed by the employer at the work place and must be made available to employees (S. 46).

8. SECTORAL DETERMINATIONS, SECTION 51

Sectoral determinations may be made to establish basic conditions for employees in a sector and area.

9. MONITORING, ENFORCEMENT AND LEGAL PROCEEDINGS, SECTIONS 53 - 61

6.1 Labour inspectors must advise employees and employers on their rights and obligations in terms of employment laws. They conduct inspections, investigate complaints and may question persons and inspect, copy and remove records and other relevant documents (S. 61 - 66).

6.2 An inspector may issue a compliance order on an employer who is not complying with a provision of the Act, the National Minimum Wage Act, 2010, the Unemployment Insurance Act or the Unemployment Insurance Contributions Act. The order may be made an Arbitration Award (S. 66 - 73).

6.3 Employees may not be discriminated against for exercising their rights in terms of the Act (S. 70-81).

10. PRESUMPTION AS TO WHO IS AN EMPLOYEE, SECTION 81A

10.1 A person who works for, or provides services to, another person is presumed to be an employee if—

- (a) he or her manner or hours of work are subject to control or direction;
- (b) he or she forms part of the employer's organisation;
- (c) he or she has worked for the other person for at least 40 hours per month over the previous three months;
- (d) he or she is economically dependent on the other person;
- (e) he or she is provided with his or her tools or work equipment; or
- (f) he or she only works for, or renders services to, one person.

10.2 If one of these factors is present, the person is presumed to be an employee and the employer presumes that he or she is not.

11. GENERAL

11.1 An offence to—

- (a) obstruct or attempt to influence improperly a person who is performing a function in terms of the Act;
- (b) obtain or attempt to obtain any prescribed document by means of fraud, false pretences, or by procuring or admitting a false or forged document;
- (c) pretend to be a labour inspector or any other person performing a function in terms of the Act;
- (d) refuse or fail to answer fully any lawful question put by a labour inspector or any other person performing a function in terms of the Act;
- (e) refuse or fail to comply with any lawful request of, or lawful order by, a labour inspector or any other person performing a function in terms of the Act;
- (f) hinder or obstruct a labour inspector or any other person performing a function in terms of the Act.