

SECTION HR 12

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MUNICIPALITY

EMPLOYMENT

EQUITY

SECTION HR 12

EMPLOYMENT EQUITY

<u>INDEX</u>	<u>PAGE</u>
1. Introduction	3
2. Brief Summary of the Employment Equity Act, 1998	3
2.1 Definitions, Purpose, Interpretation & Application	3
2.2 Prohibition of Unfair Discrimination	4
2.3 Duties of Employers	4
2.4 Affirmative Action Measures	4
2.5 Assignment of a Manager	5
2.6 Display of Summary of the Act	5
2.7 Income Differentials	5
2.8 Commission for Employment Equity	5
2.9 Monitoring, Enforcement & Legal Proceedings	5
2.10 General Provisions in the Act	5
3. Duties of Employers	6
3.1 Consult with Employees	6
3.2 Conduct an Analysis	6
3.3 Prepare an Employment Equity Plan	6
3.4 Submit the Necessary Reports	6
3.5 Appoint a Manager	6
3.6 Duty to Inform	6
3.7 Duty to Keep Records	7
3.8 Income Differentials	7
4. How to Prepare, Implement and Monitor Employment Equity Plans	7
4.1 The Planning Phase	7
4.1.1 Assignment of a Senior Manager	7
4.1.2 Communication, Awareness & Consultation	7
4.1.3 Conducting an Analysis	8
4.1.4 Preparing a Workplace Profile	8
4.2 The Development and Implementation Phase	9
4.3 The Monitoring and Evaluating Phase	9
5. Compiling Employment Equity Reports	10
6. Conclusion	10

ANNEXURE

Please refer to Employment Equity Act, 1998 for Annexures A – E, referred to in this Policy.

Annexure F :	Employment Equity Policy	11
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SECTION HR 12

EMPLOYMENT EQUITY

1. Introduction

In order to understand a municipality's legal obligations concerning the implementation of Employment Equity, one must first understand the key sections of the Employment Equity Act. We will briefly summarise the Act, focusing on the most important aspects.

Thereafter, we can address a municipality's duties in terms of the various sections of the Act, as well as how to compile an Employment equity Plan and Employment Equity reports.

2. Brief Summary of the Employment Equity Act, 1998

2.1 Definitions, Purpose, Interpretation and Application of the Act

Important Definitions

- | | | |
|---------------------------------|---|-----------------------------------------------------------------------------------------------------------------------------------|
| <u>Black People</u> | - | means Africans, Coloureds and Indians |
| <u>Designated Employer</u> | - | means an employer with more than 50 employees, or a certain annual turnover, or <u>all municipalities</u> |
| <u>Designated Groups</u> | - | means black people, women and people with disabilities |
| <u>People with Disabilities</u> | - | means people with long term or recurring physical or mental impairment, which limits their prospects of advancement or employment |

The Purpose of the Act

The purpose of the Act is to achieve in the workplace by promoting equal opportunity and fair treatment by eliminating unfair discrimination.

A further aim of the act is to implement affirmative measures to redress the disadvantages of designated groups and to ensure their equitable representation in all occupation categories and levels in the work place.

Interpretation of the Act

The Act must be interpreted in such a way that it complies with the Constitution and takes in to account any relevant code of good practice issued in terms of the Act and any other employment law.

Application of the Act

Whilst virtually all employers are bound by the Act, the important thing to remember is that the Act applies to all municipalities.

However, the Act does not apply to members of the national Defence Force, the National Intelligence Agency or the South African Secret Service, i.e. soldiers and spies.

2.2 Prohibition of Unfair Discrimination in the Act

The Act prohibits discrimination in the following ways:

2.2.1 No person may unfairly discriminate against an employee on the grounds of race, gender, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.

2.2.2 Medical testing of an employee only where legislation requires testing or when it is justifiable, e.g. it is not discriminatory to test the eyesight of a truck driver. HIV testing is prohibited unless such testing is determined to be justifiably by the Court.

2.2.3 Psychological testing and similar assessments are prohibited, unless scientifically valid and if not culturally biased.

Any disputes concerning discrimination must be handled in terms of the provisions of the Labour Relations Act. The burden of proof rests on the employer to prove that he/she/it has been unfair.

2.3 Duties of Employers

An employer must implement affirmative action measures for designated groups by consulting with employees, conducting an analysis of employment policies and practices, preparing an Employment equity Plan and reporting to the Director-General on progress made in implementing the plan. (These matters will be more fully dealt with under paragraph 3)

2.4 Affirmative Action Measures

These include measures to identify and eliminate employment barriers (i.e. things that hinder employing affirmative action candidates), including unfair discrimination that adversely affect people from designated groups. It also includes preferential treatment and numerical goals to ensure equitable representation in the work place. This excludes quotas.

However, nothing requires a designated employer to establish an absolute barrier to the prospective or continued employment or advancement of people who are not from designated groups.

2.5 Assignment of a Manager

An 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. This does not have to be a person employed only for this purpose. Duties may be assigned to current employees who are also undertaking other work.

2.6 Display of Summary of the Act

The employer must display a summary of the Employment Equity Act in every workplace. Posters of these summaries are available for the Department of Labour. The most recent Employment Equity report must also be displayed.

2.7 Income Differentials

The employer must submit to the Employment Conditions Commission a statement of remuneration and benefits received in each occupational category and level of the workforce. Where there are disproportionate income differentials, an employer must take measures to reduce it progressively. (In Local Government this function is undertaken by the South African Local Government Bargaining Council.)

2.8 Commission for Employment Equity

The Act provides for the establishment, composition, function, staff, etc. of a Commission which will set codes of Good Practice, regulations, policy, etc. on Employment Equity.

2.9 Monitoring, Enforcement and Legal Proceedings

In terms of the Act monitoring the implementation of Employment Equity is the responsibility of employees and trade union representatives. The inspectors of the Department of Labour undertake the task of enforcing the provisions of the Act.

2.10 General Provisions in the Act

These provisions include such matters as Employment Equity in state contract tenders, Codes of Good Practice, etc. There is also a provision that should employees contravene any provisions of the Act whilst performing their duties, the employer will be liable unless he/she can prove that he/she did everything in his power to prevent the undesirable act on the part of his/her employee.

3. Duties of Employers

In terms of the Act, there are several duties which an employer, including all municipalities, has to undertake. When preparing the Employment Equity Plan, it is essential that those drafting the plan ensure that all of these duties have been complied with. These duties are as follows:

3.1 Consult with Employees

An employer must consult with employees and trade union representatives and attempt to reach agreement on the conducting of the analysis of the staff employment policies, practices and procedures, the preparation and implementation of the plan and the reports to be submitted.

The employees or their nominated representatives must be representative of all occupational categories and levels of the workforce, as well as from both designated and non-designated groups.

3.2 Conduct an Analysis

The employer must collect information and conduct an analysis on employment policies, practices, procedures and the working environment to identify any issues which adversely affect people from designated groups.

The analysis must also include a profile of the employer's workforce within each occupational category and level in order to determine the degree of under-representation of people from designated groups in the various occupational categories and levels.

3.3 Prepare an Employment Equity Plan

The employer must prepare an Employment Equity Plan. The method of preparing this plan is set out in paragraph 5.

3.4 Submit the Necessary Reports

The employer must submit his/her reports to the relevant authorities. This matter is dealt with in paragraph 5.

3.5 Appoint a Manager

The employer must appoint a Manager(s) to handle Employment Equity.

3.6 Duty to Inform

The employer must display a notice in the work place showing a summary of the Employment Equity act. The Employment Equity

Plan and the reports must also be displayed in every work place of the employer.

3.7 Duty to Keep Records

The employer must establish and maintain records in respect of its workforce, its Employment Equity Plan and other Employment Equity information.

3.8 Income Differentials

The employer must report on the income differentials.

4. How to Prepare, Implement and Monitor Employment Equity Plans

The preparation of an Employment Equity Plan should be undertaken as an inclusive process that will result in a documented plan being developed. The process has three sequential phases: Planning, Development and Implementation and Monitoring.

4.1 The Planning Phase

4.1.1 Assignment of a Senior Manager

The first step is to appoint one or more Senior Managers who would have the responsibility for developing the plan as well as for its implementation and monitoring. The senior managers should be permanent employees and should preferably report directly to the Municipal Manager.

The Managers must be given the necessary authority, budget and other means in order that they may perform their allocated functions. It is advisable for performance contracts to be drafted for the responsible Managers in order that the employer may ensure that they perform their duties adequately.

4.1.2 Communication, Awareness and Consultation

A consultative forum (possibly the local labour forum) should be utilised for consulting with employees and their representatives.

The forum should include employee representatives reflecting the interests across occupational categories and levels. Naturally SAMWU and IMATU must be included in the consultation process.

Employers must make every effort to include employee representatives in all aspects of the plan in all phases.

Where necessary, training should be provided on the content of the Employment Equity Act, the processes to be followed and the responsibilities of the participants.

The employer should be represented by one or more members of senior management, usually from the Human Resources Department.

To ensure an informed and constructive consultation process, structured and regular meetings of the consultative forum or forums should be held.

4.1.3 Conducting an Analysis

The purpose of the analysis is to assess all employment policies, practices and procedures in order to identify issues which hinder the implementation of affirmative action and conditions that may adversely affect designated groups. A further purpose is to determine the extent of under-representation of employees from designated groups in different occupational categories and levels.

Employment practices include policies relating to promotions, transfers, succession planning, training and development strategies, remuneration structures, fringe benefits, disciplinary practices, etc. Working conditions that do not accommodate cultural and religious differences, such as the use of a traditional healer, should also be identified. Further practices which must be identified are those relating to the management of HIV / Aids and any other practices or conditions that are tabled as arising out of the consultative process. Gender issues should also be addressed.

4.1.4 Preparing a Workplace Profile

A workplace profile is necessary to determine which employees are members of designated groups. This may either be done by completing Form EEA 1 (Annexure A) where no reliable employment records exist, or alternatively by obtaining the information from the employer's data base and personnel files.

The analysis of the workplace should be compared with the relevant demographic data as set out in Form EEA 8 (Annexure B). If there are shortages of suitable affirmative action candidates in certain skills, advertisements should be placed nationally.

The best way of conducting the analysis of the workplace profile would be to complete sections B and C of the

Employment Equity report as defined by Form EEA 2 (Annexure C).

To assist employers in completing Form EEA 2, the standard occupational classification is defined on Form EEA 10 (Annexure D) and this should be used as well.

Alternatively, if all positions have been formally evaluated in terms of a job evaluation scheme, employers may use equivalent occupational levels as the basis for workforce analysis.

4.2 The Development and Implementation Phase

The duration of a plan should be for a period no shorter than one year and no longer than 5 years.

Measures (i.e. affirmative action) must be taken by the employer to improve the under-representation of designated groups as identified during the analysis. These measures will include appointing employees from designated groups, training and developing previously disadvantaged people, promoting and finding ways of retaining the services of people from designated groups.

All corrective measures to eliminate any barriers identified during the analysis should be specified in the plan.

Numerical goals should be developed for the appointment and promotion of people from designated groups.

In setting objectives and developing corrective measures, the parties to the consultative process should attempt to reach consensus on what would constitute reasonable progress over the duration of the plan. Methods of resolving any disputes should also be agreed upon.

4.3 The Monitoring and Evaluating Phase

Records should be kept to effectively monitor and evaluate the plan. Mechanisms to monitor and evaluate the implementation of the plan should be agreed upon and include benchmarks that would permit assessment of reasonable progress.

The plan should be evaluated at regular intervals. The consultative forums should continue to meet on a regular basis and should receive progress reports which should also be communicated to employees.

The plan should be reviewed and revised throughout the process through consultation.

5. Compiling Employment Equity Reports

Municipalities are required to submit two reports, i.e. those as set on Form EEA 2 and those as set out on Form EEA 4 (Annexure E). Form EEA 2, which comprises of 12 pages, is the main report which must be submitted to the Department of Labour.

The first report should have been submitted during the year 2000 and thereafter every second year on the first working day of October starting in 2002.

If municipalities have not yet submitted their first reports, then it is essential that this is done as soon as possible.

Form EEA 4 is the report on income differentials and this report has to be submitted to the Employment Conditions Commission via the Department of Labour.

These forms can be completed in the process of compiling the Employment Equity Plans and the completed report must be displayed on the notice boards in every workplace of an employer.

6. Conclusion

An Employment Equity Plan simply comprises of details of all information received from conducting the analysis and gathering the information, all placed together in one file. The reports mentioned under paragraph 5 will also be included in this file to make up the Employment Equity Plan as would any other matters concerning Employment Equity.

SECTION HR 12

EMPLOYMENT EQUITY

ANNEXURE F

EMPLOYMENT EQUITY POLICY

As part of its renewal strategy, the Council declares its intention to give effect to the objectives of Employment Equity.

The purpose of this policy is to achieve equity in the workplace and in so doing to foster a productive and fair work environment.

The implementation of this policy requires application of the following principles, objective and related management practices:

Absence of all Forms of Unfair Discrimination

This policy demands the complete removal of all forms of unfair discrimination and a commitment to actions which will result in a work environment in which opportunity, treatment and expectations are based on practices which do not relate to race, religion, gender or any other unfair discriminatory ground.

Specific objectives are:

- to eliminate all forms of unfair discrimination, either direct or indirect, in conditions of service and employment practices.

Where differentiation does occur, this may be related only to factors that are inherent to the requirements of the job and/or the market practices for the job concerned.

Affirmative Action

This requires the implementation of measures to address the skew representation of historically disadvantaged groups in the composition of the workforce as well as measures to accelerate the employment, training and promotion of employees from these groups. Affirmative action is not an end in itself but a process whereby individuals are given the opportunity to attain equity.

Specific objectives are:

- to address the current staff composition at all levels by means of critical mass targets which are intended to facilitate an equitable representation and utilization of human resources;
- to ensure that Council's staff composition is such that the Council is able to serve its community effectively with due regard for its diversity; thereby promoting accountability for and responsibility in respect of the needs of such community;

- to implement initiatives for the accelerated education, training and development of historically disadvantaged groups in order to improve their existing skills base and career advancement.

Equal Opportunities

The removal of unfair discriminatory practices and the implementation of affirmative action measures will foster an environment which is conducive to creating equal access to job opportunities, thereby enabling employees to develop their full potential according to the operational requirements of the Council.

A specific objective is to establish fair and equitable employment practices and to ensure equal job opportunities and conditions of service for all employees and applicants.

Valuing Diversity

This requires the development of an organizational culture that encourages understanding and appreciation of the diversity in background of all employees.

The objective is to develop a relationship of trust, co-operation and confidence amongst employees.

Applicability

This policy, as a product of a consultative process, is applicable to and binding on the Council and all its employees.

Responsibilities

The Council and top management commit themselves to the successful implementation of the Employment Equity Policy.

Line Management is accountable for the operational implementation of this policy through the applicable management practices to ensure a culture of diversity supportive of the Council's strategies.

The Human Resources division is a resource base for the Employment Equity process and provides assistance to line management regarding processes such as human resources planning, recruitment, selection, training and education, performance evaluation and succession planning.

In order to continuously facilitate and monitor the Employment Equity process and to provide an appropriate mechanism for feedback on the progress made, a specific division namely the Employment Equity Division has been created. This senior function which will be housed in the Human Resources Department, will support top management and have direct access to the Municipal Manager regarding Employment Equity matters.

Within the framework of this policy, employees should also take responsibility for their own development in contributing positively to a municipal culture with shared values.

Rights of Employees

As a general policy, the Council undertakes to refrain (as far as is operationally possible) from prejudicing the job security of those who are effective in their jobs on the grounds of the implementation of this policy.

The benefits and practices that arise from this policy or any related programme must not be construed as a right of any person or group.

Rights of Employer

The rights of the Council as employer must be maintained. These, amongst others, include the right to:

- supply job opportunities and make appointments in accordance with the operational needs of the Council without negating the principles contained in this Policy;
- demand sufficient production output according to job requirements;
- manage the municipality to ensure that its business philosophy, purpose and objectives are enhanced, without deviating from the principles contained in this policy; and
- ensure that the existing skills base of employees is not eroded.