

<b>Policy</b>	:	<b>Employment Equity Committee Workbook</b>
<b>Section</b>	:	<b>Section 5.2</b>
<b>Manual</b>	:	<b>Employment Equity Committee Manual</b>

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## Introduction

### 1 Overview of the Employment Equity Act

(PowerPoint presentation - DOL)

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### 2 Myths and fictions about employment equity

#### 2.1 INTRODUCTION

The South African experience in the implementation and enforcement of employment equity in terms of the Employment Equity Act is not unique or even dissimilar to experiences around the world. Canada, the United States of America, Northern Ireland and Britain have all seen the adoption of employment equity legislation.

Popular myths about employment equity and its impact on organisations are pervasive and unless addressed at the very outset could derail any organisation's attempts to successfully implement its employment equity initiatives.

In this Guideline we address some of these popular myths.

#### 2.2 FACTS AND FICTION

It is appropriate to consider some common myths and perceptions about employment equity before commencing with the planning and implementation of your organisation's employment equity plan.

As the person responsible for consulting to the company about the implementation of employment equity within your organisation, you the reader, as well as other appointed representatives and interested parties will be required to consider and respond to numerous questions about employment equity as well as address many prejudices towards employment equity within the workplace.

The following represents some of the most common myths, perceptions and questions concerning employment equity.

#### 2.3 FICTION 1: EMPLOYMENT EQUITY MEANS TREATING EVERYONE THE SAME

#### 2.4 FACT: EMPLOYMENT EQUITY MEANS FAIRNESS IN THE WORKPLACE

Sometimes employment equity means treating people the same despite their differences. Sometimes it means treating them as equals by accommodating their differences.

What happens when a co-worker has to see a doctor during a shift? We exchange shifts. Because of differences in height, office chairs can be adjusted. These occurrences are now so commonplace that we no longer think of them as 'accommodations'. It's just a question of fairness (and common sense).

There are many ways to accommodate employees. Flexible hours of work (flex-time) are already in wide use in many businesses. Flexitime helps employees to better balance work and family responsibilities such as planning child and elder care. This arrangement can also help employees who are commuting or participating in part-time education. How can we accommodate various religious observances? Again, flexitime could be the answer. An employee could work slightly longer days if an extra day per month is needed for religious purposes.

Employers are also using long-term solutions, such as the provision of technical equipment to assist people with physical difficulties on the job. Braille typewriters, visual or hearing communication aids are appearing in many workplaces. Wheelchair access through ramps, automated doors and other structural changes are standard features in many new office buildings.

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**2.5 FICTION 2: EMPLOYMENT EQUITY PROGRAMMES RESULT IN 'REVERSE DISCRIMINATION'**  
**2.6 FACT: EMPLOYMENT EQUITY PROGRAMMES MAKE SURE THE WORKPLACE REFLECTS SOCIETY**

Intentionally or not, certain people are denied access to jobs, promotions, or training by policies and practices in the workplace. Employment Equity programmes ensures that the skills of all employees are fully utilised by opening up opportunities equally to everyone. And those programmes link employers to a bigger pool of qualified applicants.

Some people argue that we should leave workplace equality up to market forces, the way we always have. But at their current rate of progress, women, for example, won't achieve equality in the workplace for many years to come! So what can be done to hasten the process?

Special measures through an employment equity programme can really work to create a 'level playing field'. These measures are temporary. In fact, they are really catch-up devices to assist those who have been excluded from employment opportunities.

By implementing temporary special measures, many employers are helping to bring about a workplace that reflects the demographics of the area. Language or literacy training offered in the workplace may help some workers to qualify for a better paying job.

Some people feel that as a result of an employment equity programme, they now are facing discrimination. Discrimination based on any of the prohibited grounds is illegal under various human rights legislation. Anyone who suffers from discrimination can seek protection under the appropriate legislation.

**2.7 FICTION 3: EMPLOYMENT EQUITY SETS QUOTAS**  
**2.8 FACT: EMPLOYERS SET THEIR OWN GOALS AND TIMETABLES**

Employment Equity is not about quotas... it is about goals. Employers set their own goals and realistic timetables for achieving them. Instead of quotas, employers set targets for measuring progress in hiring workers from the three designated groups. We set targets all the time. In a manufacturing plant, for example, a supervisor will set a production target. Plans are then developed to achieve the goal and progress is monitored by routine counts. An Employment Equity plan uses the same process. It describes where you are today, where you want to be at a certain time and how you intend to get there. Like a production target, it responds to the organisation's circumstances. The process of setting goals does not mean people will lose their jobs to make room for designated group members. Goals are based on predicted new employment opportunities.

**2.9 FICTION 4: EMPLOYMENT EQUITY PROMOTES TOKENISM**  
**2.10 FACT: TOKENISM SABOTAGES EMPLOYMENT EQUITY**

Employment equity encourages the hiring, promotion and training of qualified individuals. That includes all qualified individuals. Tokenism in the workplace means putting someone in a job solely because they are a member of a designated group. You don't bother looking for people with the qualifications or experience for the job. No one supports token hiring. The widely held view of designated group is that job applicants should be hired only if there is a basis for believing that they will perform successfully on the job. And in the business world, tokenism does not make good sense.

**2.11 FICTION 5: EMPLOYMENT EQUITY MEANS LOWERING JOB STANDARDS**  
**2.12 FACT: EMPLOYMENT EQUITY EXAMINES JOB STANDARDS TO ENSURE THAT JOB CRITERIA ARE REALISTIC AND JOB RELATED**

Employment equity planning frees the workplace from out-dated and limiting rules and traditions that screen out valuable and qualified talent. A sound employment equity programme guarantees that people are not denied better jobs for reasons unrelated to their skills or abilities. Does the applicant really need a high school diploma or university degree to do the job? Is it necessary for the employee to be 5 feet 10 inches tall? Does that job really require a certain experience? Will word of mouth recruitment alone attract enough qualified applicants? Is it necessary for the applicant to have a driver's license? By examining job standards from an equity or fairness perspective, applicants can be assessed on actual requirements. And job standards in your workplace may be raised as a result of an employment equity programme.

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### 2.13 COMMON MYTHS

Employment equity plans benefit three groups of workers who have faced the most damaging and persistent kinds of discrimination in employment. Indirectly, they benefit everyone, including members of the community. They contribute to a more harmonious and equitable workplace for all. The following points will help you respond to arguments against employment equity people commonly raise.

#### 2.14 MYTH 1: EMPLOYMENT EQUITY IS REVERSE DISCRIMINATION

Discrimination is treating one group unfairly. For example, if men and women were equally distributed in all job levels and salary levels of an organisation, it would be discriminatory to selectively advertise for women, or to offer special training programmes for them. But until all groups catch up, special, positive measures are needed to make sure they are represented in the workplace at the same levels as in the community.

The facts show that it is black workers, women, and the disabled (and people living with HIV/AIDS) who face discrimination, get less access to educational programmes and training, and are often denied jobs and promotions even when they do have the qualifications and experience.

#### 2.15 MYTH 2: EMPLOYMENT EQUITY MEANS HIRING UNQUALIFIED WORKERS

Employment equity plans call for the hiring of qualified candidates from designated groups and others. This ensures that qualified workers who were previously kept out of jobs will have the opportunity to fill them. A qualified worker is someone who comes to the job with all the skills required for the job, or is someone who can do the job from the first day, or with a reasonable amount of training. It would defeat the purpose of employment equity to hire unqualified workers just to reach the numerical targets set for each designated group.

Employment equity further challenges our traditional notions of what constitutes "qualified" employees. Often without being aware of it, we are guilty of "cheap screening" methods and credentialism. The Act extends our traditional notion of what may be regarded as "qualified".

For purposes of this Act, a person may be suitably qualified for a job as a result of any one of, or any combination of that person's:

- Formal qualifications
- Prior learning
- Relevant experience
- Capacity to acquire (within a reasonable time) the ability to do the job.

#### 2.16 MYTH 3: EMPLOYMENT EQUITY CAUSES OVERNIGHT CHANGE IN THE MAKE-UP OF THE WORKFORCE

Employment equity is a process of change. Once plans are consulted on and made public in a workplace, changes in hiring and promotion can only happen as opportunities for change become available. If the economy is slow, there will be few changes. Even retiring employees may not be replaced right away. It will probably take many years to make the make-up of the workforce reflect the composition of the community.

#### 2.17 MYTH 4: EMPLOYMENT EQUITY IS MAINLY FOR BLACKS

Employment equity is for women, black people, persons with disabilities and people living with HIV/AIDS. Most people who benefit directly from employment equity will probably be women, since most or half of all workers are women-- but not half of all higher-level employees are women. Injured workers and people with disabilities, who are also found everywhere in the country, are another major group to benefit from employment equity.

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## 2.18 THE PRINCIPLES OF PARTNERSHIP

The Towards Industrial Partnership project was launched in 1992 in the UK, New Zealand Australia with a consultative document which set out seven principles of partnership.

Three commitments to which all partners should subscribe:

- The Success of the enterprise.
- Building trust and greater employee involvement.
- Recognising the legitimate role of the partners.

Four building blocks on which a partnership is built:

- Recognition of the employees' need for employment security and the company's need to maximise flexibility.
- Sharing success within the company.
- Informing and consulting staff at the workplace and at company level.
- Representation of the interests of employees.

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## Legislative Framework

### 3 The Bill of Rights

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#### 3.1 CHAPTER 2 - BILL OF RIGHTS

##### Rights

7. (1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

(2) The state must respect, protect, promote, and fulfil the rights in the Bill of Rights.

(3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

##### Application

8. (1) The Bill of Rights applies to all law and binds the legislature, the executive, the judiciary, and all organs of state.

(2) A provision of the Bill of Rights binds natural and juristic persons if, and to the extent that, it is applicable, taking into account the nature of the right and of any duty imposed by the right.

(3) In applying the provisions of the Bill of Rights to natural and juristic persons in terms of subsection (2), a court -

(a) in order to give effect to a right in the Bill, must apply, or where necessary, develop, the common law to the extent that legislation does not give effect to that right; and

(b) may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).

(4) Juristic persons are entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and of the juristic persons.

##### Equality

9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

##### Human dignity

10. Everyone has inherent dignity and the right to have their dignity respected and protected.

#### 3.2 PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT

##### Scope of the Act

To give effect to section 9 read with item 23(1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996, so as to prevent and prohibit unfair discrimination and harassment; to promote equality and eliminate unfair discrimination; to prevent and prohibit hate speech; and to provide for matters connected therewith.

South Africa also has international obligations under binding treaties and customary international law in the field of human rights which promote equality and prohibit unfair discrimination. Among these obligations are those specified in the

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Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Elimination of All Forms of Racial Discrimination;

Section 9 of the Constitution provides for the enactment of national legislation to prevent or prohibit unfair discrimination and to promote the achievement of equality;

### **Specific Exclusion**

This Act does not apply to any person to whom and to the extent to which the Employment Equity Act, 1998 (Act No. 55 of 1998), applies.

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### **Concepts addressed by this Act**

#### **Prevention and general prohibition of unfair discrimination**

6. Neither the State nor any person may unfairly discriminate against any person.

#### **Prohibition of unfair discrimination on ground of race**

7. Subject to section 6, no person may unfairly discriminate against any person on the ground of race, including—

- (a) the dissemination of any propaganda or idea, which propounds the racial superiority or inferiority of any person, including incitement to, or participation in, any form of racial violence;
- (b) the engagement in any activity which is intended to promote, or has the effect of promoting, exclusivity, based on race;
- (c) the exclusion of persons of a particular race group under any rule or practice that appears to be legitimate but which is actually aimed at maintaining exclusive control by a particular race group;
- (d) the provision or continued provision of inferior services to any racial group, compared to those of another racial group;
- (e) the denial of access to opportunities, including access to services or contractual opportunities for rendering services for consideration, or failing to take steps to reasonably accommodate the needs of such persons.

#### **Prohibition of unfair discrimination on ground of gender**

8. Subject to section 6, no person may unfairly discriminate against any person on the ground of gender, including—

- (a) gender-based violence;
- (b) female genital mutilation;
- (c) the system of preventing women from inheriting family property;
- (d) any practice, including traditional, customary or religious practice, which impairs the dignity of women and undermines equality between women and men, including the undermining of the dignity and well-being of the girl child;
- (e) any policy or conduct that unfairly limits access of women to land rights, finance, and other resources;
- (f) discrimination on the ground of pregnancy;
- (g) limiting women's access to social services or benefits, such as health, education and social security;
- (h) the denial of access to opportunities, including access to services or contractual opportunities for rendering services for consideration, or failing to take steps to reasonably accommodate the needs of such persons;
- (i) systemic inequality of access to opportunities by women as a result of the sexual division of labour.

#### **Prohibition of unfair discrimination on ground of disability**

9. Subject to section 6, no person may unfairly discriminate against any person on the ground of disability, including—

- (a) denying or removing from any person who has a disability, any supporting or enabling facility necessary for their functioning in society;
- (b) contravening the code of practice or regulations of the South African Bureau of Standards that govern environmental accessibility;
- (c) failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such persons.

#### **Prohibition of hate speech**

10. (1) Subject to the proviso in section 12, no person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to—

- (a) be hurtful;
- (b) be harmful or to incite harm;

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(c) promote or propagate hatred.

(2) Without prejudice to any remedies of a civil nature under this Act, the court may, in accordance with section 21(2)(n) and where appropriate, refer any case dealing with the publication, advocacy, propagation or communication of hate speech as contemplated in subsection (1), to the Director of Public Prosecutions having jurisdiction for the institution of criminal proceedings in terms of the common law or relevant legislation.

### Prohibition of harassment

11. No person may subject any person to harassment.

### Prohibition of dissemination and publication of information that unfairly discriminates

12. No person may—

(a) disseminate or broadcast any information;

(b) publish or display any advertisement or notice,

that could reasonably be construed or reasonably be understood to demonstrate a clear intention to unfairly discriminate against any person: Provided that *bona fide* engagement in artistic creativity, academic and scientific inquiry, fair and accurate reporting in the public interest or publication of any information, advertisement or notice in accordance with section 16 of the Constitution, is not precluded by this section.

### Definitions of Terms

(i) “age” includes the conditions of disadvantage and vulnerability suffered by persons on the basis of their age, especially advanced age;

(iii) “Commission for Gender Equality” means the Commission for Gender Equality referred to in section 187 of the Constitution;

(viii) “discrimination” means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly—

(a) imposes burdens, obligations or disadvantage on; or

(b) withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds;

(ix) “equality” includes the full and equal enjoyment of rights and freedoms as contemplated in the Constitution and includes *de jure* and *de facto* equality and also equality in terms of outcomes;

(xi) “family responsibility” means responsibility in relation to a complainant’s spouse, partner, dependent, child or other members of his or her family in respect of whom the member is liable for care and support;

(xii) “family status” includes membership in a family and the social, cultural and legal rights and expectations associated with such status;

(xiii) “harassment” means unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to—

(a) sex, gender or sexual orientation; or

(b) a person’s membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such group;

(xiv) “HIV/AIDS status” includes actual or perceived presence in a person’s body of the Human Immunodeficiency Virus (HIV) or symptoms of Acquired Immune Deficiency Syndrome (AIDS), as well as adverse assumptions based on this status;

(xv) “marital status” includes the status or condition of being single, married, divorced, widowed or in a relationship, whether with a person of the same or the opposite sex, involving a commitment to reciprocal support in a relationship;

(xvi) “Minister” means the Minister for Justice and Constitutional Development;

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(xvii) “nationality” means ethnic or national origin and includes practices associated with xenophobia and other adverse assumptions of a discriminatory nature but does not include rights and obligations normally associated with citizenship;

(xxii) “prohibited grounds” are—

(a) race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth; or

(b) any other ground where discrimination based on that other ground—

(i) causes or perpetuates systemic disadvantage;

(ii) undermines human dignity; or

(iii) adversely affects the equal enjoyment of a person’s rights and

freedoms in a serious manner that is comparable to discrimination on a ground in paragraph (a);

(xxvi) “socio-economic status” includes a social or economic condition or perceived condition of a person who is disadvantaged by poverty, low employment status or lack of or low-level educational qualifications;

(xxvii) “South African Human Rights Commission” means the South African Human Rights Commission referred to in section 184 of the Constitution;

### **Duty of State to promote equality**

**25.** (1) The State must, where necessary with the assistance of the relevant constitutional institutions—

(a) develop awareness of fundamental rights in order to promote a climate of understanding, mutual respect and equality;

(b) take measures to develop and implement programmes in order to promote equality; and

(c) where necessary or appropriate—

(i) develop action plans to address any unfair discrimination, hate speech or harassment;

(ii) enact further legislation that seeks to promote equality and to establish a legislative framework in line with the objectives of this Act;

(iii) develop codes of practice as contemplated in this Act in order to promote equality, and develop guidelines, including codes in respect of reasonable accommodation;

(iv) provide assistance, advice and training on issues of equality;

(v) develop appropriate internal mechanisms to deal with complaints of unfair discrimination, hate speech or harassment;

(vi) conduct information campaigns to popularise this Act.

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### **3.3 LEGAL PRINCIPLES ESTABLISHED IN VARIOUS LEGISLATION**

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- **Code of Good Practice on Sexual Harassment**

- Concepts of harassment

- Quid pro quo harassment

Quid pro quo harassment occurs where an owner, employer, supervisor, member of management or co-employee, undertakes or attempts to influence the process of employment, promotion, training, discipline, dismissal, salary increment or other benefit of an employee or job applicant, in exchange for sexual favours.

- Sexual favouritism

- **Code of Good Practice on Disability**

- Reasonable Accommodation
- Undue hardship / unjustifiable hardship
- 'Unjustifiable hardship' is action that requires significant or considerable difficulty or expense. This involves considering, amongst other things, the effectiveness of the accommodation and the extent to which it would seriously disrupt the operation of the business.

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Illustrative examples of discriminatory practices (South Africa & International)

- Equal pay
- Undue hardship
- Reasonable accommodation
- Harassment
- Sexual harassment
- Quid pro quo sexual harassment
- "Poisoned environment" (sexual harassment)
- Gender equality & gender mainstreaming
- Testing (medical)
- Testing (assessments)
- Unfair Promotions & Benefits
- Same Sex Benefits
- Religious Accommodation
- Disability

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#### 4 Employment Equity: Key Principles And Practices

##### 4.1 CONSTITUTIONAL EQUALITY

Constitutional equality as formulated in section 9 of the South African Constitution forms the backdrop and the standards for the Employment Equity Act and should always be considered when dealing with employment equity issues. Section 9 of the Constitution of the Republic of South Africa, Act 108 of 1996, reads as follows:

- Everyone is equal before the law and has the right to equal protection and benefit of the law.
- Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- The state may not discriminate directly, or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth.
- No person may unfairly discriminate directly, or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth.
- Discrimination on one or more of the grounds listed is unfair unless it is established the discrimination is fair

##### 4.2 THE AFFIRMATIVE ACTION CLAUSE

Discrimination refers to different treatment for different people. It is not discrimination per se that should be eradicated, but unfair discrimination. Unfair discrimination in modern usage refers to the practice of selecting between people or groups arbitrarily or by using inappropriate criteria.

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### 4.3 THE ANTI-DISCRIMINATION CLAUSE

Discrimination is qualified by the word "unfair" in order to distinguish between the pejorative and the benign meanings of the word. Thus, the qualification makes it clear that it is not differentiation as such that is prohibited, but unfair differentiation. The onus to prove that an employer has not discriminated unfairly against an employee now shifts to the employer who will have to prove that the discrimination was not unfair.

It should be noted that this so-called "business necessity defence" is a very narrow defence against a charge of discrimination. The mere fact that certain types of work have traditionally been reserved for men or are regarded as unsuitable for women will not stand constitutional scrutiny in the absence of rational and/ or empirical proof.

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### 4.4 THE OBJECTIVES OF THE EMPLOYMENT EQUITY ACT

The most important objectives of the act are:

- All employers are required to take steps to end unfair discrimination in their employment policies and practices.
- Medical testing of employees and psychometric testing unless justified.
- Designated employers must prepare and implement equity plans. The plan must contain specific affirmative action plans to achieve equitable representation in all occupation levels and categories in the workforce.
- Designated employers must take measures to progressively reduce disproportionate income differentials.
- Designated employers must report to the DoL about their implementation and progress made with achieving their EE goals.
- Any employer who intends to contract with the State must meet its employment equity obligations.

### 4.5 APPLICATION OF THE ACT

Chapter III of the Act requires affirmative action to be implement and applies to "designated employers" and people from "designated groups" only.

#### 4.5.1 A designated employer is:

A person who employs 50 or more employees;

A person, who employs fewer than 50 employees, but has a total annual turnover that is equal to or above the applicable annual turnover small business in terms of the Schedule 4 to this Act;

#### 4.5.2 A municipality;

An organ of state, but excluding local spheres of government, National Defence Force, the National Intelligence Agency, and the South African Secret Service; and

An employer who, in terms of a collective agreement, becomes a designated employer to the extent provided for in the collective agreement

#### 4.5.3 Designated groups are:

- Black people. This reference is used in a broad context to Africans, Coloureds and Indians
- Women
- People with disabilities

The act does not specify an order of importance for implementing an employment equity plan, nor does it talk about aggregating groups such as all Black employees, or all women etc.

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#### 4.6 AFFIRMATIVE ACTION MEASURES

Affirmative action measures are measures designed to ensure that qualified persons from designated groups have equal employment opportunities and are equitably represented in all occupational levels in the workforce.

##### 4.6.1 Affirmative action measures must include:

- Measures to identify and eliminate employment barriers
- Measures to identify and eliminate unfair discrimination, which adversely affect people from designated groups
- Measures designed to further diversity in the workplace based on dignity and respect of all people
- Making reasonable accommodation for people from designated groups in order to ensure that they enjoy equal opportunities; "Reasonable accommodation is any modification or adjustment to a job or to the working environment that will enable a person from a designated group to participate or advance in employment
- Measures to ensure the equitable representation of suitably qualified people from designated groups in all occupational levels in the workforce
- Measures to retain and develop people from designated group implement appropriate training measures

#### 4.7 DUTIES OF DESIGNATED EMPLOYEES

##### 4.7.1 A designated employer must:

- Prepare and implement an employment equity plan
- Report to the Director-General on progress made in implementing plan
- Employer must consult and attempt to reach consensus on the conduct of the staff analysis, preparation and implementation of the equal opportunity plan and the report to be submitted to the DoL
- Employers have to consult with trade unions, workplace forums and representatives of registered union
- Employers have to disclose relevant information that will allow effective consultation
- Employer must conduct an analysis of its employment practices, policies and procedures
- Analyse and identify employment barriers
- The analysis must include a profile of the workforce within each occupational category and level and under-representation must be identified

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#### 4.8 CONSULTATION PRINCIPLES AND PRACTICES

The Act does not set out any specific mechanism for consultations. These arrangements should be agreed between the employer and the employees. If there are consultation procedures already in place, these should be reviewed and updated as necessary to ensure that they continue to meet the requirements of the Act. The most appropriate type of consultation method is best chosen at local level. There may be a national shop stewards committee, worker directors or a structure such as a workplace forum may already exist. These structures may be used as a model for the Employment Equity committee, or their effectiveness reviewed to identify failings in their operation.

Consultation arrangements should include balanced participation on the part of both employees and employers.

As stated earlier, consultation is an ongoing process. Each successive employment equity plan (see section 23 of the Act) is also subject to consultation.

- **Consultation is not synonymous with consensus.** It is, however, a process that permits and promotes the two-way flow of ideas and information among all sectors of society and between them and the government. The process ensures that employees are aware of and consulted about options that ultimately will become decisions affecting their lives.
- **The outcome of consultation should not be predetermined.** Consultation should not be used to communicate decisions already taken.

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- **Effective consultation will not always lead to agreement.** However, it should lead to a better understanding of each other's positions.

**4.8.1 In the case of any consultation mechanism the following general points should be borne in mind:**

- The size and number would depend on such matters as the size of the organisation, the range and type of work activities. Influential members of management should be involved in order to emphasise the organisation's commitment to employment equity.
- The officers (chairman and secretary) should have the ability to ensure that it can function effectively. Business should be conducted in an ordered and structured fashion. Minutes, reports and submissions likelihood of having recommendations considered and acted upon more speedily. The officership could be held by either side or rotated.
- There should be regular meetings under a specific agenda, which could as appropriate include items like the following:
  - Progress report on the implementation of employment equity or task groups established to investigate particular matters
  - Examination of the minutes and action plans since the last meeting
  - Special consideration of any recent incident or workplace event, which may undermine employment equity initiatives
  - Practical equity suggestions or solutions from management or employees
  - Special activities such as "Equity Awareness Weeks"
  - Diversity training needs and reports on training courses attended by management or employees
  - Any items arising under Section 17 of the Act

**4.8.2 The terms of reference of the consultative forum must include scope for consultation on the following matters:**

- Work environment analysis
- The workforce survey
- The employment systems review
- The preparation of the employment equity plan and skills development plans (WSP)
- The drafting and publication of the employment equity and skills development report

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**4.9 CONSULTATION**

Note:- The emphasis should be on consultation as opposed to negotiation. These forums are not negotiation forums, but represent an opportunity to get input directly from employees via their representatives. The scope of areas subject to consultation is determined by the Act.

The Act introduces elements of flexibility in its requirement that employers consult on the organisation's employment equity plan.

16. (1) A designated employer must take reasonable steps to consult and attempt to reach agreement on the matters referred to in section 17.

The terms of reference of the consultative forum must include scope for consultation on the following matters:

- (a) the conduct of the analysis referred to in section 19 of the Act;
- (b) the preparation and implementation of the employment equity plan referred to in section 20 of the Act; and
- (c) a report referred to in section 21 of the Act.

In other words, consultation must take place on, amongst others, the following:

- The workforce survey / profile;
- The employment systems review;

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- The preparation of the employment equity plan;
- The drafting and publication of the employment equity report;
- The implementation, monitoring and review of the employment equity plan

To ensure full commitment by all representatives, the employer should also consult on the communications to the workforce on the progress made, implementation and monitoring of employment equity within the organisation.

It is recommended that the consultative forum includes a communications sub-committee whose sole task is to communicate information back to the organisation, using all available communication methods and forums, such as:

- Departmental meetings
- Company magazines
- Information de-briefing sessions
- Report back meetings
- Equity Awareness Surveys
- Equity Awareness Weeks/Days (focused on specific designated groups or issues based)
- Communications on training programmes to designated groups
- Management-Employee Forums etc.

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#### 4.10 BENEFITS OF CONSULTATION

Consultation benefits both those in management as well as employees by:

- creating a climate in which management and employees can exchange views, ideas, and information that result in policies and programs responsive to organisational priorities, needs, and concerns;
- broadening the decision-making sphere by engaging employees, through their representatives, consensus on policy and programme objectives;
- providing employees with a better understanding of policy and programme options, and employer responsibilities and constraints; and,
- promoting a more favourable environment for decisions, thus maximizing the potential for concurrence and minimizing the potential for conflict.

#### 4.11 SOME PRINCIPLES OF CONSULTATION

- Consultation is not synonymous with consensus. It is, however, a process that permits and promotes the two-way flow of ideas and information among all sectors of society and between them and the government. The process ensures that employees are aware of and consulted about options that ultimately will become decisions affecting their lives.
- Effective consultation is based on principles of openness, transparency, integrity, and mutual respect.
- As with all management responsibilities, satisfactory consultation requires good planning, research, analysis, advice and feed-back.
- The initiative to consult on a particular matter may come from the employer or employees -- each should respond as constructively as it can.
- Participants in a consultation should have clear mandates. Participants should have influence over the outcome and a stake in implementing any action agreed upon.
- Participants should have a realistic idea of how much time a consultation is likely to take and plan for this in designing the process.
- Effective consultation will not always lead to agreement; however, it should lead to a better understanding of each other's positions.
- Where consultation does lead to agreement, whenever possible, participants should hold themselves accountable for implementing the resulting recommendations.
- Effective consultation requires follow-through. Participants are entitled to know what use is made of the views and information they provide; they should also be made aware of the impact their ideas and involvement ultimately have on government decision-making.
- The skills required for effective consultation are: listening, problem-solving, communicating, negotiating and consensus building. Participants should be trained in these skills.

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#### 4.12 BEHAVIOURAL DIMENSIONS FOR EFFECTIVE CONSULTATION

The following behaviours reinforce effective consultation if displayed by participating members in a consultative forum:

Behaviour	Definition	Typical Behaviours
<input type="checkbox"/> <b>Listening</b>	Demonstrating an understanding of verbal communication and an awareness of the feeling / emotion behind the content	<input type="checkbox"/> Acknowledges the feeling or emotion behind what is being said by the other party; <input type="checkbox"/> Seeks clarification and checks for understanding; <input type="checkbox"/> Takes notes and uses and acknowledges the ideas and information supplied by the other party(s).
<input type="checkbox"/> <b>Facilitation</b>	Uses appropriate interpersonal skills and methods to motivate and lead a meeting towards its stated objectives, adapting behaviour according to the tasks and participants present at the meeting.	<input type="checkbox"/> Provides participants with all the information necessary to prepare for and participate in the meeting and the issues being discussed; <input type="checkbox"/> Encourages teamwork and participation by all; <input type="checkbox"/> Summarises and sets follow-up dates; <input type="checkbox"/> Maintains self-esteem of participants; <input type="checkbox"/> States the purpose of the meeting and agrees agenda items; <input type="checkbox"/> Sets meeting rules; <input type="checkbox"/> Guides meeting and maintains order and ensures agenda items are systematically addressed.
<input type="checkbox"/> <b>Teamwork</b>	Active participation in meetings, demonstrating listening and facilitation skills.	<input type="checkbox"/> Participates actively and pro-actively in meetings and achievement of agreed goals of the meeting; <input type="checkbox"/> Defines roles and responsibilities of meeting participants; <input type="checkbox"/> Supports participants in the meeting; <input type="checkbox"/> Checks for agreement on goals and problem solving / deadlock breaking mechanisms; <input type="checkbox"/> Shares information.
<input type="checkbox"/> <b>Analysis</b>	Secures relevant information, identifies key issues and inter-relationships / causal factors, and compares information from different sources.	<input type="checkbox"/> Demonstrates use of questioning techniques; <input type="checkbox"/> Has an understanding of systemic thinking; <input type="checkbox"/> Identifies underlying problems and issues; <input type="checkbox"/> Recognises trends or associations; <input type="checkbox"/> Draws logical conclusions from available information.
<input type="checkbox"/> <b>Collaboration</b>	Working effectively with others outside of traditional/formal reporting lines to achieve objectives of task group.	<input type="checkbox"/> Develops and supports mutual goals and plans; <input type="checkbox"/> Defines participants' responsibilities; <input type="checkbox"/> Identifies areas of conflict and disagreement and suggests avenues for resolution; <input type="checkbox"/> Listens and takes into account others views and opinions; <input type="checkbox"/> Encourages trust and open communication.
<input type="checkbox"/> <b>Negotiation</b>	Identifies underlying perceptions, fears and interests of other participants and explores "win-win" outcomes and areas of mutual interest.	<input type="checkbox"/> Uses legitimate authority to express own interests; <input type="checkbox"/> Supports viewpoint with factual information; <input type="checkbox"/> Avoids destructive confrontation; <input type="checkbox"/> Discloses information effectively to encourage openness and trust; <input type="checkbox"/> Finds compromise positions satisfactory to both

		parties;
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**4.13 TERMS OF REFERENCE OF COMMITTEE**

See Terms of Reference of EE Forum

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Discuss:-

- How were members nominated
- Obligations of representatives
- Roles and responsibilities
- Feedback to employees
- How will information gathered in EE Forum meetings be used

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**Complying with the Employment Equity Act**

**5 Process of compliance**

**5.1 TEN STEPS TO PREPARING & IMPLEMENTING AN EMPLOYMENT EQUITY PLAN**

Drawn from the Code of Good Practice: Preparation, Implementation and Monitoring of Employment Equity Plans

The process of developing a plan should have three sequential phases:

<b>Phase</b>	<b>1Phase</b>	<b>2Phase</b>	<b>3</b>
PREPARATION	IMPLEMENTATION	MONITORING	
<b>Step</b>	<b>1Step</b>	<b>5Step</b>	<b>9</b>
Assign responsibility	Corrective measures and objectives	Monitor, evaluate, and review	
<b>Step</b>	<b>2Step</b>	<b>6Step</b>	<b>10</b>
Communication, awareness and training	Time frames established	Report	
<b>Step</b>	<b>3Step</b>	<b>7</b>	
Consultation	Allocation of resources		
<b>Step</b>	<b>4Step</b>	<b>8</b>	
Analysis	Plan communication		

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Some steps may overlap while others, such as communication and consultation continues throughout the process. The key outcomes of the process include:-

- The completion of Forms EEA2 and EEA4 and submission of these forms to the Department of Labour;
- The development of an employment equity plan through consultation
- The communication of the Plan and Reports to employees
- The implementation of the Plan
- The subsequent annual submission of the Forms

**6 The Code of Good Practice**

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**6.1 PREPARATION, IMPLEMENTATION AND MONITORING OF EMPLOYMENT EQUITY PLANS**

Notice is hereby given under Section 54 of the Employment Equity Act, 1998, that the Minister of Labour, having been advised by the Commission for Employment Equity, has issued a Code of Good Practice on the preparation, implementation and monitoring of an Employment Equity Plan, as set out in this schedule.

**CONTENTS**

1. Objective
2. Legal Framework
3. Scope
4. Purpose and rationale for the plan

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5. Structure of the plan
6. Process for constructing a plan
7. Planning phase
8. Developing the plan
9. Monitoring and evaluating the plan

**1. OBJECTIVE**

The objective of this code is to provide guidelines of good practice, in terms of the requirements of the Employment Equity Act, 1998 (Act No 55 of 1998) (*hereafter referred to as "the Act"*), for the preparation and implementation of an employment equity plan (*hereafter referred to as "the plan"*).

**2. LEGAL FRAMEWORK**

**2.1** This code is issued in terms of Section 54 of the Employment Equity Act, No. 55 of 1998 and relates to Section 20.

**2.2** This code does not impose any legal obligations in addition to those in the Act and the failure to observe it does not, by itself, render a designated employer liable in any proceedings, except where the code refers to obligations that are required by the Act

**2.3** When interpreting the Act, any relevant code of good practice must be taken into account.

**3. SCOPE**

**3.1** This code is relevant to all employers that are regarded as designated employers in the Act.

**3.2** Designated employers and the employees of designated employers should apply the guidelines set out in this code to develop their employment equity plans, taking into account the specific circumstances of their own organisations.

**3.3** This code may be read in conjunction with other codes of good practice that may be issued by the Minister of Labour.

**4. PURPOSE AND RATIONALE FOR THE PLAN**

**4.1** The plan reflects a designated employer's employment equity implementation program.

**4.2** The plan represents the critical link between the current workforce profile and possible barriers in employment policies and procedures, and the implementation of remedial steps to ultimately result in employment equity in the workplace.

**5. STRUCTURE OF THE PLAN**

**5.1** The plan may be a separate document or a component of a broader document such as a business plan.

**5.2** In terms of the manner in which it is set out, the plan may closely follow the sections of the Act and the relevant items of the Code, or may be organised differently, as long as the statutory requirements in Section 20 of the Act are reflected in the plan.

**5.3** The plan should be accessible and structured in such a way that it is easy to understand.

**6. PROCESS FOR CONSTRUCTING A PLAN**

**6.1** The development of a plan should be undertaken as an inclusive process that will result in a documented plan.

**6.2** The process of developing a plan has three sequential phases: planning, development, and implementation and monitoring.

**6.3** The planning phase of the process should include –

- assignment of responsibility and accountability to one or more senior managers;
- a communication, awareness and training programme;
- consultation with relevant stakeholders;
- an analysis of existing employment policies, procedures, and practices;
- an analysis of the existing workforce profile;
- an analysis of relevant demographic information such as that contained in form EEA 8, and
- an appropriate benchmarking exercise, such as comparing the organisation's workforce profile with those of other organisations within the same sector, or the development of other meaningful comparisons.

**6.4** In the development phase, in consultation with the identified role players, should include –

- objectives set;
- corrective measures formulated;
- time frames established;
- the plan drawn up;
- resources identified and allocated for the implementation of the plan, and
- the plan communicated.

**6.5** Implementation and monitoring is an ongoing process and should continue to include components of the earlier phases, such as consultation, communication, awareness and training. This phase should include –

- implementation
- monitoring and evaluating progress;
- reviewing the plan, and
- reporting on progress.

**7. PLANNING PHASE**

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## 7.1 Assignment of senior manager

7.1.1 The planning phase should commence with the assignment of one or more senior managers who should have the responsibility for the development, implementation and monitoring of the plan. They should –

- be permanent employees, and
- report directly to the Chief Executive Officer.

7.1.2 The assignment of one or more senior managers implies that –

- the employer should also provide the assigned managers with the necessary authority and means, such as an appropriate budget, to perform their allocated functions;
- the employer is not relieved of any duty imposed by this Act or any other law, and
- the employer should take reasonable steps to ensure that these managers perform their allocated functions. This could be done through the incorporation of key employment equity outcomes in performance contracts of the responsible managers as well as line managers throughout the organisation.

## 7.2 Communication, Awareness and Consultation

7.2.1 All employees should be made aware and informed of –

- the content and application of the Act as preparation for their participation and consultation;
- employment equity and anti-discrimination issues;
- the proposed process to be followed by the employer;
- the advantages to employees of participation in the process, and
- the need for the involvement of all stakeholders in order to promote positive outcomes.

7.2.2 Employers are required to consult with regard to conducting an analysis, the preparation and implementation of the plan, and the submission of employment equity reports to the Department of Labour.

7.2.3 To ensure the successful implementation of a plan, employers should make every effort to include employee representatives in all aspects of the plan, especially the planning and development phases.

7.2.3 Managers should be informed of their obligations in terms of the Act, and training should be provided to them where particular skills do not exist. Examples of required training could include diversity management, coaching and mentoring programmes.

7.2.4 The communication of an employment equity strategy should focus on positive outcomes, such as the better utilisation of all of the employer's human resources and the creation of a diverse and more productive workforce.

7.2.5 Communication should also include employees from non-designated groups and focus on the contribution that can be made by them.

7.2.6 Consultation with employees should commence as early as possible in the process.

7.2.7 A consultative forum should be established or an existing forum utilised. The forum should include employee representatives reflecting the interests of employees from both designated and non-designated groups and across all occupational levels of the workforce. Representative trade unions, where these exist, or representatives nominated by such trade unions must be included in the consultation process.

7.2.8 The employer should be represented by one or more members of senior management.

7.2.9 Consultation would include –

- the opportunity to meet and report back to employees and management;
- reasonable opportunity for employee representatives to meet with the employer;
- the request, receipt and consideration of relevant information, and
- adequate time allowed for each of these steps.

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

7.2.11 The disclosure of relevant information by designated employers is vital for the successful implementation of the plan. Such information could include –

- the particular business environment and circumstances of the employer;
- information relating to the relevant economic sector or industry;
- relevant local, regional, and national demographic information relating to the economically active population;
- the anticipated growth or reduction of the employer's workforce;
- the turnover of employees in the employer's workforce;
- the internal and external availability for appointment or promotion of suitably qualified people from the designated groups;
- the degree of representation of designated employees in each occupational category and level in the employer's workforce, and

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- employment policies and practices of the employer.

**7.2.12** All parties should, in all good faith, keep an open mind throughout the process and seriously consider proposals put forward.

**7.2.13** Where a representative body or trade union refuses to take part in the consultation process, the employer should record the circumstances, in writing, including those steps that the employer has taken to communicate and initiate the consultation process. A copy of this document should be provided to the representative body or trade union concerned.

### 7.3 Conducting an analysis

The purpose of the analysis is –

- a. to assess all employment policies, practices, procedures, and the working environment so as to –
  - identify any barriers that may contribute to the under-representation or under-utilisation of employees from the designated groups;
  - identify any barriers or factors that may contribute to the lack of affirmation of diversity in the workplace;
  - identify other employment conditions that may adversely affect designated groups;
  - identify practices or factors that positively promote employment equity and diversity in the workplace; and
- b. to determine the extent of under-representation of employees from the designated groups in the different occupational levels of the employer's workforce.

While the first type of analysis is of a more qualitative and legal nature, the second is mainly a statistical and data processing exercise.

#### 7.3.1 Review of employment policies, practices, procedures, and working environment

A review of all employment policies, practices, procedures, and of the working environment should be undertaken in order to identify any barriers that may be responsible for the under-representation or under-utilisation of employees from designated groups.

- a. The review should include a critical examination of all established policies, practices, procedures and working environment. These would include –
  - employment policy or practices, such as recruitment, selection, pre-employment testing, and induction that could be biased, inappropriate, or unaffirming;
  - practices related to succession and experience planning, and related promotions and transfers to establish whether designated groups are excluded or adversely impacted;
  - utilisation and job assignments to establish whether designated groups are able to meaningfully participate and contribute;
  - current training and development methodologies and strategies, including access to training for designated groups;
  - remuneration structures and practices such as equal remuneration for work of equal value;
  - employee benefits related to retirement, risk, and medical aid to establish whether designated groups have equal access;
  - disciplinary practices that may have a disproportionately adverse effect on designated groups and that may not be justified;
  - working conditions that may not accommodate cultural or religious differences, such as the use of traditional healers and observance of religious holidays;
  - the number and nature of dismissals, voluntary terminations and retrenchments of employees from designated groups that may indicate internal or external equity-related factors contributing to such terminations;
  - corporate culture, which may be characterised by exclusionary social and other practices;
  - practices relating to the management of HIV/AIDS in the workplace, to ensure that people living with HIV/AIDS are not discriminated against, and
  - any other practices or conditions that are tabled arising out of the consultative process.
- b. All practices should be assessed in terms of cross-cultural and gender fairness.
- c. The review should take into account more subtle or indirect forms of discrimination and stereotyping which could result in certain groups of people not being employed in particular jobs, or which could preclude people from being promoted. Examples would include pregnancy, family responsibility, exclusionary social practices, sexual harassment, and religious or cultural beliefs and practices.

#### 7.3.2 Workforce profile

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- a. The first step in conducting an analysis of the workforce profile is to establish which employees are members of designated groups. This information should be obtained from employees themselves, either from a declaration as provided for in Regulation 2(1) or from existing and dependable sources. An example of an existing and dependable source would be an employer's database that contains the information required on employment application forms. If such existing records are utilised for this purpose, each employee should have the opportunity to verify or request changes to this information.
- b. An analysis of the workforce profile should provide a comparison of designated groups by occupational levels to relevant demographic data. Form EEA 8 contains some demographic data for this purpose, but there are many other sources of information that could be utilised and might be more relevant.
- c. In addition to the demographics, both the availability of suitably qualified people from designated groups in the relevant recruitment area, as well as the internal skills profile of designated employees, should be taken into account. The 'relevant recruitment area' is that geographic area from which the employer would reasonably be expected to draw or recruit employees.
- d. Recruitment areas may vary depending upon the level of responsibility and the degree of specialisation of the occupation. Usually, the higher the degree of responsibility or specialisation required for the job, the broader the recruitment area.
- e. Occupational levels could be determined by any of the professional job grading systems (Paterson, Peromnes, Hay, etc.) or their equivalents as detailed in form EEA 9. In the absence of a formal job grading system, designated employers may use equivalent occupational levels as the basis for the workforce analysis.
- f. Sections B and C of the Employment Equity Report as defined by form EEA 2 should guide employers in establishing information requirements to develop a plan, and provide the basis for developing a workforce profile.

## 8. DEVELOPING THE PLAN

### 8.1 Duration of the plan

The duration of the plan should be for a period that will allow the employer to make reasonable progress towards achieving employment equity. This period should be no shorter than one year and no longer than five years, as specified in the Act.

### 8.2 Broad objectives of the plan

The broad objectives of the plan should be specified and a timetable developed for the fulfilment of each objective. These objectives should -

- take into account the output of the planning phase;
- the particular circumstances of the employer, and
- be aligned with and included in the broader business strategy of the employer.

### 8.3 Affirmative action measures

8.3.1 Affirmative action measures, to address the barriers identified during the analysis, should be developed to improve the under-representation of designated group members. Such measures relate to, but are not limited to the following:

- **Appointment of members from designated groups**  
This would include transparent recruitment strategies such as appropriate and unbiased selection criteria and selection panels, and targeted advertising.
- **Increasing the pool of available candidates**  
Community investment and bridging programmes can increase the number of potential candidates.
- **Training and development of people from designated groups**  
These measures include access to training by members of designated groups, structured training and development programmes like learnerships and internships; on the job mentoring and coaching, and accelerated training for new recruits. Where required, diversity training should be provided to responsible managers as well as training in coaching and mentoring skills.
- **Promotion of people from designated groups**  
This could form part of structured succession and experience planning and would include appropriate and accelerated training.
- **Retention of people from designated groups**  
Retention strategies would include the promotion of a more diverse organisational culture; an interactive communication and feedback strategy; and ongoing labour turnover analysis.
- **Reasonable accommodation for people from designated groups**  
These measures include providing an enabling environment for disabled workers and workers

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with family responsibilities so that they may participate fully and, in so doing, improve productivity. Examples of reasonable accommodation are accessible working areas, modifications to buildings and facilities, and flexible working hours where these can be accommodated.

- **Steps to ensure that members of designated groups are appointed in such positions that they are able to meaningfully participate in corporate decision-making processes**  
A conscious effort should be made to avoid all forms of tokenism. Candidates must be appointed with commensurate degrees of authority.
- **Steps to ensure that the corporate culture of the past is transformed in a way that affirms diversity in the workplace and harnesses the potential of all employees**  
Such steps could include programmes for all staff, including management, contextualising employment equity and sensitising employees with regard to the grounds of discrimination such as race, diversity, gender, disability, and religious accommodation.
- **Any other measures arising out of the consultative process**

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

**8.3.3** The employer is under no obligation to introduce an absolute barrier relating to people who are not from designated groups, for example having a policy of not considering white males at all for promotion or excluding them from applying for vacant positions.

**8.4 Numerical goals**

**8.4.1** Numerical goals should be developed for the appointment and promotion of people from designated groups. The purpose of these goals would be to increase the representation of people from designated groups in each occupational category and level in the employer’s workforce, where under-representation has been identified and to make the workforce reflective of the relevant demographics as provided for in form EEA 8.

**8.4.2** In developing the numerical goals, the following factors should be taken into consideration –

- The degree of under-representation of employees from designated groups in each occupational category and level in the employer’s workforce;
- present and planned vacancies;
- the provincial and national economically active population as presented in form EEA 8;
- the pool of suitably qualified persons from designated groups, from which the employer may be reasonably expected to draw for recruitment purposes;
- present and anticipated economic and financial factors relevant to the industry in which the employer operates;
- economic and financial circumstances of the employer;
- the anticipated growth or reduction in the employer’s workforce during the time period for the goals;
- the expected turnover of employees in the employer’s workforce during the time period for the goals, and
- labour turnover trends and underlying reasons, specifically for employees from designated groups.

**8.5 Consensus**

In setting objectives and developing corrective measures, parties to the consultative processes should attempt to reach consensus on what would constitute reasonable progress over the duration of the plan.

**8.6 Resources**

Resources, including budgets, should be appropriately allocated in order to implement the agreed components of the plan.

**8.7 Assignment of responsibility**

Responsibility for implementation and monitoring of the plan, as assigned during the planning phase, should be confirmed and noted.

**8.8 Dispute Resolution**

**8.8.1** Internal procedures for resolving any dispute about the interpretation and implementation of the plan should be agreed and specified.

**8.8.2** The use of existing dispute resolution procedures should be encouraged provided that they are appropriate, and if necessary adapted to the needs of employment equity.

**8.8.3** Alternatively, a mechanism with appropriate representation from employer and employees may be established in order to address and resolve such disputes.

**8.9 Communication**

**8.9.1** The plan should be appropriately and comprehensively communicated to employees. This communication mechanism should indicate the parties responsible for the implementation of the plan and

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the agreed dispute resolution procedures. Information about the plan should be easily accessible to all levels of employees.

**9. MONITORING AND EVALUATING THE PLAN**

**9.1** Records should be kept to effectively monitor and evaluate the plan.

**9.2** Mechanisms to monitor and evaluate the implementation of the plan should be agreed and include benchmarks that would permit assessment of reasonable progress.

**9.3** The plan should be evaluated at regular intervals to ensure that reasonable progress is made. This evaluation should be integrated into mechanisms that the employer normally utilises to monitor its operations.

**9.4** The consultative forum(s) should continue to meet on a regular basis, and should receive progress reports. Progress should be recorded and communicated to employees. Such meetings should take place at reasonable intervals to ensure feedback and inform the ongoing implementation process.

**9.5** The plan should be reviewed and revised, as necessary, through consultation.

**9.6 Reporting**

**9.6.1** Larger employers, with 150 or more employees, will be required to submit first reports by 1 June 2000 and thereafter annually on the first working day of October, starting in 2001.

**9.6.2** Smaller employers, with fewer than 150 employees, will be required to submit their first reports by 1 December 2000 and thereafter every second year, on the first working day of October, starting in 2002.

**9.6.3** The reporting format for employers is contained in the Employment Equity Report as defined in form EEA2.

**9.6.4** Designated employers whose operations extend across different geographical areas, functional units, workplaces or industry sectors may elect to submit either a consolidated or a separate report for each of these. This decision should be made by employers after consultation with the relevant stakeholders.

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**Developing a Workforce Profile**

**7 Workforce profile**

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Occupational Levels	Male				Female				TOTAL
	African	Coloured	Indian	White	African	Coloured	Indian	White	
Top management									
Senior management									
Professionally qualified and experienced specialists and mid-management									
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents									
Semi-skilled and discretionary decision making									
Unskilled and defined decision making									
<b>TOTAL PERMANENT</b>									
Non – permanent employees									
<b>TOTAL</b>									

**7.1 IDENTIFYING COMPARATIVE PROFILES**

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## Conducting an Employment Systems Review

### 8 Systems review - barriers and affirmative measures

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The Employment Equity Act requires that every designated employer conduct a review of employment systems. In terms of the Act, an employment systems review is an examination of employment policies and practices to evaluate their impact on designated employees.

**Employment systems** in layperson's terms, refers to the procedures used to recruit, hire, pay, manage and develop human resources in all organizations. They may be formal or informal and may or may not be consistently applied. The key elements of employment systems consist of policies and practices to do with job recruitment, selection, training and development, upward and lateral mobility, wages and benefits, working conditions, terminations and layoffs.

An Employment Systems Review (employment systems review) is a comprehensive examination of an organisation's policies and practices to identify and permit removal of systemic and attitudinal barriers to employment opportunities for persons in the designated groups.

A comprehensive and thorough employment systems review goes beyond a desk audit of a human resources manual. It not only helps in identifying systemic barriers to the designated groups but enables an organisation to institute or formalize non-discriminatory policies and practices. By building on the values of fairness and merit, a good employment systems review will contribute to better management of human resources in a diversified workforce.

#### Legal requirements

The Act requires that employers must identify and eliminate barriers in their employment practices and policies which discriminate against designated employees or which prevent the diversification of the workforce through affirmative action measures. It does so by placing a proactive duty on every employer to:-

1. Eliminate unfair discrimination in its employment policies and practices;
2. Promote affirmative action through identifying and eliminating employment barriers which adversely affect designated employees;
3. Make reasonable accommodation in its employment policies and practices for designated employees; and
4. Conduct an analysis of employment policies and practices.

#### Eliminate unfair discrimination

Section 5 of the Act states that every employer must take steps to promote equal opportunity in the workplace by **eliminating unfair discrimination** in any **employment policy or practice**.

Section 6 prohibits unfair discrimination by any person, whether 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 and birth.

#### Promote affirmative action

Section 15 of the Act makes provision for employers to implement affirmative action through measures which identify and eliminate **employment barriers**, including unfair discrimination, which adversely affect people from designated groups; measures designed to further diversity in the workplace based on equal dignity and respect of all people.

#### Reasonable accommodation

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Section 15(2)(c) requires employers to make **reasonable accommodation** for people from designated groups in order to ensure that they *enjoy* equal opportunities and are equitably represented in *the* workforce of a designated employer. The Act defines reasonable accommodation as any modification or adjustment to a job or to the working environment that will enable a person from a designated group to have access to or participate or advance in employment. How far this duty to provide reasonable accommodation extends will be subject to much litigation and debate in future. For example, in some jurisdictions, the concept of "**undue hardship**" has been developed to limit the duty of reasonable accommodation. An employer is required to make reasonable accommodation up to undue hardship on the employer. This concept will be discussed further in this chapter.

Subject to section 42 of the Act, the employer is not required to take any decision concerning an **employment policy or practice** that would establish an absolute barrier to the prospective or continued employment or advancement of people who are not from designated groups.

It is submitted that the requirement of making reasonable accommodation extends to an employers obligation to prevent unfair discrimination. Chapter 2 of the Act provides that every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice. The steps contemplated in this chapter could well include making reasonable accommodation to prevent unfair discrimination, whether 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 and birth.

### Conduct an analysis

Section 19 of the Act provides that every employer must collect information and conduct an analysis, as prescribed, of its employment policies, practices, procedures and the working environment, in order to identify employment barriers which adversely affect people from designated groups.

In determining whether an employer is implementing employment equity in compliance with the Act, the Director-General (or any person or body applying this Act) must, in terms of section 42 of the Act, and in addition to the factors stated in section 15, take into account, amongst other factors, *the* extent to which the designated employer has made progress in eliminating employment barriers that adversely affect people from designated groups.

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### What constitutes an employment policy or practice?

The Act defines an employment policy or practice as including, but not limited to

- recruitment procedures, advertising and selection criteria;
- appointments and the appointment process;
- job classification and grading;
- remuneration, employment benefits and terms and conditions of employment;
- job assignments;
- the working environment and facilities;
- training and development;
- performance evaluation systems;
- promotion;
- transfer;
- demotion;
- disciplinary measures other than dismissal; and
- dismissal.

In fulfilling its duty to review employment policies and practices, an employer will be achieving two separate but related objectives of the Act, namely:-

- To prevent unfair discrimination against employees on grounds of ... (Chapter 2 provisions of the Act)
- And promote affirmative action of designated employees. (Chapter 3 provisions of the Act)

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It is important to recognise these objectives, and to incorporate them into the employment systems review. In addition, it is also necessary to recognise that employment policies and practices do not refer only to written policies.

A systems analysis must be more than just a review of written policies and clearly prescribed practices. It must identify and review informal practices which may also be in use and how these policies are actually applied.

While some organisations have written human resource policies and procedures, often employment practices are not documented. Identifying and reviewing these unwritten or understood employment practices in an organisation is a difficult exercise and requires a different approach than merely reading through the organisations policies and procedures manual and making the necessary adaptations.

In other cases, employers have some human resource policies and practices that apply to all occupational groups and others that apply only to specific occupational groups or even levels within the organisation. For instance, some employers have recruiting tests designed to test skills for a particular job. In other situations, certain policies or practices only apply to certain levels within the organisation. The organisation may have a specific recruitment or selection process for executive management only, such as the use of head hunters, psychometric testing, or hidden unexpressed criteria. For example, if one determines that the Board of Directors of a large organisation is comprised of a majority of white male ex-Zimbabweans, this could be an indication of unexpressed but compelling selection criteria which may need to be identified, expressed and reviewed.

In time it is envisaged that the Employment Equity Commission will develop specific Codes of Good Practice and Best Practices for conducting employment systems review. The specific requirements of conducting an analysis of employment systems contained in EEA1 (Code of Good Practice on the preparation, implementation and monitoring of an Employment Equity Plan) will be discussed in Guideline 8.

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The Code of Good Practice [Code, EEA1, s 7.3] provides as follows:-

### 7.3 Conducting an analysis

The purpose of the analysis is –

- a. to assess all employment policies, practices, procedures, and the working environment so as to –
  - identify any barriers that may contribute to the under-representation or under-utilisation of employees from the designated groups;
  - identify any barriers or factors that may contribute to the lack of affirmation of diversity in the workplace;
  - identify other employment conditions that may adversely affect designated groups;
  - identify practices or factors that positively promote employment equity and diversity in the workplace; and
- b. to determine the extent of under-representation of employees from the designated groups in the different occupational levels of the employer's workforce.

While the first type of analysis is of a more qualitative and legal nature, the second is mainly a statistical and data processing exercise.

#### 7.3.1 Review of employment policies, practices, procedures, and working environment

A review of all employment policies, practices, procedures, and of the working environment should be undertaken in order to identify any barriers that may be responsible for the under-representation or under-utilisation of employees from designated groups.

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- a. The review should include a critical examination of all established policies, practices, procedures and working environment. These would include –
- employment policy or practices, such as recruitment, selection, pre-employment testing, and induction that could be biased, inappropriate, or unaffirming;
  - practices related to succession and experience planning, and related promotions and transfers to establish whether designated groups are excluded or adversely impacted;
  - utilisation and job assignments to establish whether designated groups are able to meaningfully participate and contribute;
  - current training and development methodologies and strategies, including access to training for designated groups;
  - remuneration structures and practices such as equal remuneration for work of equal value;
  - employee benefits related to retirement, risk, and medical aid to establish whether designated groups have equal access;
  - disciplinary practices that may have a disproportionately adverse effect on designated groups and that may not be justified;
  - working conditions that may not accommodate cultural or religious differences, such as the use of traditional healers and observance of religious holidays;
  - the number and nature of dismissals, voluntary terminations and retrenchments of employees from designated groups that may indicate internal or external equity-related factors contributing to such terminations;
  - corporate culture, which may be characterised by exclusionary social and other practices;
  - practices relating to the management of HIV/AIDS in the workplace, to ensure that people living with HIV/AIDS are not discriminated against, and
  - any other practices or conditions that are tabled arising out of the consultative process.
- b. All practices should be assessed in terms of cross-cultural and gender fairness.
- c. The review should take into account more subtle or indirect forms of discrimination and stereo-typing which could result in certain groups of people not being employed in particular jobs, or which could preclude people from being promoted. Examples would include pregnancy, family responsibility, exclusionary social practices, sexual harassment, and religious or cultural beliefs and practices.

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### 8.1 CHECKLIST

Please indicate in which categories of employment policy or practices barriers to employment equity were identified:

Categories	Yes	No	If yes, specify
<input type="checkbox"/> Recruitment procedures			
<input type="checkbox"/> Advertising positions			
<input type="checkbox"/> Selection criteria			
<input type="checkbox"/> Appointments			
<input type="checkbox"/> Job classification and grading			
<input type="checkbox"/> Remuneration and benefits			
<input type="checkbox"/> Terms and conditions of employment			
<input type="checkbox"/> Job assignments			

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- Work environment and facilities
- Training and development
- Performance and evaluation systems
- Promotions
- Transfers
- Demotions
- Succession and experience planning
- Disciplinary measures
- Dismissals
- Corporate culture
- HIV/Aids education and prevention programme
- Other (please specify):

## 9 Checklists for assessing barriers and adverse impact on designated groups

The following checklists contain a sampling of the types of questions to be asked when examining employment systems. These lists are not an exhaustive list of every question that can be asked. Use them as a guideline to conduct a good qualitative assessment of your current situation.

### 9.1 RECRUITMENT SYSTEM CHECKLIST

- Are recruiters representative of and include members of the designated groups?
- Are job openings posted on bulletin boards (electronic and paper version) accessible to all employees, including those who work in remote locations and persons with disabilities?
- Are managers aware of recruiting under special measures and are they encouraged to use them?
- Do all job advertisements accurately reflect bona fide qualifications and skill requirements for the job?
- Are you creating a pool of qualified designated group members that possess the types of skills needed by departments?
- Do you take these into consideration when discussing the job requirements with the manager and formulating the essential criteria for the job?
- Would the selection profile eliminate designated group members in the organisation or tend to discourage them from applying?
- Are departmental human resource professionals contacted and given the opportunity to brief the staffing officer by providing relevant information on designated group members at the feeder levels in the department? Are designated group members encouraged to apply in the competition and provided with the required background information?
- If it is apparent that there are no designated group members in the competitive process, do you re-think your criteria and modify them in order to expand the area of competition thereby making it more inclusive?
- Are you aware of the special programmes for designated group members that might yield candidates? If so, do you pursue this avenue if it is determined that there is an insufficient number of designated group candidates in the competitive process?
- Do you know the numbers of designated group members that are retained in each stage of the competitive process?
- Is the participation rate of designated groups tracked?
- Do job advertisements indicate that you are an equal opportunity employer?
- Are all jobs free of credentialism barriers? In other words, is formal academic training required only where safety and/or efficiency and effectiveness standards would be otherwise compromised?
- Are all job advertisements written in easy-to-read, non-bureaucratic, and inclusive language designed to attract a wider pool of job applicants?
- Can you demonstrate that your recruitment practices are up-to-date, and consistently reflect your written policy and procedures?
- Have your recruitment policy and practices been communicated to unions, managers, and employees?
- Are you developing mechanisms to carry out consultation and collaboration with employee representatives under the EEA?
- Do you advertise employment opportunities through a wide variety of mechanisms and media?
- Do you distribute job bulletins to communities where large numbers of designated groups reside e.g. black communities?
- Do you canvass schools, colleges and universities with a high representation of designated groups?
- When conducting recruitment at educational institutions, do you seek advice from employment equity officers and designated group student associations?
- If you hold a staffing inventory, does it consistently have a representative pool of qualified candidates at all job levels?

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- Are participation rates tracked from beginning to end of the recruitment process in order to identify potential barriers?
- Are skill components broken down to reflect actual job requirements (e.g., a receptionist position described as follows: receiving the public, receiving applications, possessing a knowledge of company procedures and practices, etc.)?
- Is someone who is familiar with the day-to-day functions of the job available to provide prospective applicants with information?
- Is the language used in job postings and advertisements checked for gender and cultural biases? For example, is "drafts person" used as opposed to "draftsman"?
- Is "experience" asked for instead of "South African / Gauteng experience", or "university education" rather than "degree from a South African university"?
- Is illustrated material used in recruiting checked for gender and cultural biases?
- Have personnel staffs received training with respect to human rights and other employment-related legislation?
- Have up-to-date human rights and other relevant legislation and information been used in preparing your company's job application forms?
- Is the personnel department accessible to people with physical disabilities?
- Are provisions made in the interviewing process to accommodate people with physical disabilities?
- Do job descriptions/advertisements specify the physical requirements of the job, based on a physical demands analysis?

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## 9.2 SELECTION SYSTEMS CHECKLIST

- Are frontline staffs i.e. assessors, interviewers and staffing specialists knowledgeable about human rights and employment equity legislation vis-à-vis employer obligations as well as diversity issues?
- Does the area of selection include a representative pool of designated group members?
- Are managers and interviewers aware of their individual and collective responsibilities to support their organisation's employment equity vision and goals?
- Is the selection process, including interviews, fully documented and monitored for adverse effects on designated groups?
- Does your organisation include designated group members on selection teams, especially where designated group members are in the candidate pool?
- Are job requirements reviewed: (a) initially, to ensure that they are bona fide, and do not constitute barriers to designated group candidates, and (b) subsequently reviewed to determine whether they will exclude designated group candidates at rates disproportionate to non-designated group candidates?
- Are tests validated for job-relatedness?
- Are tests and other screening tools examined for cultural, gender and racial biases?
- Do personnel with the right skills and training to avoid biased assessments of designated group members administer tests?
- Are testing and interview locations accessible in physical and geographical terms?
- Are selection test materials made available in various media to accommodate applicant's needs (e.g. Braille, tapes, translation services for hearing-impaired)?
- Are selection tools adapted to meet candidates' needs and do they support the principles of reasonable accommodation?
- Are selection methods reviewed and updated periodically and in keeping with new or revised employment equity policies and laws?
- Are all managers and interviewers aware of the organization's employment equity philosophy and goals?
- Is the selection process, including interviews, fully documented?
- Are efforts made to include designated group members on the interviewing teams?
- Are tests validated for job-relatedness?
- Are tests examined for gender and racial biases?
- Do trained personnel administer tests?
- Are testing conditions standardized?
- Is the testing facility accessible to wheelchair users?
- Are test materials available in various media to accommodate applicants' needs (e.g., Braille, tapes, translation services for hearing-impaired, etc.)?

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- Are procedures for reference checks standardized?

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### 9.3 APPOINTMENT SYSTEMS CHECKLIST

- Are departmental staffing practitioners knowledgeable about the staffing policies and procedures, and the values that they represent, i.e. equitable access, fairness, and merit?
- Do you monitor the proportion of designated group members versus the non-designated group population recruited from the external labour market?
- Do you monitor the promotion rate of designated group members within the department versus that of non-designated group members?
- Are staffing practitioners and managers who exercise delegated staffing authority adequately trained in staffing and EE matters?

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### 9.4 RETENTION CHECKLIST

The goal of the systems review with respect to these issues is to determine if designated group member's leave at disproportionate rates and why. Some reasons for leaving are positive – for example, promotions, offer and acceptance of developmental assignments, improved career opportunities, the desire to do something different. Others tend to be negative and related to the organisational culture. An unwelcoming culture may be a contributing factor in a high turnover rate of designated group members.

- Do persons in the designated groups leave at disproportionate rates compared to other employees?
- Does the organisation have information on why its employees are leaving?
- Do these reasons include unfair targeting of designated group members? For example, are they over-represented in term appointments that are not renewed?
- Are there reports of subtle pressure on designated group members to seek alternative employment?
- Are lay-off and termination decisions based on clearly defined, job-related and objective criteria?
- Are alternative opportunities available and communicated to designated group members affected by terminations?

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### 9.5 TRAINING AND DEVELOPMENT SYSTEM CHECKLIST

In conducting the training and development systems review, the review should extend to a broad examination of an organisations training and development initiatives, from the identification of training needs, to the instructional design of the training material, as well as the actual training itself.

- Do designated group members participate in training and development opportunities at lower rates than other employees? Is information on training and development opportunities disseminated to all employees? Is this information accessible to persons with disabilities?
- Do all new employees have access to orientation and other courses about the department?
- Is the selection for training and development solely at the discretion of supervisors? Do designated group members and other employees have access to a redress mechanism if they feel that they have been unfairly denied access to training and development opportunities?
- Do employees in the designated groups have access to training and development opportunities that prepare them for more advanced jobs in the organization?

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- Has your training material been reviewed for gender, racial or other biases?
- Is diversity training available to all employees of your organization either as stand-alone modules or integrated with other training activities? Do managers and employees who are not in the designated groups participate in such training?
- Is training linked to seniority, job type and level, earnings, or next-in-line status, and if so, does it adversely affect designated group members.
- Do designated group members participate in all training and development programs at the same rate as other employees? What is the underlying reason for their lower participation rate?
- Are records kept of designated group participation in training events to determine if training policies and procedures exclude designated group members.
- Are members of designated groups excluded from training programmes because of stereotyping and in-group bias? For example, women might be excluded from some types of training because of the assumption that they may be away from work for maternity and child-rearing leave.
- Is information on training programmes disseminated to all employees within the organisation, and they familiar with how to apply.
- Are training materials or notices about training produced in alternate formats, such as Braille or audio form.
- Determine whether training nominations, which are usually done solely at the discretion of supervisors, do not exclude designated group members. Where possible, allow employees to nominate themselves for training.
- Selection criteria for taking training should not be inflated, but should also take cognisance of prior learning, relevant experience and reasonable ability to acquire the skills, otherwise designated group members may not apply.
- Sometimes, training for employees at the lower level of the organization is given to enhance current job skills, not to prepare for different or more advanced jobs. More senior-level employees often have the option of taking courses to prepare them for promotion. This practice could adversely affect designated group members, if they are located at the lower levels of the organization. It can be useful to compare the kind of training extended to members of designated groups to the training given to senior staff.
- Are trainers instructed on the needs and issues of designated group members and on how to encourage them to participate during training sessions?
- Are contracted trainers made aware of the organization's employment equity policies and cross-cultural issues in a training context?
- Does your organization have a training and development policy based on employment equity principles? For example, is a fair proportion of your training plan focused on employment equity initiatives, such as diversity awareness training, sexual harassment training etc? Does your training plan allocate a certain percentage of training to delegates from designated groups?
- Are all employees aware of the organization's training and development opportunities?
- Do all employees have access to training and development opportunities?
- Have you ensured that there are no restrictions to training opportunities based on occupational levels and earnings?
- Are training centres accessible to disabled persons?
- Do employees have access to in-house or company-paid career counselling?

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## 9.6 PROMOTION SYSTEM CHECKLIST

An organisation's promotion systems must form part of the employment systems review. An organization's promotion mechanisms may include: job rotation, secondments, special assignments, bridging jobs and task force and/or committee participation. As with other employment systems, access to these and other mobility mechanisms can be blocked because such opportunities may not be publicized. Also, employee selection may be based on seniority or managerial discretion. An absence of fair and objective selection criteria also leaves room for subjectivity and bias that could influence the choice of candidates for mobility or promotional opportunities.

Which of the following mobility mechanisms exist in your organization?

- Secondments
- Special assignments
- Job rotation
- Transfers

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- Bridging jobs
- Special training and development courses
- Retraining
- Special committee or task force participation

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#### 9.7 UPWARD MOBILITY SYSTEMS CHECKLIST

If you are unable to answer yes to the following questions, you are encouraged to develop appropriate solutions to remedy the situation.

- Have you identified formal lines of progression or career paths for each occupational group?
- Has this information been made available to all employees as part of a career counselling or performance appraisal session?
- Are there entry-level jobs in each job category from which employees have the opportunity to advance?
- Are there established criteria to select employees for upward mobility opportunities?

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#### 9.8 PERFORMANCE EVALUATION SYSTEM CHECKLIST

Performance evaluations in use in the organisation need to be examined for possible adverse impact on designated groups. If the performance criteria used for determining suitability for promotion to more senior positions are different from those used in performance evaluations of lower level job categories, it may be difficult to determine the suitability of the affirmative promotion of employees from designated groups. For example, a junior level employee may be evaluated on his or her "attention to detail" and "time management" yet the department manager will be measured against such criteria as "initiative" and "strategic thinking".

When using performance management systems as a criteria for promotion, extend the evaluation of performance to external community based work to identify possible skills of employees from designated groups which, while not utilised in the workplace, may be an indication of an employees capacity to meet senior level position criteria. There are numerous instances of Black employees who are involved in community projects or hold responsible community leadership positions. The writer can recall one scenario where a low level employee who held a "cleaning" position acted as a treasurer for a large community based housing initiative. Prior to the employee's community activities became public knowledge within the department, the employee was always overlooked for promotion because of lack of formal education and perceived lack of financial skills.

- Establish "bridging" positions for employees to move from low-level positions within the organisation to more senior positions. For example, upon closer examination (using either a job grading system or skills and knowledge hierarchy) the promotion of a senior human resource officer to a human resource manager represents a difference of two or three job grades. Unless support mechanisms are in place, an employee from a designated group may be destined for failure or become a poor manager and viewed by the organisation as mere "window dressing".
- Allow for lateral movement out of "dead-end" jobs into occupational groups, which may have greater scope for further development or promotion. For example, there is little scope for promotion of female secretaries. Yet allowing female employees to move laterally and occupy positions in Sales and Marketing functions or Financial or I.T functions will allow this category of designated employees to grow and develop skills for future promotion.
- Avoid unconscious biases in the promotion of employees in specific job categories. For example, a common bias is to think that Training and Development Directors should female or have a specific sexual orientation. Financial director positions tend to be reserved for male employees while Sales and Marketing, Communications, Public Relations or other "soft skills" positions reserved for females.
- Ensure that promotion criteria used to evaluate candidates for promotion are disclosed in advance of interviews or evaluations and widely publicized.

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### 9.9 RETENTION, RECALL AND TERMINATION

Layoff, recall, disciplinary action and termination are employer-initiated actions in response to such factors as incapacity, misconduct or the operational requirements of the business. Voluntary employee termination refers to an employee leaving employment of his/her own volition for such reasons as the need to change jobs, better pay and benefits, better working conditions and/or career opportunities. As with other employment systems, the policies and practices governing the components of this particular employment system can have an adverse impact on designated group members.

### 9.10 REVIEWING YOUR LAYOFF, RECALL, DISCIPLINARY ACTION AND TERMINATION SYSTEMS:

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- Seniority based on company policy
- Seniority based on collective agreement
- Performance appraisal results
- Inability to meet productivity standards
- Job redefinition
- Outsourcing
- Change in image of organisation
- Disciplinary problems
- Alcohol or drug-related problems

Implement:

- The suggested remedies and alternatives you deem appropriate and/or develop alternatives that best meet your organization's needs, and document the suggested remedies and alternatives for incorporation into the employment equity report.
- Review all relevant policies and formal collective agreements, and develop lay-off and recall procedures that minimize negative effects on designated groups.
- Record the frequency, length of time of, and reasons for layoffs, by department or work site; determine if the results are different for designated and non-designated groups.
- Determine the impact of layoff decisions on designated groups; provide retraining and bridging opportunities (to alternative positions) where possible and investigate work-sharing programs with relevant government sources.

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### 9.11 DISCIPLINARY ACTION AND TERMINATION

If a disproportionately high number of designated group employees are negatively affected by disciplinary and termination decisions:

- Track terminations by designated group status
- Investigate disciplinary action and termination patterns throughout the organization by designated group status; compare with majority groups to determine if the applicable policies have an adverse impact
- Provide, for those affected by disciplinary termination actions, in-house counselling which is sensitive to designated group issues and which reflects the company's commitment to employment equity
- Establish policies which clearly state acceptable standards of work behaviour
- Outline procedures for possible disciplinary action and consequences for non-compliance, and subsequent appeal routes
- Inform managers of their role in adhering to policy guidelines, and their responsibility to be sensitive to designated group issues while applying these guidelines
- Ensure that all employees are aware of relevant policies

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### 9.12 LAYOFF, RECALL, DISCIPLINARY ACTION AND TERMINATION SYSTEMS CHECKLIST

If you are unable to answer yes to the following questions, you are encouraged to develop appropriate solutions to remedy the situation.

- Are layoff and termination decisions based on clearly defined, job-related and objective criteria?
- Have your company's employees been provided with information on the organization's policies and procedures respecting layoff, recall, disciplinary action and termination?
- Does management in your company follow an established procedure when taking disciplinary action against an employee?
- Does your company provide counselling and/or rehabilitation programs to employees?
- Do all employees have access to company employee assistance programs?
- Are formal exit interviews conducted to determine reasons for voluntary employee terminations?

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### 9.13 JOB EVALUATION SYSTEMS REVIEW

The factors used in job evaluation typically include the skills and knowledge required to do the job, the amount and significance of responsibility involved, the effort required and the working conditions. Job evaluation simplifies pay structure decisions and makes them more rational.

The most common methods of job evaluation are: ranking, classification (or grade description), point system and factor comparison.

Pay equity is becoming a growing consideration in the selection and application of job evaluation plans. One of the most significant problems is gender bias, which has led to pay differentials between jobs performed by men and women. Although various job assessment methods ostensibly place emphasis on the value of the job and not on the person doing the job, traditional job evaluation systems tend to devalue jobs frequently filled by designated group members, and women in particular.

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### 9.14 JOB EVALUATION SYSTEMS CHECKLIST

If you are unable to answer yes to the following questions, you are encouraged to develop appropriate solutions to remedy the situation.

- Have you eliminated the use of market value as a key criterion in your job evaluation system(s)?
- Do your systems focus on job content, instead?
- Does your job evaluation system incorporate pay equity principles in order to eliminate gender based pay discrimination?
- Are you confident that your company could pass a pay equity compliance review (in jurisdictions where pay equity laws apply)?

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### 9.15 COMPENSATION SYSTEMS REVIEW

The purpose of any compensation system is to convert the value, which a company's job evaluation system ascribes to each job to actual wages and salaries. In essence, compensation is any payment for work performed by an employee as well as benefits. It includes salary, wages, commissions and bonuses. Various definitions of what constitutes compensation exist in employment related legislation.

In many organisations, the employer in respect of senior executive employees pays all contributions to medical aids and retirement funds. The former definition would not take into account these payments, and any comparative review of the organization's compensation systems would be skewed. In respect of the latter definition, these employer contributions as well as other allowances such as telephone, cellular, car, security, entertainment etc would be included in determining what constitutes compensation.

As with the job evaluation system, rater biases and subjective opinions can influence individual pay determinations. Other factors which can adversely affect individual pay determinations are: market value considerations, the number and range of salary grades used in the system, stereotypical beliefs about the level of skills required, employment experience and need to work, and the skill or ability to negotiate initial salary or subsequent pay increases.

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#### Reviewing your compensation system:

- The policies and practices governing your organization's compensation system
- Your organization's methods of compensation
- Which factors determine initial salary rates for new employees (for example: work experience, managerial discretion, market value, individual negotiation)
- The validity of factors influencing pay differentials
- Whether your organization's pay scales are publicised or the rationale for not publicising
- The average earnings of designated group members compared with non-designated group members in comparable jobs
- If your organization is subject to pay equity legislation

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### 9.16 COMPENSATION SYSTEM CHECKLIST

If you are unable to answer yes to the following questions, you are encouraged to develop appropriate solutions to remedy the situation.

- Have pay ranges been established for all jobs?
- Are your company's pay scales publicised or accessible to employees?
- Are you confident that any existing pay differentials are based on such factors as skill, effort, responsibility and working conditions, and not on sex or race?
- Is your organization's compensation system based on pay equity or equal pay principles, as determined by applicable provincial legislation?
- Would your company be able to pass a pay equity compliance review, where pay equity legislation applies?

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### 9.17 BENEFITS SYSTEMS REVIEW

#### Reviewing your benefits system

- What benefits, including perks, are offered by your organisation
- The eligibility criteria for the various benefits and perks which your organization provides. Highlight, for example, which employee groups are eligible and note the exclusions as well as the rationale
- The policy respecting the accumulation of benefits and seniority during leaves of absence, including maternity or paternity leave, sabbaticals and other short- and long-term leaves
- What benefits are available to part-time employees
- How information on benefits is communicated to employees
- If any of the policies, including eligibility criteria governing your organization's benefits system, have an adverse impact on designated group members
- Ensure that bonuses are fairly distributed among qualified employees
- Determine reasons for salary-based, maximum payments or discretionary payment plans, and implement appropriate changes
- Review all paid and unpaid leave policies and determine if exclusion affects designated groups disproportionately
- Review labour and human rights requirements and ensure compliance with applicable legislation
- Review your organization's maternity and parental leave policies and institute necessary changes to ensure that all employees can benefit from this practice
- Consider "topping up" the unemployment insurance benefits of women on maternity leave to equal their usual earnings
- Ensure that employees receive periodic updates on their benefit options
- Designate a knowledgeable staff member to publicize benefit options and handle enquiries
- Determine the need for multilingual brochures and information packages, and produce as appropriate.
- Formulate a policy to deal with employees' requests for special religious holidays, with due regard to the application of the business necessity criterion and the concept of reasonable accommodation which is encouraged by human rights legislation and the Employment Equity Act.

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### 9.18 CONDITIONS OF EMPLOYMENT SYSTEMS REVIEW

Working atmosphere is also an important aspect of conditions of employment. Failure to ensure a hospitable working environment for all employees can make an organization vulnerable to human rights complaints and litigation, particularly with respect to sexual harassment, which is prohibited by human rights legislation. In essence, an unreceptive working environment may result in not only unfair treatment, particularly of designated group members, but also an ineffective use of human resources.

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### 9.19 REVIEWING YOUR CONDITIONS OF EMPLOYMENT

- Whether conditions of employment are reasonable in light of the organisation and are consistently applied across all job levels
- Whether any work conditions have an adverse impact on designated group employees
- Whether the working environment is receptive to all employees
- Whether conditions allow access to employment opportunities for all employees
- The organization's health and safety policies and practices
- Ensure that attendance rules are reasonable and job-related for employees at all levels

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- Determine the business necessity of established rules and make reasonable accommodation wherever possible
- Provide consistent and non-arbitrary guidelines for employees at all levels
- Eliminate dress codes wherever requirements are not demonstrably job-related; abide by human rights legislation respecting individual religious observance and dress requirements and provide reasonable accommodation, as appropriate
- Define and require respectful conduct of and toward all employees
- Conduct a survey of existing physical barriers; obtain expert assistance from governments and advocacy groups regarding technical aids and job accommodation
- Involve employees with disabilities in developing and delivering awareness sessions on working with persons with disabilities, and include such topics as job accommodation and technical aids.

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#### 9.20 CONDITIONS OF EMPLOYMENT CHECKLIST

If you are unable to answer yes to the following questions, you are encouraged to develop appropriate solutions to remedy the situation.

- Are your workplace rules applied consistently?
- Is your working environment hospitable to designated group members?
- Do your conditions of employment allow for reasonable accommodation of differences among employees?
- Does your organisation have a health and safety committee?
- Is the work site accessible to employees with disabilities?
- Are washroom and cafeteria facilities accessible to persons with disabilities?
- Does your organisation supply technical aids to workers with disabilities?

#### 9.21 WORKPLACE HARASSMENT

If there are no workplace anti-harassment policies and procedures:

- Prepare an anti-harassment policy in consultation with management, labour and individual employees, as appropriate
- Ensure that company practices comply with applicable human rights legislation, specifically with respect to discrimination based on prohibited grounds, such as race, ancestry, place of origin, record of offences, marital status, family status, handicap, age, religion, creed and sexual orientation
- Review and, if necessary, strengthen any existing policy and procedures in this area
- Disseminate the relevant policy and procedures throughout the organization via information sessions

#### 9.22 HEALTH AND SAFETY ISSUES

- Review current literature on VDT usage and related health and safety issues
- Prepare and disseminate up-to-date health and safety policies addressing possible hazards related to VDT use
- Ensure frequent (approximately every two to three hours) rest breaks of approximately 10 minutes each for VDT operators
- Ensure that VDT equipment and furniture used by VDT operators is well designed and fully adjustable
- Consider providing VDT operators with company-paid eye examinations annually
- In addition to complying with applicable health and safety laws, apply the principle of reasonable accommodation where employees are, or believe themselves to be at risk

#### 9.23 SUPPLEMENTARY INITIATIVES

- AIDS / HIV awareness
- Sexual harassment prevention
- Harassment and Discrimination
- Disability awareness

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**The Skills Development Act**

**10 Skills Development Act**

The legal framework for training and development

NQF Level	NQF Band	Type of Qualification	Typical Learning Providers
8	<b>Higher Education and Training Band</b>	Doctorate and Further Research Degrees	Universities, Technikons, Research and Professional Institutions
7		Masters and First Research Degrees	Universities, Technikons, Research and Professional Institutions
6		Final Degrees and Higher Diplomas	Universities, Technikons, Colleges, Workplace, Private and Professional Institutions
5		Diplomas and Occupational Certificates	Universities, Technikons, Colleges, Workplace, Private and Professional Institutions
<b>Further Education and Training Certificates</b>			
4	<b>Further Education and Training Band</b>	High School, College and Workplace Certificates	Public and Private High Schools, Public and Private Colleges, Occupational Colleges and Training Institutions, National, SETA and Organisation based Education and Training Schemes
3		High School, College and Workplace Certificates	
2		High School, College and Workplace Certificates	
<b>General Education and Training Certificates</b>			
1	<b>General Education and Training Band</b>	Senior Phase	ABET Level 4
		Intermediate Phase	ABET Level 3
		Foundation Phase	AVET Level 2
		Pre School Phase	ABET Level 1

**10.1 SPOTLIGHT ON LEARNERSHIPS**

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**10.2 INTRODUCTION**

This article sets out to provide a concise 'guide' for line managers about the rationale behind the introduction of learnerships, and explains some of the technicalities of getting to grips with implementing learnerships.

**10.3 WHAT IS A LEARNERSHIP?**

Learnerships are new work-based education and training programmes where learners learn not only why things are done but how they are done too. Training institutions provide the theoretical training while practical training happens at workplaces under normal working conditions. For a learnership to be successful learners must be able to use the skills that they have

been taught. Learnerships must be carefully planned so that they happen in work situations where there is likely to be job opportunities in the future. There is no point in training people if there are no jobs or self-employment opportunities.

Learnerships are critically important to the success of the skills development strategy, as new skills so vital for boosting the South African economy will be learnt in this way. All learnership programmes are nationally recognised as qualifications and will be registered on the National Qualifications Framework (NQF). They will appear at different NQF levels -from the introductory through to the professional levels. Anyone who is interested in developing a learnership, or assisting to plan, design or implement one should contact a Sector Education and Training Authority. The SETAs should be able to advise about the processes involved in this, but will also know something about the range of learnerships being developed in each sector.

#### 10.4 FUNDING LEARNERSHIPS

Under the Skills Development Act, SETAs must disburse grants in line with the published funding regulations. The National Skills Fund will also make grants available for the design and development of these learning programmes. There are two ways in which employers will be able to claim grants for learnerships:

- They can include learnerships in their Workplace Skills Plan. These Workplace Skills Plans are submitted to SETAs in line with the requirements of the Skills Development Act. The grants received are calculated as a percentage of the levy paid to SARS.
- They can claim additional grants for each Learnership Agreement entered into. These grants will only be available once learnerships are registered with the Department of Labour. On every Learnership Registration Form, the amount of the grant the SETA may pay to employers will be recorded.

The size of the grant will take many variables into account. If an employer provides a learnership for an unemployed person the employer may also be able to claim a grant towards the allowance that must be paid to the learner. However, employers should note that they must get the approval of the SETA for the grant before they proceed with an agreement with the learner -as the grants will depend on whether or not sufficient funds are available from the SETA. A SETA can decide whether or not to pay the grant.

#### 10.5 CONSIDERATIONS FOR ESTABLISHING LEARNERSHIPS

The following issues require careful consideration when establishing learnerships:

- There must be a need or demand for the learnership in the economy
- The proposed learnership must address labour market concerns, including unemployment, skill shortages, skill over-supply, between sector portability of competence, and SMME development
- The learnership must contain all the components required by the SAQA for awarding a NQF qualification
- The structured learning component and practical work experience components must be properly integrated
- The educational component of the learnership must, in addition to the specific educational requirements of the occupation, also include general educational content that relates to issues of national concern and national importance
- Assessment at the end of the learnership must measure applied competence
- The terms of reference of the learnership must clearly define how on-the-job training will be conducted
- The proposed learnership must create a platform for learners to access employment
- Accredited education and training providers must be available for the provision of the educational and training components of learning
- Employers with the required competence and resources must be available for the provision of the practical work experience component of learning
- Unit Standards of the NQF qualification to which the learnership will be attached, must have been developed and approved by the SAQA
- The relationship between the proposed learnership and other existing learnerships must be identified in terms of economic and educational value, duration, and overlap

#### 10.6 GUIDELINES FOR ESTABLISHING LEARNERSHIPS

First, and foremost, it is important to note that there is no prescribed procedure for establishing learnerships. The different contexts of different economic sectors will demand a particular approach, which could lead to the establishment of "best practice" procedures. The following guidelines would, however, be helpful to SETAs in their stride to establish learnerships for the development of skills within their particular business sectors.

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- The process of developing learnerships should involve key stakeholders, including the state, employers, organised labour and related education and training providers
- The first assignment of a "learnership design group" should be to establish a definite economic or social need for an envisaged learnership. In establishing the need, the working group should take note of the following realities:
  - ❑ Increasing local and international competition is forcing the cutting of overhead costs, which leads to automation, and the reduction of employee numbers
  - ❑ Competitive pressures in the marketplace are also forcing employers to refocus their core business activities from time to time. New business initiatives require that employees learn new competences in relatively short time cycles
  - ❑ Compliance with world class business practices demand that organisations outsource business activities, which do not add value to the core business of the enterprise
  - ❑ Globalisation and E-Commerce requires that business enterprises focus their product development and service delivery efforts beyond local, regional and national boundaries. This has actioned the development of business partnerships and strategic alliances with local and offshore organisations to maximise their effectiveness
- Two major consequences of these trends have been a significant reduction of intake of school, technical college, technikon, and university graduates in favour of people (including own staff in different positions) who have some related experience and a good employment track record, and a substantial reduction of human resources training and development infrastructures, including the closing of training centres, outsourcing of training, and the redeployment or retrenchment of in-house training staff.
  - ❑ Having defined the need for a learnership, the working group should then identify the range of occupations and employment contexts that will be covered by the learnership. The range should include both blue-and white-collar jobs and should as far as possible cut across traditionally defined business functions.
  - ❑ The occupational and employment range definition of the learnership must promote economic growth, stimulate employment and increase social development within the economy of the country .The range definition should also aim to include occupations, which are most vulnerable in the labour market.
  - ❑ Next, the learnership design-working group should identify the qualification(s) on the NQF that could be attained on completion of the learnership. The choice of qualifications will be determined by the match between the Unit Standards of particular qualifications and the work requirements of the occupational and employment range definition developed in the previous step.
  - ❑ Based on the requirements of the Unit Standards of the selected qualifications, the working group should then define the structured education, training and practical work experience components of the learnership. Particular attention must be given to establishing how and where on-the-job training will be conducted and how the structured learning component and practical work experience components will be integrated.
  - ❑ Then, the working group should focus its attention on defining the monitoring, assessment and quality processes and procedures pertaining to both the structured learning and practical work experiences components of the learnership. The outcome of this step should answer the following key questions:
    - How will trainee progress be tracked and monitored?
    - How will the quality of learning be assured?
    - When, how and by whom will trainees be assessed?
    - What will they be assessed on at each stage?
    - How will quality of assessment be assured?
- Based on the choice of NQF qualification(s), the definitions of the structured and practical work experience components of the learnership, and the definition of monitoring, assessment and quality processes and procedures pertaining to each of the learning components of the learnership, the working group should now develop specifications for the following:
  - ❑ Entry-level qualification requirements for learners; these requirements should include criteria for prior learning and attained competences instead of traditional school qualification levels
  - ❑ Specifications and terms of reference for the appointment of appropriate education and training providers
  - ❑ Qualification requirements for employers

The final task of the learnership design working group should be to develop the pro-forma learnership contract documentation for one or more legal advisors to refine, in consultation with the members of the working group.

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### 10.7 ESTABLISHING LEARNERSHIP AGREEMENTS

The Skills Development Act, 1998, clearly defines the terms of reference for establishing learnership agreements. The Act states that an "learnership agreement" is a contract entered into by:

- A learner
- An employer, or a group of employers
- Training providers accredited by an Education and Training Quality Assurer (ETQA)
- The Act further states that the terms of the learnership agreement must oblige an employer to:
  - ❑ Employ the learner for the period specified in the agreement
  - ❑ Provide the learner with practical work experience specified in the agreement
  - ❑ Release the learner to attend the education and training specified in the agreement
- The terms of the learnership agreement must also oblige the learner to:
  - ❑ Work for the employer
  - ❑ Participate in the education and training specified in the agreement
- Finally, the terms of the learnership agreement must oblige the provider(s) of education and training to:
  - ❑ Provide the education and training specified in the agreement
  - ❑ Provide the learner support, specified in the agreement
- The agreement must be documented on prescribed stationery and registered with a SETA in the prescribed manner. Please note: the Minister Of Labour finally signed off The Learnership Regulations in April 2001.
- The duration of the agreement will be the period of duration specified in the learnership contract. The agreement may, however, be terminated before the expiry date of the contract if:
  - ❑ The learner meets the requirements for the successful completion of the learnership
  - ❑ The SETA, which registered the agreement, approves of such early termination
  - ❑ The learner is fairly dismissed for a reason related to the learner's conduct or capacity as an employee
- The employer or education and training providers that are party to a learnership agreement are bound to the agreement as specified in the learnership contract.

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### 10.8 THE DIFFERENCES BETWEEN SKILL PROGRAMMES AND LEARNERSHIPS

<b>A.</b>	<b>SKILLS PROGRAMMES</b>
1.	<b>PURPOSE:</b> Aims to provide a particular training component of the Unit Standards of a NQF qualification that will enable the learner to obtain credits towards the attainment of a NQF qualification.
2.	<b>DURATION:</b> They are shorter than Learnerships, and occupy a number of training days/weeks to complete.
3.	<b>BENEFIT TO LEARNERS:</b> It enables learners to obtain skills and competences that have economic value, which provide access to "limited-skill" employment.
4.	<b>ECONOMIC VALUE:</b> It provides quick and reputable training in areas of need within the labour market of particular value to the development of people who are unemployed, the establishment of SMMEs, job creation projects and volunteer service programmes.
5.	<b>DRIVER:</b> The need for, and the, entry and exit point of skills programmes are primarily determined and prescribed by the particular training needs of the learner.
<b>B.</b>	<b>LEARNERSHIPS</b>
1.	<b>PURPOSE:</b> Aims to provide the full range of education, training and work experience that will enable learners to attain a NQF qualification.
2.	<b>DURATION:</b> They are much longer than skills programmes and occupy a number of months to complete.

3.	<b>BENEFIT TO LEARNERS:</b> It enables learners to obtain the relevant education and the full range of skills and competences that provide access to skilled occupational employment.
4.	<b>ECONOMIC VALUE:</b> It provides for the delivery of contemporary knowledge, skills, competencies, and vocational qualifications, which are required in the labour market for the development of world-class competitiveness in all sectors of the economy.
5.	<b>DRIVER:</b> The need for and the exit point of learners hips are determined by SETAs in terms of business needs, and SAQA in terms of NQF qualification requirements.

### 10.9 RESPONSIBILITY FOR ESTABLISHING SKILLS PROGRAMMES

The Skills Development Act, 1998, states that " any person" can develop skills programme. This is an open invitation, particularly directed at employers (including municipalities) and training providers to become directly Involved In the development and implementation of the national skills development strategy. Skills programmes can also be developed by non-government organisations (NGOs) for the training of entrepreneurs, and the training of occupational skills that will promote economic self-reliance and economic independence of individuals and communities -particular those individuals and communities that have become impoverished as a result of inequities of the past.

### 10.10 CONSIDERATIONS FOR ESTABLISHING SKILLS PROGRAMMES

The following issues require careful consideration when establishing Skills Programmes:

- There must be learners who need or demand the development of particular skills
- The proposed skills programme must address labour market concerns, including unemployment SMME development, and the skills development requirements of particular Learnerships
- The learning contents of the skills programme must enable the learner to attain credits towards a NQF qualification
- The training programme must be outcomes-based (competence-based) and assessment at the end of the skills programme must measure applied competence
- The proposed skills programme must create a platform for learners to access employment or improve their current employment
- Accredited training providers must be available for the conduct of the skills programme
- Unit Standards of the NQF qualification to which the Learnership will " be attached, must have been developed and approved by the SAQA
- The relationship between the proposed skills programme and other existing skills programmes must be identified in terms of economic and educational value, duration and overlap

### 10.11 GUIDELINES FOR ESTABLISHING SKILLS PROGRAMMES

As in the case of Learnerships, there is no prescribed procedure for establishing skills programmes. The different contexts of different skills development needs will demand a particular approach. The following guidelines would, however, assist employers, training providers, volunteer groups, etc., in their attempts to develop skills programmes:

- The process of developing skills programmes should involve key stakeholders including the following:
  - ❑ Employees who will receive skills training
  - ❑ Labour Unions who represent the employment interests of the employees who will be trained
  - ❑ Subject Matter Experts (SMEs) who are competent in defining the details of the training need and who are able to advise the skills programme developers on the learning content, duration of training, training resources
  - ❑ Training programme designers who will be responsible for developing the curriculum and the learning materials of the skills programme
  - ❑ Training providers\* who will be assigned to present and administer the skills programme

The first assignment of a " skills programme design working group" should be to establish a definite economic, or social need for the envisaged skills development programme.

- PLEASE NOTE: Currently most internal training departments are their own suppliers of in-house training and development programmes custom designed for their own organisation. In future (next 18 months possibly) training departments are likely to become subject to the same quality standards/regulations that

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apply to commercial vendors if they wish to continue to access grants for training delivered, and/or obtain funding for the development of skills programmes.

- Having defined the need for a skills programme, the working group should then define the trainee target population that will participate in the skills programme.
- Next, the working group should identify the Unit Standard(s) on the NQF that could be attained on completion of the skills programme. The choice of Unit Standards will be determined by the training need, and trainee target population definitions established in the preceding steps.
- Based on the requirements of the Unit Standard(s) identified, the working group should then select the training and practical work application components of Unit Standard(s) that will be included in the skills programme.
- The next step of the working group's assignment requires the development of the curriculum and the learning contents of the skills programme. Particular attention must be given to establishing and scheduling how and where the training will be conducted and how practical work applications will be scheduled to enable the application of theoretical learning.
- Then, the working group should focus its attention on defining the monitoring, assessment and quality processes and procedures that apply to both the theoretical learning and practical work application components of the skills programme. The outcome of this step should answer the following key questions:
  - How will trainee progress be tracked and monitored?
  - How will the quality of learning be assured?
  - When, how and by whom will trainees be assessed?
  - What will they be assessed on at each stage?
  - How will quality of assessment be assured?
- Based on the curriculum, learning objectives and learning contents of the skills programme, the working group should now develop specifications for the following:
  - Entry-level requirements for learners; these requirements should, where applicable, include criteria for prior learning and attained competences instead of traditional school qualification levels
  - Specifications and terms of reference for the appointment of appropriate training providers
  - Qualification requirements for training participants
- The final task of the skills programme design working group should be to package the skills programme proposal for funding by one or more appropriate SETA(s) or the Director-General of the DOL. The particular administrative requirements for making applications for the funding of skills programmes will be determined by the various SETAs and the DOL.

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## 10.12 THE FUNDING OF SKILLS PROGRAMMES

Skills programmes can be funded from one of two sources of funding. These sources of funding are the following:

- 1. A SETA for a grant
- 2. The National Skills Fund for a subsidy

A SETA would consider and provide a grant, which originates from the skills development levy, for skills programmes that, by definition, fall within the jurisdiction of the SETA where the application for a grant is made, and provided the skills programme is in accordance with the SET A's sector skills plan.

Alternatively a subsidy for the funding of a skills programme could be sought from the National Skills Fund if the skills programme, by definition, is in accordance with the objectives of the national skills development strategy.

Applications for SETA grants must be made to the Executive Officer of the SET A and applications for NSF subsidies must be made to the Director- General of the DOL. Particular terms and conditions for the funding of skills programmes may be set by the SET As for the qualification for grants, and by the Director-General for the qualification for subsidies.

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**10.13 MONITORING OF SKILLS PROGRAMMES**

The Act requires that SETAs and the Director-General monitor the skills programmes funded by SET As or the Director-General, as the case may be. The Act also empowers SETAs and the Director-General to withhold payments or recover any payments made, if a SETA or the Director-General, as the case may be, has concluded any of the following:

- The funds are not being used for the purpose for which they were made available
- Any term or condition of the funding is not complied with
- The training provided is not up to standard

Any party to a dispute about the application or interpretation of the terms and conditions of funding or the establishment, conduct and monitoring of skills programmes may refer the dispute to the Labour Court for adjudication.

**10.14 ANNUAL SKILLS PRIORITIES**

*Strategic skills development priorities for the financial year 1/4/... to 31/3/....*

Annual Skills Priorities													
Skills priority number	Skills priorities List education and training priorities	Level of planned education and training								SAQA registered?			
		General		Further			Higher					If yes, provide SAQA ID number	
		Up to and including level 1	2	3	4	5	6	7	8	Yes	No		
1													
2													
3													
4													
5													
6													
7													
8													

**Proposed Beneficiaries**

Occupation	Skills priorities [use skills priority number from Part A(2) above]	Number of beneficiaries per population group														
		African			Coloureds			Indians			Whites			Total		
		10.1	F	D	M	F	D	M	F	D	M	F	D	M	F	D
Senior officials and managers/owner managers																
Professionals																
Technicians and associated professionals																
Clerical and/or administrative workers																
Service workers																
Agricultural and fishery workers																
Skilled workers																

Plant/machine operators and assemblers																	
Labourers																	
Apprentices and Section 18(2) learners																	
Total																	

In the table above: M = Male, F = Female, D = Person with disability

**Development and Consultative Processes**

1. Describe the processes used to develop the workplace skills plan.
2. How does the plan relate to the organisation's Employment Equity Plan?
3. If a Skills Development Committee has been established, please outline its composition. Was the draft plan reviewed and considered by the Committee?
4. If no Committee exists, please outline the steps taken to consult employees about the workplace skills plan.

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## **Black Economic Empowerment Legislation**

### **11 Black Economic Empowerment**

#### **11.1 A NEW IMPERATIVE TO THE EMPLOYMENT EQUITY AND SKILLS DEVELOPMENT ACTS**

- How does your human resource development measures stack up against the BEE Scorecard?

The Broad-Based Black Economic Empowerment Bill, when promulgated by Parliament will inject new life into employment equity and skills development initiatives. That's the good news. An unfortunate consequence of the proposed legislation is that affirmative action measures focused on (white) women and people with disabilities may be relegated to the distant horizon in the BEE landscape.

The BEE Bill refers exclusively to the broad-based empowerment of black persons (African, Coloured and Indian). The familiar terminology of designated groups is not present in the BEE Bill, despite designated groups remaining the focus of affirmative action measures in the Employment Equity Act.

The government in March 2003 launched the Black Economic Empowerment (BEE) strategy. The message of the strategy is clear — for the South African economy to grow it needs to draw on the skills and resources of the whole population. The Department of Trade and Industry, led by Alec Irwin, will act as the support, guide and overseer of the BEE policy. At present the strategy is at the Bill phase and industries, political and business leaders are busy debating the interpretation of the policy. Critics of the BEE approach argue that it is being decided on 'behind closed doors' in partnerships between government and big business. It is crucial therefore that businesses remain informed and educated about the BEE process.

#### **In essence, what is it?**

After the furore of the leaking of the Mining charter in 2002, the government's BEE policy has moved away from a prescriptive approach driven by charters to one that allows and supports individual industries to draw up their own charters and targets, except in sectors where government has a right, a licence, a concession or an asset. Government has drawn up a 'balanced scorecard' to measure the progress made in achieving BEE goals and will provide policies, codes, principles, bills and regulations as instruments of change to guide and regulate the implementation of the strategy in the public and private sectors. The common scorecard will provide a basic framework for measuring BEE. The scorecard will measure empowerment through ownership, control of assets and enterprises, human resources development, employment equity, preferential procurement bringing about indirect empowerment of other enterprises and communities.

#### **Outline of BEE 'balanced scorecard'**

##### **What is it?**

The government will use a 'balanced scorecard' to measure progress made in achieving BEE by enterprises and sectors and help set measurable targets for BEE. It is a balanced scorecard because it incorporates the measurement of three varied but core elements of economic empowerment:

- Direct empowerment through ownership and control of enterprises and assets
- Human resource development and employment equity
- Indirect empowerment through preferential procurement and enterprise development

The use of a common scorecard will help benchmark BEE development in different enterprises and sectors, including government departments and state-owned enterprises and other public agencies.

##### **How will it be used?**

The scorecard will be issued as a Code of Good Practice in terms of the forthcoming legislation. The code will allow for a measure of flexibility in order that it can be adapted to the particular sector or business context it is being applied, will still retaining a generic standardisation to the definition and measurement of BEE.

Government will use the BEE criteria of the scorecard in the following circumstances:

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- In granting a licence to engage in a specific regulated economic activity, e.g., mining
- In granting a concession to a private enterprise to operate an asset or enterprise on behalf of the state
- In the sale of an asset or state-owned enterprise
- When government enters into a public-private partnership
- When government engages in any economic activity

The 'balanced scorecard' includes a residual category to allow sectors to tailor the scorecard to their industry's circumstances. Government encourages sectors to consider the following in their scorecards, infrastructural support to suppliers and other enterprises in the same area or community, labour-intensive production and construction methods, beneficiation and investment, support to enterprises operating in rural areas and the development of those areas that are the industries labour reserve (both urban and rural)

In order to promote the achievement of equality of women, as provided for in section 9(2) of the Constitution, a code of good practice issued in terms of the BEE legislation, may distinguish between black women

### **Definition of categories of empowerment and related scorecard percentages**

*Direct empowerment:* BEE must be reflected in an increase in ownership and control of assets and enterprises by black persons. Such ownership must involve genuine involvement in decision-making at board and, executive management and operations levels, and must include the assumption of risk.

Control means:

- The right or the ability to direct or otherwise control the majority of the votes attaching to the shareholder's issued shares
- The right or ability to appoint or remove directors holding a majority of voting rights at meetings of the board of directors of that shareholder
- The right to control the management of that shareholder
- Direct ownership or equity ownership (shares) has a weighting of 20 % on the 'balanced scorecard'
- Management i.e., the % of black persons in executive management has a weighting of 10% on the 'balanced scorecard'

### **Human resource development and employment equity:**

Enterprises are required to comply with the provisions of the Employment Equity Act.

The Act aims at bringing about an equitable representation of black persons in all occupations and at all levels of business organisation.

The weighting of human resource and employment equity is 10% on the 'balanced scorecard'

### **Indirect empowerment:**

*Preferential procurement by both State and the private sector is aimed providing black enterprises with opportunities to expand their output.*

- *Preferential procurement carries a weighting of 20% on the 'balanced scorecard'*
- Enterprise development is the second component of indirect empowerment and takes two forms, Investment in black-owned and black-empowered enterprises and joint ventures with black-owned and black-empowered enterprises that result in substantial skills transfer Joint ventures may take the form of include outsourcing or jointly contracting for certain projects.
- Investment in black-owned and empowered enterprises carries a weighting of 10% in the balanced scorecard
- The residual carries a weighting of 10%

### **Ranking enterprises using the scorecard**

Using the scorecard as a guide, the government will rank and categorise enterprises for the purposes of preferential procurement, restructuring of state-owned enterprises, financing and other kinds of support.

- A total score of 65% and above will be a good contributor to broad-based BEE
- A total score of 40% to 64.9% will be a satisfactory contributor to broad-based BEE
- A total score of below 40% will be seen as a limited contributor to broad-based BEE

### **Some questions and considerations**

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Of particular interest for HR practitioners or line managers responsible for implementing skills development and employment equity is the so-called balanced scorecard, and more specifically the rating ascribed to "management" [10%], "employment equity" [10%] and "skills development" [20%]. The dual components of employment equity and skills development are categorised under the heading of human resource development.

The combined rating for "management" and employment equity" is a total of 20% while a further 20% is ascribed to skills development. The Scorecard in the BEE Code and the Strategy Document establishes skills development **expenditure** as a percentage of the total payroll as the indicator of skills development contribution for the purposes of the scorecard.

### Balanced Scorecard Components

#### Component

- Equity Ownership

#### Indicators

- % share of economic benefits

#### Weighting

- 20%

#### Component

- Management

#### Indicators

- % black persons in executive management and/or executive board and board committees

#### Weighting

- 10%

#### Component

- Employment equity

#### Indicators

- Weighted employment equity analysis

#### Weighting

- 10%

#### Component

- Skills Development

#### Indicators

- Skills development of expenditure as a proportion of total payroll

#### Weighting

- 20%

#### Component

- Preferential procurement

#### Indicators

- Procurement from black-owned and empowered enterprises as a portion of total procurement

#### Weighting

- 20%

#### Component

- Enterprise development

#### Indicators

- Investment in black-owned and empowered enterprises as a proportion of total assets

#### Weighting

- 10%

Residual 10% to be determined by sector charters.

The Code has a very general definition of what constitutes human resource development. It refers to the transfer of skills generally and advanced **professional skills** in particular.

The "Balanced Scorecard" uses the EE Act and Skills Development Act as the method of measurement of "human resource development". In particular the indicator for Skills Development is skills development expenditure as a proportion of total payroll, while the indicator for employment equity compliance will be comprised of a basket of indicators, ranging from numerical targets, compliance with employment equity reporting requirements and affirmative action measures.

### Skills Development measures

The Skills Development Levies Act requires all employers to contribute 1% of the leviable amount. The leviable amount is defined in the Skills Development Act. The BEE Code refers to skills development expenditure as a proportion of **total payroll**.

### The difference in measures of expenditure

- Why the difference in terminology? Is the term "payroll" to be assigned the same meaning in terms of the Skills Development Act or will it be assigned the same meaning as "remuneration" as defined now in terms of the Basic Conditions of Employment Act regulation. This latter definition includes employer contributions to medical aid and retirement funds as well as other non-discretionary payments to employees such as 13<sup>th</sup> cheques or December bonuses.
- The Skills Development Act allows for the recovery of up to 50% of the leviable amount (being 1%), aside from any discretionary grants. Any expenditure over the leviable amount will not be recoverable.

The Business Map Foundation ([www.businessmap.org.za](http://www.businessmap.org.za)), in their pioneering work on BEE, note that South African training expenditure is well below international norms. In South Africa the average spend on training is 2.7% of payroll. In countries such as Korea and the OECD region, training spend is on average 7% of payroll.

The BEE legislation will hopefully see a significant imperative being given to training, at least in respect of those companies needing to comply with BEE. The question is whether the respective sector Charters will require this training spend to be focused on black persons only or will be allow for training initiatives generally.

- The Fin Services Charter requires 1.5% of payroll spent p.a. on skills development of black employees; and a target of 4.5% of staff to be comprised of learnerships.
- The Charter for the South African Petroleum and Liquid Fuels acknowledges the importance to be applied to HR Development (capacity building) but provides no further clarity in regard to Skills Development initiatives or Employment Equity targets.
- The Socio-Economic Empowerment Charter for the South African Mining Industry merely sets out aspirational requirements for learnerships and does not clarify any further % spend on payroll, and merely cites literacy, mentoring initiatives and career pathing as vague criteria for HR Development initiatives. In fact, it avoids any reference to the measurement of Skills Development initiatives.

### Employment equity and the BEE Charters

The Employment Equity Act require employers (designated employers ito the EEA) to implement affirmative action measures to ensure the promotion, development and equitable representation of people from designated groups. Designated groups in terms of this Act refers to Black persons (African, Indian and Coloured), Women and People with Disabilities.

The BEE Code defines employment equity as "the equitable representation of black people in all occupations and at all levels of an enterprise

Where the EE Act purposively avoided the setting of actual numerical targets, the Sector BEE Charters now set specific numerical targets:-

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- The Financial Services Charter sets numerical targets for Black persons in Senior, Middle and Junior Management which are to be achieved within specified time periods (2008, and 2014)
- Of all the available Charters, the Financial Services Charter also recognises the prominence to be given to the employment or presence of black women by the BEE Code of Good Practice in management levels.
- The Socio-Economic Empowerment Charter for the South African Mining Industry sets out vague aspirational targets of 40% black in management levels, and 10% women in the mining sector within a 5 year period.
  - The stakeholders aspire to a baseline of 40 percent HDSA participation in management within 5-years;
  - Ensuring higher levels of inclusiveness and advancement of women. The stakeholders aspire to a baseline of 10 percent of women participation in the mining industry within 5-years;

These specific numerical targets which approximate quotas is a clear but necessary deviation from the EE Act.

### Consulation

While the BEE legislation does not place any direct requirement for employee consultation, both the Employment Equity and Skills Development Acts place a premium on consultation in the establishment of employment equity plans and workplace skills plan. The SDA regulations provide that it is important that employees are consulted about the person(s) to be designated as skills development facilitators, the workplace skills plan and the report on the implementation of the workplace skills plan. It is strongly recommended for organisations with more than 50 employees that a Skills Development Committee is established for the purposes of consultation on training matters. This committee, as a whole, should reflect the interests of employees from all occupational levels in the organisation's workforce. All trades unions that represent 10 per cent or more of the workforce or represent a significant occupational group should be invited to take part in this committee. A trade union that represents 80 per cent or more of the workforce may be the sole representative.

Indirectly therefore, employee consultation will remain a feature of the BEE legislation.

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### Conclusion

The Black Economic Empowerment legislation has acquired a life of its own, focusing on the twin pillars of economic empowerment and equality for black persons. It provides a new imperative to employment equity and skills development legislation, moving away from mere formal compliance with these Acts to establishing clear criteria which will need to be met. We suggest that companies conduct an audit of their current employment equity and skills development efforts and evaluate such efforts against the Scorecard and sector Charters. This exercise, and resulting score should reveal the extent to which companies fall short of the measures required by Government and place companies in a position to formulate their human resource development strategy for the future.

## 11.2 BLACK ECONOMIC EMPOWERMENT SCORECARDS AND CHARTERS

*See Financial Services and IT Scorecards*

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### 11.3 DEVELOPING NUMERICAL TARGETS USING BEE CRITERIA

Current vs Required Workforce Profile

Occupational Levels	Male				Female				TOTAL
	African	Coloured	Indian	White	African	Coloured	Indian	White	
Top management									
Senior management									
Professionally qualified and experienced specialists and mid-management									
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents									
Semi-skilled and discretionary decision making									
Unskilled and defined decision making									
<b>TOTAL PERMANENT</b>									
Non – permanent employees									
<b>TOTAL</b>									

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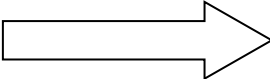
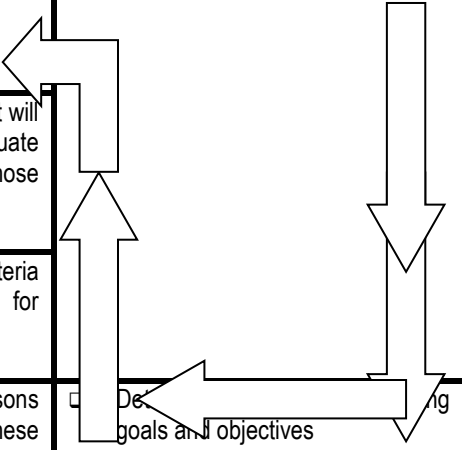


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**Developing the Employment Equity Plan**

**12 Developing an Employment Equity Plan**

Guidelines for developing content of equity plan (in consultation with employee representatives or an employment equity committee)

	<input type="checkbox"/> Conduct analysis (Systems Review, Workforce Analysis, Special Measures Accommodation)	<input type="checkbox"/> Write down and record the results of the analysis
<input type="checkbox"/> Determine review dates for each measure		<input type="checkbox"/> Identify possible solutions or potential measures which may be adopted
<input type="checkbox"/> Determine the procedures that will be used to monitor and evaluate the implementation of those measures		<input type="checkbox"/> Determine those measures which may be practically adopted
<input type="checkbox"/> Determine performance criteria (quantitative and qualitative) for each of those measures.		<input type="checkbox"/> Write down the specific measures which will be adopted
<input type="checkbox"/> Identify resources and persons responsible for achieving these goals and objectives.		<input type="checkbox"/> Set objective for each measure (e.g. numerical goals or affirmative action measures)

**Suggested structure of content of an employment equity plan (utilising the format of the employment equity report as a guideline)**

In developing your employment equity plan, adopt a simple approach focusing on the main components of the plan. Do not try to address each and every conceivable employment barrier, analyse every possible reason for under-representation, or attempt to implement as many affirmative action measures as you can. You will have an opportunity to refine your equity plan in successive reporting periods. Recognise that this is your first attempt at a comprehensive structured equity plan.

1. Introductory policy statement
2. State annual objectives
3. Specify affirmative action measures, including special accommodation measures
4. State numerical goals to remedy under-representation
5. Specify the duration of the plan
6. Determine the procedures that will be used to monitor and evaluate the implementation
7. Determine the internal procedures to resolve any dispute about the interpretation or implementation of the plan

8. Identify the persons responsible for monitoring and implementing the plan
9. Any other prescribed matter
10. Any other measures
11. Subsequent employment equity plans

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### Process for constructing a plan

The development of a plan should be undertaken as an inclusive process that will result in a documented plan. The process of developing a plan has three sequential phases: planning, development, and implementation and monitoring. [Code, s 6]

- |                                      |  |
|--------------------------------------|--|
| <b>Planning phase</b>                | <ul style="list-style-type: none"> <li><input type="checkbox"/> assignment of responsibility and accountability to one or more senior managers;</li> <li><input type="checkbox"/> a communication, awareness and training programme;</li> <li><input type="checkbox"/> consultation with relevant stakeholders;</li> <li><input type="checkbox"/> an analysis of existing employment policies, procedures, and practices;</li> <li><input type="checkbox"/> an analysis of the existing workforce profile;</li> <li><input type="checkbox"/> an analysis of relevant demographic information such as that contained in form EEA 8, and</li> <li><input type="checkbox"/> an appropriate benchmarking exercise, such as comparing the organisation's workforce profile with those of other organisations within the same sector, or the development of other meaningful comparisons.</li> </ul> |
| <b>Development phase</b>             | <ul style="list-style-type: none"> <li><input type="checkbox"/> in consultation with the identified role players, should include                             <ul style="list-style-type: none"> <li><input type="checkbox"/> objectives set;</li> <li><input type="checkbox"/> corrective measures formulated;</li> <li><input type="checkbox"/> time frames established;</li> <li><input type="checkbox"/> the plan drawn up;</li> <li><input type="checkbox"/> resources identified and allocated for the implementation of the plan, and</li> <li><input type="checkbox"/> the plan communicated.</li> </ul> </li> </ul>  |
| <b>Implementation and monitoring</b> | <ul style="list-style-type: none"> <li><input type="checkbox"/> an ongoing process and should continue to include components of the earlier phases, such as consultation, communication, awareness and training. This phase should include                             <ul style="list-style-type: none"> <li>-</li> <li><input type="checkbox"/> implementation</li> <li><input type="checkbox"/> monitoring and evaluating progress;</li> <li><input type="checkbox"/> reviewing the plan, and</li> <li><input type="checkbox"/> reporting on progress.</li> </ul> </li> </ul>   |

Section 8 of the Code of Good Practice elaborates further on the development of an employment equity plan. It is important to note that the main legal requirements regarding employment equity plans are contained in the *Act* itself. There are no regulations specifically relating to the contents of an employment equity plan. In time, model equity plans may be released by the Department of Labour, and various best practices identified.

### 12.1 FOCUS GROUPS

#### Discussion Guide for Focus Groups

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### Introduction

Introduce the Focus Group procedures:

- We want your opinion. Not those of your department, your supervisor or any other group.
- Feel free to agree or to disagree.
- All responses are confidential and anonymous.
- You are being taped in order for us to keep track of your views.
- Individuals will not be identified.
- The session should last approximately 90 minutes (one hour and a half). There will be a ten-minute break.

Mention the sponsor — the [company] — wants participants' views on a number of issues regarding the [company].

Ask each participant to identify themselves by name and by department or agency.

Ask each participant to tell a little about themselves (describe their jobs, marital status, children at home, spouse working in the home or outside the home).

*Remember all members of the group will be working at essentially the same level within the [company].*

### Introduce the Topic

As you know, the [company] has undergone significant changes during the last few years. Most managers have seen their jobs change and many have experienced downsizing, decentralization, and restraint. As well, the [company] has also gone through a period of renewal where ideas of empowerment and service quality have become central themes.

*(For women)* Within this context, I want to talk about the opportunities and barriers that women face in the [company] and at home today. Our discussion will focus on the nature of the changes taking place in the workplace and whether you feel that the situation is better or worse than it was some years ago. Unless you have any comments or questions I would like to start by asking...

*(For men)* Within this context, I want to talk about the general state of the [company] in light of the many changes taking place. Specifically, we are interested in probing your views on opportunities for women in the workplace. Our discussion will focus on the nature of opportunities and barriers, some possible solutions and whether you feel that the situation is better or worse than it was some years ago. Unless you have any comments or questions I would like to start by asking...

### Themes

Note: The items which are numbered are high priority items. If time permits the remaining questions will be asked in the groups.

### General

1. What are job opportunities like in the department where you work?  
What is the general work climate like?

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Probe for: opportunities, fear of lay-offs, downsizing, transfer of powers to other levels of government.

### ***Inequalities***

2. On balance, do you feel that women have an easier or a more difficult time than men in getting ahead in the [company]? In what way?

Probe for: attitudes, levels, opportunities for advancement, good jobs are not available to women, staff versus operational jobs, excluded from the power structure, outside the loop, judged more harshly than their male colleagues.

How large are the inequalities?

3. Have inequalities decreased or become worse in recent years?  
How strongly do you feel that the policies towards remedying inequalities are adequate but actual practices (implementation) are at fault?
4. Since there is almost an equal number of men and women in Canada, do you believe that there should be an equal number of males and females at each level in your organization?

### ***Causes of Inequalities***

5. Do barriers exist for women in the [company]?

If "yes" — What is the nature of these barriers?

Probe for: personal versus institutional circumstances. These include: work flexibility, availability of day care, work scheduling such as meetings called at the last moment, male networks, male domain, failure to be identified as potential management or executive material, poor training opportunities, lack of relevant skills (analysis, methodology).

How can they be removed?

If "no" — Please explain your position.

Using your own experiences as a guide, in a competition for a job at the EX level in your department, is there a bias for any one gender? Do you think that there is a bias at the EX minus one level in terms of who *applies* for the job during the competition process? Who wins the job?

6. Is there any group of individuals in the government who you feel might be more supportive of women seeking promotions?

Probe for: gender, occupational group, level of education, age, ethnic or language group.

Is there any group which might be less supportive?

Why do you think that women only make up 17 per cent of the executive group in the government?

Probe for: discrimination, poor qualifications, family pressures, low levels of work motivation, don't need the money, can't handle the stress.

### ***Policy Solutions***

7. Are programs useful which encourage women to get ahead? (Explain if necessary — programs which promote targets to increase participation of women.)

(*Women only*) Can you give me an example of what your department has done to help you succeed in your career?

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Probe for: promotion, training, support group.

What more could have been done?

Probe for: more support, job notices, guidance, training, nothing.

## Contributing Factors

### *The Work Environment*

8. Describe the type of woman who is most likely to advance in your department.
9. How would you characterize the relationship between women and men in your work unit? Is it antagonistic? Too friendly? Competitive? Cooperative?
10. Do you know any one who has experienced harassment in the workplace?

Probe for: sexual, gender-related, or other abuses of power, types of harassment.  
(Note: This is a critical new issue and we will need precise examples, if possible.)

Do you believe that the best women make it in your department or agency? That is, among the pool of candidates, do you think the most competent are selected for executive positions?

Do you feel that the best men are also promoted in your department?

11. How would you explain why some women continue upward into senior executive jobs and others do not?

Probe for: mentors, friends higher up, motivation to succeed, no kids or spouse, job stream.

*(Women only)* Do you feel any particular pressure to represent the views of women, collectively, as opposed to your own personal views? Have you acted any differently than you normally would have?

### *Work and Home Life*

12. What kind of personal sacrifices have you or others that you know had to make to get where you are today?

Probe for: less time with family, children, spouse, friends, parents, marriage break-up, personal development.

13. Does balancing work and home life represent a particular challenge in terms of your career progression? How does one cope with this responsibility?

Probe for: trading off level of support for spouse's career. If personal aspirations have been moderated?

Is work more stressful than it was a few years ago?

In your experience, do men carry the same work load as women in the home? Has the situation changed much over the last few years?

Is the present work environment unfairly organized in favour of men? In what way?

Is there something the [company] as employer should do to address the home/work challenge?

Probe: to see whose responsibility this issue is. Who should pay for it?

### *Gender Differences*

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14. Do you believe that men and women bring different characteristics and ways of thinking to the job? If so, what are they?

Does this mean that some people are more suited to being executives or managers than others? What differentiates them? (Note: in this instance we are looking for executive-type behaviour which includes leadership, agenda-setting, big picture skills, rationalizing resources. Management behaviour includes day-to-day operations, making things happen.)

Is there such a thing as female management characteristics? What could these be?

Probe for: consensus seeking, communicative, flexible, team-builders.

**The Future**

15. Have your views changed over the last five years regarding gender equality in the workplace? In which way? Why?
16. If you were formulating government policy, what steps would you take in order to achieve gender balance within five years in the EX category?
17. Finally, what kind of advice would you give a new employee at the EX minus one or lower level about managing her (his) career?

Probe for: relying on the [company] Commission/own department versus self reliance (luck versus skill) importance of ability/seen to be able.

What advice would you give to a new woman employee?

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## Communicating the Employment Equity Plan

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### 13 Developing a Communications Plan

The Act requires that an employer communicate with its employees and their representatives regarding Employment Equity. It reinforces this duty to communicate with its employees by requiring an employer to:

- Display a summary of the Act in all workplaces (Form EE3);
- Provide employees with a copy of its employment equity plan (section 25(3));
- Consult ("communicate") with employee representatives, and thereby necessitating the nomination of employee representatives and introducing the process of obtaining mandates and giving feedback - natural consequences of the duty to consult.

Through these measures, the Act, to the extent that it is able to through regulatory practices, places great emphasis on the communication.

In addition, the Code of Good Practice and guidelines produced by the Department of Labour makes various recommendations in respect of communicating information to employees regarding employment equity and the employment equity plan.

Any programme of communication should aim to create a climate of understanding, commitment and support that will contribute to the success and effectiveness of the organization's employment equity plan and activities. The communication programme should:

- keep employees informed;
- promote ownership and participation in the employment equity programme;
- remind employees that the programme is ongoing and good for everyone as well as the efficiency of the organization;
- emphasize the organization's commitment to employment equity;
- be ongoing, communicating with employees at all stages of the development and implementation of the employment equity programme.

To ensure the success of its communication programme, an employer should develop a project brief or communications strategy. Such a strategy will include a number of components, each intended to achieve specific results. For example, communications about the workforce survey are designed to achieve a high level of accurate response from employees. Communications about the employment equity plan may be intended to increase the expertise of managers with respect to employment equity implementation; to promote the effective implementation of the plan; to remind managers about their ongoing responsibilities; to recognize achievements; and to keep staff informed of progress. Spelling out specific goals for each communication activity helps to focus the development of communications and enables an evaluation of the success of each activity.

#### 13.1 LEGAL DUTY TO INFORM EMPLOYEES

In terms of section 25 of the Act, an employer must display at the workplace where it can be read by all employees a notice in the prescribed form, informing them about the provisions of this Act. Form EE3, promulgated in the recent employment equity Regulations, contains a summary (in English and Xitsonga) of the Employment Equity Act, 55 of 1998, issued in terms of Section 25(1).

In addition to the requirement to display the statutory summary of the Act in the workplace, an employer is also required to place in prominent places that are accessible to all employees-

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- the most recent report submitted by that employer to the Director-General;
- any compliance order, arbitration award or order of the Labour Court
- concerning the provisions of this Act in relation to that employer; and
- any other document concerning this Act as may be prescribed<sup>1</sup>.
- An employer who has an employment equity plan, must make a copy of the plan available to its employees for copying and consultation<sup>2</sup>.

**13.2 LIST THE CURRENT COMMUNICATION METHODS USED IN THE ORGANISATION?**


**13.3 FOR EACH METHOD, DECIDE IF THEY ARE APPROPRIATE AND SUFFICIENT FOR THE PURPOSES OF IMPLEMENTING THE COMMUNICATION REQUIREMENTS OF THE EE ACT?**


**13.4 WHAT ADDITIONAL METHODS WILL BE REQUIRED TO COMMUNICATE (FOR EACH PHASE/STAGE) REGULARLY?**


**13.5 LIST AND DESCRIBE THE FIRST 3-5 ISSUES/ITEMS THAT THE EQUITY-SKILL DEVELOPMENT FORUM MUST COMMUNICATE WITH THE COMPANY OVERALL AND THEIR OWN CONSTITUENTS AFTER THIS WORKSHOP.**


**13.6 DEVELOP A TIMETABLE FOR COMMUNICATING THE ABOVE ITEMS; DECIDE WHAT IS THE BEST METHOD/S FOR COMMUNICATING THESE ISSUES/ITEMS**

Issue/Item	When	How/Method	Resources
1.			
2.			
3.			
4.			
5.			

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<sup>1</sup> Section 25(2) of the Employment Equity Act  
<sup>2</sup> Section 25(3) of the Employment Equity Act

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## 14 Broad Based Black Economic Empowerment

### 14.1 EXTRACT FROM CODE 000: BROAD-BASED BLACK ECONOMIC EMPOWERMENT FRAMEWORK

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There are seven key elements that are pillars to broad-based BEE. These elements provide a common base for measuring the impact of policy objectives of broad-based BEE across different entities and sectors with the economy.

#### **Ownership**

46. Ownership recognises and measures the entitlement of black people to the voting rights and economic interest associated with equity holding. Voting rights afford the rights to determine strategic and operational policies of an enterprise, while economic interests result in the rebuilding and accumulation of wealth by black people. All economic interests or voting rights that are subject to specific restrictions as outlined in Statement 100 are excluded from the scorecard.

47. Statement 100 on equity ownership proposes the measurement of ownership with respect to voting rights and economic interest. The rights and economic interest, however, may be limited due to financing and analogous arrangements. The series of statements in Code 100 of the Code of Good Practice details various principles and criteria to be applied in the determination of an ownership interest in accordance with the scorecard. The key principles include the flow-through principle, restrictions and the definitions of voting rights and economic interest.

48. Code 100 also guides the recognition and measurement of ownership in specific circumstances, including Government equity holding in an enterprise and some provisions for indicative ownership score for multinationals.

#### **Management**

49. Management control refers to the effective control of economic activities and resources. This involves the power to determine policies as well as the direction of economic activities and resources. Management control is exercised through the governing bodies of an enterprise and is normally measured at two levels:

- a) board of directors (equivalent structure), where the determination of strategies, policies and direction of the economic activities and resources is made,
- b) executive management or highest executive body after the board of directors or equivalent structure, which is entrusted with the day to day management of the enterprise's economic activities and resources.

The series of statement in Code 200 of the Code of Good Practice, detail the various criteria to be applied in the determination of the management of an enterprise

#### **Employment Equity**

50. Employment equity is a mechanism used 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 black people, in order to ensure their equitable representation in all occupational categories and levels in the workplace.

51. Entities are required to comply with the spirit and the provisions of the Employment Equity Act to bring about an equitable representation of black persons at all occupational and skills levels in organisations over a period of time. The underlying principle behind employment equity is to foster the active involvement of black people in the operational, professional and executive decision-making processes in their employing entities. The series of statements in Code 300 of the Code of Good Practice outline the various criteria to be applied in determining the level of employment equity of the enterprise.

#### **Skills Development**

52. Skills development, in the context of this code, refers to the development of core competencies of black people to facilitate their interaction in the mainstream of the economy. It is imperative that there be a focus on core and technical skills that would enable black people to participate in the wider economy in a meaningful manner. The series of statements in Code 400 of the Code of Good Practice outlines the various

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criteria to be applied in determining the level of skills development within an enterprise..© 2004 Department of trade and industry - Draft for comment 16

**Preferential Procurement**

53. Preferential procurement is a measure designed to widen market access for entities, in order to integrate them into the mainstream of the economy. Preferential procurement encourages and facilitates the adoption of broad-based BEE by aligning business imperatives to broad-based BEE. Preferential procurement will create economic empowerment benefits indirectly but meaningfully as it multiplies the effects of private and public sector intervention to promote broad-based BEE. The series of statement in Code 500 of the Codes of Good Practice outlines the various principles to be applied in the determination and measurement of the level of preferential procurement within an enterprise

**Enterprise Development**

54. The enterprise development element aims at assisting and accelerating the development of the operational and financial capacity of entrepreneurial enterprises who contribute towards broad-based BEE. The primary beneficiaries of enterprise development are the small and medium enterprises owned and controlled by black people. The measures range from direct financial assistance to non-monetary support provided to entrepreneurial enterprises. The series of statement in Code 600 of the Codes of Good Practice outlines the various principles and criteria to be applied in the determination of the level of enterprise development within an enterprise

**Residual factor**

55. This element allows other factors that may accelerate broad-based to be taken into account and included at the discretion of the specific sector or enterprise. Sectors and entities are encouraged to consider some of the following in their broad-based BEE initiatives:

- a) infrastructural support to suppliers and other enterprises in the same area or community.
- b) labour-intensive production and construction methods
- c) beneficiation
- d) investment and support to enterprises operating in rural communities and the geographic areas identified in government's integrated sustainable rural development programme and urban renewal programme
- e) investment in the social wage of employees (for example, housing, transport, and health care)

**Distinction between Broad-based BEE and Broad-based Ownership**

56. There is a clear distinction between broad-based BEE and broad-based ownership. Broad-based ownership refers to equity ownership held by a broader base of beneficiaries and is thus limited to the equity ownership element of the broad-based BEE scorecard. Broad-based BEE is far-reaching in its effect as it covers all the major components and elements of BEE. Broad-based BEE also supports a wider network of beneficiaries who benefit from the three different components. Broad-based ownership is only one of the seven elements of broad-based BEE.

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**BROAD-BASED BEE BALANCED SCORECARD**

Core Components	BEE Elements	Code Ref.	Weighting	Indicators	Indicator Weighting	Targets	Sub-minimum	Bonus/ Preferential Weighting Provisions
Direct Empowerment	Ownership	BEE 100	20%	Unrestricted Voting Rights in the Enterprise in the hands of Black people	3%	25 % + 1 vote		Introduction of new entrants and BEE ownership in excess of target
				Unrestricted Voting Rights in the Enterprise in the hands of Black women	2%	10%		
				Economic Interest in the Enterprise to which Black people are entitled.	4%	25%		
				Economic Interest in the Enterprise to which Black women are entitled	2%	10%		
				Economic Interest in the Enterprise to which Black designated groups are entitled	1%	2.5%		
				Level of Unrestricted entitlement of Black people to receive their Economic Interest in the Enterprise (as percentage of total ownership)	8%	25%		
	Management	BEE 200	10%	Weighted Management Representation Scorecard (See BEE 200)	10%	40%		Women Management. Different management positions weighed according to seniority and executive involvement
Human Resources Development	Employment Equity	BEE 300	10%	Weighted Employment Equity Scorecard (See BEE 300)	10%	50%		Women representation
	Skills Development	BEE 400	20%	Investment in Skills Development (in addition to skills development levy), as a percentage of payroll	15%	3%		Fast-track programs for black employees and management. Provision of skills development programs and learnership in priority skill areas.
				Learnership- learnership positions (as a percentage of employees)	5%	3%		
Indirect Empowerment	Preferential Procurement	BEE 500	20%	Affirmative Procurement from Excellent BEE Contributors (BEE Percentage Score as per scorecard, between 80 and 100 points)	18%	50%		- Procurement from <b>excellent contributors</b> (recognized at R 1.25 for every R1 of spend) - Procurement from <b>good contributors</b> (recognized at R 1 for every R1 of spend) - Procurement from <b>satisfactory contributors</b> (recognized at 50c for every R1 of spend)
				Affirmative Procurement from Good BEE Contributors (BEE Percentage Score between 65 and 79)				
				Affirmative Procurement from Satisfactory BEE Contributors (BEE Percentage Score between 45 and 65)				
				Implementation of robust, independent verification and reporting mechanism to avoid fronting	2%			
	Enterprise Development	BEE 600	10%	Monetary Investment in SMME with excellent or good BEE contributions (as percentage of Net Asset Value/EBITDA/Total Procurement)	8%	5% - 10% (depending on base used)		The sum percentage score achieved through monetary investment and quantifiable non-monetary support are summed to arrive at the enterprise development points. (The maximum achievable percentage score for enterprise development is 10)
				Quantifiable non-monetary support to SMME with excellent or good BEE contributions (as percentage of Net Asset Value/EBITDA/Total Procurement)	2%	2% - 5% (depending on base used)		
Residual Element	BEE 700	10%	Industry specific initiatives to facilitate the inclusion of black people in the sector (as a percent of net profit)	10%	3%		Total contribution towards these initiatives are summed relative to net profit of an enterprise. The total achievable percentage score for these initiatives is 10. (Initiatives that does not promote the empowerment of black people are specifically excluded)	
			Industry specific initiatives to promote black economic empowerment (as a percent of net profit)					
			Corporate social investment initiatives in health, education, poverty alleviation and community development(as a percent of net profit)					
<b>Total</b>	<b>Element Weighting</b>		<b>100%</b>	<b>Indicator Weighting</b>	<b>100%</b>		<b>Sub-Minimum</b>	

## 15 Key steps in implementing employment equity

### EMPLOYMENT EQUITY IMPLEMENTATION

- Compile workforce profile (current and required). Determine future workforce profile in line with BEE charter and scorecard
- Appoint Employment Equity Manager
- Get nominations for EE Forum
- Establish EE Forum in each plant / operation (Appoint and establish an Employment Equity Committee ensuring employees are consulted on equity initiatives)
- Conduct briefing session with employees on EE and Skills Development
- Conduct employment systems review of employment practices
- Produce Human Resources Policies and Procedures Manual (based on international practices and local legislative criteria)
- Prepare and submit Forms EEA2 and 4 to Department of Labour
- Compile an Employment Equity Plan
- Conduct Employment Equity and Diversity training

### INCORPORATE WORKPLACE SKILLS PLAN INITIATIVES

- Appoint an accredited Skills Development Facilitator (train internal)
- Compile a Workplace Skills Plan
- Submit Workplace Skills Plan (annexures A and B) to SETA
- Ensure recordkeeping of training initiatives for subsequent reporting.

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