

EMPLOYMENT EQUITY REPORTING

- A Statutory Plan for Equality -

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The Department of Labour's online portal opened for Employment Equity Report submissions from 1st September 2018 until 15th January 2019.

During the 2017 employment equity reporting cycle, 27,163 employment equity reports were submitted by designated employers, representing 7,299,428 employees. The 18th Commission for Employment Equity Annual Report revealed a shift from the 'White' population to the 'Black' population, in particular the 'Indian' Population at the Top and Senior management levels. The White Population at Top Management level decreased by 20%, whilst at Senior Management level a 24.9% decrease was noted. This represents around a 1% increase of the 'Black' Population year-on-year, which is considered a slow rate of transformation.

In her foreword, Tabea Kabinde, Chairperson for the Commission for Employment Equity, disclosed concerning trends in the 2017 submissions. "Some errors are negligent and inexcusable, which should not be used as an excuse for submitting inaccurate reports. In 2017, 30 employers reported that their total staff complement consisted of people with disabilities. Although an employer could have a full staff complement of people with disabilities, it was suspicious and highly improbable. Upon further investigation, it was found that these employers simply repeated the same number of employees in the Table on Workforce Profile for all Employees and in the Table on Workforce Profile for Persons with Disabilities only, most probably as a "copy and paste". Negligent errors typically occur with some employers who report "just for the sake of compliance" to simply "tick the boxes" at the end of the reporting cycle'.

What submission date is applicable to newly qualified Designated Employers?

It is important to note that employers who for the first time meet the qualifying criteria of a Designated Employer between the first working day of April 2018 and the last working day of September 2018 are only required to submit their Employment Equity Report on the first working day of October 2019.

Is submitting an Employment Equity Report mandatory?

In terms of Section 20(1) of The Employment Equity Act (55 of 1998) (The Act), all employers that qualify as Designated Employers are obligated to prepare and submit an Employment Equity Plan. This submission must outline how an employer reasonably intends to implement equity in their workforce, in line with the set targets.

Who qualifies as a Designated Employer?

- > An employer who employs 50 or more employees; and
- > 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 of the Act: (Amended Act, 47 of 2013).

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| Agriculture | R6 000 000 |
| Mining and Quarrying | R22 500 000 |
| Manufacturing | R30 000 000 |
| Electricity, Gas and Water | R30 000 000 |
| Construction | R15 000 000 |
| Retail and Motor Trade and Repair Services | R45 000 000 |
| Wholesale Trade, Commercial Agents and Allied Services | R75 000 000 |
| Catering, Accommodation and Other Trade | R15 000 000 |
| Transport, Storage and Communications | R30 000 000 |
| Finance and Business Services | R30 000 000 |
| Community, Social and Personal Services | R15 000 000 |

Are there exclusions for submitting an Employment Equity Report?

- > A municipality as referred to in Chapter 7 of the Constitution.
- > An organ-of-state as defined in Section 239 of the Constitution, but excludes local spheres of government, the National Defence Force, the National Intelligence Agency and the South African Secret Services.
- > An employer bound by a collective agreement in terms of Section 23 or 31 of the Labour Relations Act.

What are the consequences for not complying with the Act?

In terms of the Act, as amended, 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, submit or implement an Employment Equity Plan.

Hereunder is a non-exhaustive list of the maximum fines that may be imposed. Column three outlines the penalties that may be incurred.

| Previous Contravention | Contravention of any Provision of Sections 16 (read with 17), 19, 22, 24, 25, 26 and 43(2) | Contravention of Provisions of Sections 20, 21, 23 and 44(b) |
|---|--|--|
| No Previous Contravention | R 1 500 000 | The greater of R1.5m or 2% of the employer's turnover. |
| A previous contravention in respect of the same provision | R 1 800 000 | The greater of R 1.8m or 4% of the employer's turnover. |
| A previous contravention within the last 12 months or two previous contraventions in respect of the same provision within three years | R 2 100 000 | The greater of R2.1m or 6% of the employer's turnover. |
| Three previous contraventions in respect of the same provision within three years | R 2 400 000 | The greater of R2.4m or 8% of the employer's turnover. |
| Four previous contraventions in respect of the same provision within three years | R 2 700 000 | The greater of R2.7m or 10% of the employer's turnover. |

What is the process to extend the submission deadline?

"(4A) An employer who is not able to submit a report to the Director-General by the first working day of October in terms of sub-section (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. (Section 21(4A) inserted by section 11(d) of the Act 47 of 2013)."

Failure to notify the Director-General in advance of a late submission will result in an organisation being deemed not to have submitted a report at all, which may result in the penalties as detailed in the above table.

What is the impact of an Employment Equity submission on a B-BBEE Scorecard?

- > Paragraph 3.4 of Statement 000 states the following:
"The requirement to submit data to the Department of Labour under the Act is only applicable to designated employers who employ 50 or more employees. However, for the purpose of measurement, both Generic and Qualifying Small Enterprises that employ less than 50 employees are required to submit sufficient evidence for verification purposes."
- > Thus: Employers that are required by law, but fail to submit an Employment Equity Report to the Department of Labour, cannot score any points under the Management Control element of their B-BBEE scorecard.
- > A letter of acknowledgement from the Department of Labour, indicating an organisation's compliance with the Act, is required as evidence of submission.