



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 694

Cape Town
Kaapstad

14 April 2023

No. 48418

THE PRESIDENCY

No. 3280 14 April 2023

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

Act No. 04 of 2022: Employment Equity Amendment Act, 2022

HOFISI YA PRESIDENTE

No. 3280 14 April 2023

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

No. 04 wa 2022: Nawu wa Kuantswisiwa Ka Ndzingano wa Vutholi, 2022

ISSN 1682-5845



9 771682 584003

4 8 4 1 8



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

 (English text signed by the President)
 (Assented to 6 April 2023)

ACT

To amend the Employment Equity Act, 1998, so as to amend a definition; to insert certain definitions; to substitute a definition and to delete a definition; to provide for the Minister to identify sectoral numerical targets in order to ensure the equitable representation of suitably qualified people from designated groups; to provide criteria for the Minister to issue certificates; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts, as follows:—

Amendment of section 1 of Act 55 of 1998, as amended by section 40 of Act 65 of 2002, section 26 of Act 68 of 2002, sections 23 and 25 of Act 52 of 2003, section 51 of Act 11 of 2013 and sections 1 and 2 of Act 47 of 2013 5

1. Section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998) (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the deletion of paragraph (b) of the definition of “designated employer”;
- (b) by the insertion, after the definition of “Minister”, of the following definition:
 - “ **‘National Minimum Wage Commission’** means the Commission established in terms of section 8 of the National Minimum Wage Act, 2018 (Act No. 9 of 2018);” 10
- (c) by the substitution for the definition of “people with disabilities” of the following definition:
 - “ **‘people with disabilities’** [means] includes people who have a long-term or recurring physical [or], mental, intellectual or sensory impairment which, in interaction with various barriers, may substantially [limits] limit their prospects of entry into, or advancement in, employment, and ‘persons with disabilities’ has a corresponding meaning;” 15
- (d) by the insertion, after the definition of “Republic”, of the following definition:
 - “ **‘sector’** means an industry or service or part of any industry or service;” 20
- (e) by the deletion of the definition of “serve” or “submit”.

Amendment of section 8 of Act 55 of 1998, as amended by section 4 of Act 47 of 2013

2. Section 8 of the principal Act is hereby amended by the insertion of the word “and” at the end of paragraph (b), the substitution for the expression “; and” at the end of paragraph (c) of a full stop and the deletion of paragraph (d).

Repeal of section 14 of Act 55 of 1998

5

3. Section 14 of the principal Act is hereby repealed.

Insertion of section 15A in Act 55 of 1998

4. The following section is hereby inserted after section 15 of the principal Act:

“Determination of sectoral numerical targets

15A. (1) The Minister may, by notice in the *Gazette*, identify national economic sectors for the purposes of this Act, having regard to any relevant code contained in the Standard Industrial Classification of all Economic Activities published by Statistics South Africa. 10

(2) The Minister may, after consulting the relevant sectors and with the advice of the Commission, for the purpose of ensuring the equitable representation of suitably qualified people from designated groups at all occupational levels in the workforce, by notice in the *Gazette* set numerical targets for any national economic sector identified in terms of subsection (1). 15

(3) A notice issued in terms of subsection (2) may set different numerical targets for different occupational levels, sub-sectors or regions within a sector or on the basis of any other relevant factor. 20

(4) A draft of any notice that the Minister proposes to issue in terms of subsection (1) or subsection (2) must be published in the *Gazette*, allowing interested parties at least 30 days to comment thereon.”. 25

Amendment of section 16 of Act 55 of 1998, as amended by section 8 of Act 47 of 2013

5. Section 16 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) with a representative trade union representing members at the workplace [and its employees or representatives nominated by them]; or” 30

Amendment of section 20 of Act 55 of 1998, as amended by section 10 of Act 47 of 2013

6. Section 20 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection: 35

“(2A) The numerical goals set by an employer in terms of subsection (2) must comply with any sectoral target in terms of section 15A that applies to that employer.”

Amendment of section 21 of Act 55 of 1998, as substituted by section 11 of Act 47 of 2013

7. Section 21 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 5
“(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 and in such manner as may be prescribed.”;
- (b) by the deletion of subsections (3) and (4); and
- (c) by the substitution for subsection (4A) of the following subsection: 10
“(4A) An employer that is not able to submit a report to the Director-General **[by the first working day of October]** within the period prescribed in terms of subsection (1) must notify the Director-General **[in writing before the last working day of August in the same year]** in the prescribed manner and period giving reasons for its inability to do so.”. 15

Amendment of section 27 of Act 55 of 1998, as amended by section 12 of Act 47 of 2013

8. (1) Section 27 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 20
“(1) Every designated employer, when reporting in terms of section 21(1), must submit a statement, as prescribed, to the **[Employment Conditions] National Minimum Wage 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.”; and 25
- (b) by the substitution for subsections (3), (4) and (5) of the following subsections, respectively:
- “(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 and the national minimum wage set in terms of the National Minimum Wage Act, 2018 (Act No. 9 of 2018); 30
- (c) applying the norms and benchmarks set by the **[Employment Conditions] National Minimum Wage Commission;** 35
- (d) relevant measures contained in skills development legislation; or
- (e) other measures that are appropriate in the circumstances.
- (4) The **[Employment Conditions] National Minimum Wage Commission** must research and investigate norms and benchmarks for proportionate income differentials and advise the Minister on appropriate measures for reducing disproportional differentials. 40
- (5) The **[Employment Conditions] National Minimum Wage Commission** may not disclose any information pertaining to individual employees or employers.”.

Amendment of section 36 of Act 55 of 1998, as substituted by section 13 of Act 47 of 2013 45

9. Section 36 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 50
“A labour inspector may request and obtain a written undertaking from a designated employer to comply with paragraph (a), (b), (c), (f), (h), (i)

- or (j) within a specified period, if the inspector has reasonable grounds to believe that the employer has failed to—”; and
- (b) by the insertion in subsection (1) after paragraph (b) of the following paragraph:
“(c) prepare an employment equity plan as required by section 20;”.

Amendment of section 37 of Act 55 of 1998, as amended by section 14 of Act 47 of 2013

10. Section 37 of the principal Act is hereby amended—
- (a) by the substitution for subsection 1 of the following subsection:
“(1) A labour inspector may [**issue**] serve a compliance order [to] on a designated employer in the prescribed manner if that employer has failed to comply with section 16, 17, 19, 22, 24, 25 or 26 of this Act.”.
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
“A compliance order [**issued**] contemplated in [terms of] subsection (1) must be issued by a labour inspector and must set out—”.

Amendment of section 42 of Act 55 of 1998, as substituted by section 16 of Act 47 of 2013

11. Section 42 of the principal Act is hereby amended by the insertion in subsection (1) after paragraph (a) of the following paragraph:
“(aA) whether the employer has complied with a sectoral target as set out in terms of section 15A applicable to that employer;”.

Amendment of section 53 of Act 55 of 1998, as amended by section 20 of Act 47 of 2013

12. Section 53 of the principal Act is hereby amended by the addition of the following subsection:
“(6) The Minister may only issue a certificate in terms of subsection (2) if the Minister is satisfied that—
- (a) the employer has complied with a numerical target set in terms of section 15A that applies to that employer;
- (b) in respect of any target with which the employer has not complied, the employer has raised a reasonable ground to justify its failure to comply, as contemplated by section 42(4);
- (c) the employer has submitted a report in terms of section 21;
- (d) there has been no finding by the CCMA or a court within the previous 12 months that the employer breached the prohibition on unfair discrimination in Chapter 2; and
- (e) the CCMA has not issued an award against the employer in the previous 12 months for failing to pay the minimum wage in terms of the National Minimum Wage Act, 2018 (Act No. 9 of 2018).”.

Repeal of section 64A of Act 55 of 1998

13. Section 64A of the principal Act is hereby repealed.

Repeal of Schedule 4 to Act 55 of 1998

14. Schedule 4 to the principal Act is hereby repealed.

Deletion of footnotes to Act 55 of 1998

15. Footnotes 4 and 7 to the principal Act are hereby deleted.

Short title and commencement

16. This Act is called the Employment Equity Amendment Act, 2022, and takes effect on a date fixed by the President by proclamation in the *Gazette*. 5