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Foreword

The inclusion of employment equity in the Ruling Party's manifesto, followed by the overwhelming majority vote for it, is testimony that the majority of the people in South Africa still recognise employment equity as a potent force for their economic liberation. It is a well considered view of this Commission that this Act gives effect to the Constitutional provision as enshrined in the Bill of Rights, Section 9 (2) which states that, "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." Focusing on Black people is not an antithesis of non-racialism but rather a fulfillment of it, for the society is still racially segregated.

In addition, our constitution gives expression to Convention 111 of the International Labour Organisation (ILO), which obliges signatory States, of which South Africa is one, to enact mechanisms of redress. Affirmative action, as a redress mechanism, is therefore not an end result by itself, but is a means to an end, which is the achievement of equality through an equitable environment that broadly reflect the national demographics of the Economically Active Population of South Africa. There are those people who see the Act as a piece of legislation that is both racist and in fact an instrument of reverse racism - some even go further to say that the implementation of this Act promotes nepotism and cronyism. Views that seek to bring this Act to an abrupt end have been expressed as it is alleged that the Act seems to be racially divisive and its application too mechanistic. Many attempts, albeit unsuccessful, have been waged by, amongst others, right wing elements, including some political parties, certain universities and analysts to discredit the Commission and individuals that promote the implementation of this Act.

This report will dispassionately detail the progress or lack thereof in achieving the policy objectives of equitable workplaces at all occupational levels. It will also show that the allegation surrounding the under representation of the so-called minority groups (i.e. Coloureds, Indians and Whites) is not true. In addition, the report will reflect the disproportionate over-representation of White people in general, White males in particular, at the top echelons in most organisations and the under-representation of people with disabilities, Coloureds and Africans.

It is disconcerting to observe from the DG Review, work that all 106 companies that were reviewed were found to be in breach of procedural and substantive compliance. The majority of these companies are in the top 100 JSE listing, which implies that they have the resources to implement the Act. This creates an impression that these companies are treating the Act with contempt even 10 years after its promulgation. The Commission for Employment Equity (CEE) will continue to monitor compliance with the agreed DG Review recommendations and will 'name and shame' those who fail to comply with the agreed recommendations.

Even more disappointing has been the behaviour of some beneficiaries of the Employment Equity Act, who are at the top echelons of some of these organisations and have now become proxy or worse than some of their untransformed White counterparts. These 'reasonable' beneficiaries have become complicit in frustrating transformation by not assisting their organisations to acquire the skills of other Black people - for some reason they seem to think transformation ended with their appointment. These Black people continue to discredit themselves by becoming very eloquent and poetic about transformation, yet have no substantive evidence to back up their poetry.

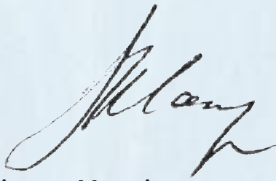
Furthermore, the Commission is seriously considering implementing a 'name and shame' strategy against structures such as the nomination committees, boards, human resources and, in particular, chairperson's, chief executive officers and managing directors that have influence in the appointment of top and senior management personnel.

It is noted with disappointment that certain companies, especially in the financial sector, have missed the golden opportunities to transform the top echelons as seen in the recent highly publicised appointments.

The Commission is urging all South Africans to embrace this corrective piece of legislation as a fundamental, peaceful and just approach in order to achieve a non-racial society objectively. To date, there has not been any plausible alternative to this noble policy.

Equality is still under construction; the calls for a 'sunset clause' are still very premature and misplaced given the little progress made after ten years of the promulgation of the Act.

I express my gratitude to all Commissioners, including those who have left, for their unselfish contributions. A word of appreciation goes to the secretariat for their commitment, dedication and ongoing technical and administrative support. In conclusion, and on behalf of the Commission, I take this opportunity to express our gratitude and appreciation to the Minister for his unwavering support and commitment towards reaching the objectives of the Act.



Jimmy Manyi

Chairperson: Commission for Employment Equity

Commission for Employment Equity

Section 28 of the Employment Equity Act (EEA) established the Commission for Employment Equity (CEE). According to section 29 (1) of the EEA, the CEE consists of a Chairperson appointed by the Minister and the following eight members nominated by NEDLAC, i.e. two representatives from the State; two representatives from organised business; two representatives from organised labour; and two representatives from the community constituency.

The Commission is pleased to welcome Ms Mpho Nkeli from organised business as a replacement to Ms Marlene Bossett who resigned in the previous financial year due to career opportunities. The current structure of the CEE is as follows:



Mpho Nkeli
Business
Representative



Rhulani Makhubela
State
Representative



Jimmy Manyi
Chairperson



Lebogang Montjane
Business
Representative



Thembeke Gwagwa
Labour
Representative



Khulu Mbongo
Community
Representative



Mzolisi Ka-Toni
Community
Representative



Nimla Pillay
Labour
Representative



Nomvula Masango Makgothlo
State
Representative

1. Introduction

The Commission for Employment Equity, a statutory body established in terms of section 28 of the Act to advise the Minister, is required to submit an annual report to the Minister of Labour on the implementation of employment equity in terms of section 33 of the Act.

This report covers the period from 1 April 2008 to 31 March 2009. It provides highlights for the period, the workforce distribution and an analysis of Employment Equity Reports received from employers in October 2008. The report also reflects on reporting and representivity trends of the designated groups over a defined period and concludes with observations and remarks by the Commission.

Highlights cover some key activities that impact on the implementation of the Act. The workforce distribution supplies information on the total population and the Economically Active Population (EAP) of the country's four major population groupings in terms of their race and gender, which is crucial for the setting of EE numerical goals. The trends analysis provides a snapshot of changes in the top four occupational levels for the years 2004, 2006 and 2008. Focus is placed on these specific reporting periods because it is when all designated employers, both large and small, were expected to submit employment equity reports to the Department of Labour. Trends on the representivity levels is centred around the first three occupational levels, i.e. Top Management, Senior Management and Professionally Qualified levels, as this is where the designated groups are most under-represented.

According to the Act, employers with 150 or more employees (i.e. large employers) are required to submit reports to the Department on an annual basis. While those employers with fewer than 150 employees (i.e. small employers) are expected to report every two years. A further requirement is for employers with fewer than 50 employees but have a turnover exceeding that of a small business (as stipulated in Schedule 4 of the Act) to report. Employers who are not designated to report in terms of the afore mentioned requirements have the option to voluntarily comply with the reporting requirements. The Employment Equity Regulations goes even further in order to ensure effective data collection; it requires small employers to report within 12 months of being designated and thereafter on every year that ends with an even number.

An exciting development is that for the first time in this report workforce profile data will be provided separately for all employers, government and for the private sector.

2. Highlights for the period

This area of the report covers key highlights for the 2008/09 reporting period.

2.1 Interaction with key stakeholders on employment equity

The Commission presented its 8th Annual Report to the Parliamentary Portfolio Committee on Labour on 28 May 2008 and to Cabinet on 28 January 2009. A key request was the need to also include separate data for government and the private sector. Data shows that government's progress in terms of equitable representation is masking the little achievements made by all employers in implementing employment equity. Disappointment was expressed at the slow progress being made in implementing employment equity - the current progress rate will take employers approximately one hundred years to achieve equitable representation in workplaces.

2.2 Road shows

During the months of July and August 2008, the Commission jointly with the Department embarked on road shows in all nine provinces covering 2 711 participants. The primary focus was to interact with employers and other interest groups to share information on the following:

- Code of Good Practice on Preparing, Implementing and Monitoring Employment Equity Plans
- Code of Good Practice on Key Aspects of HIV and AIDS and employment
- Code of Good Practice on the Employment of People with Disabilities
- Online reporting
- Observations made during Director-General (DG) Reviews conducted by the Department.

Information gathered from the road shows indicated, amongst others, that completing the reporting forms contained in the Regulations was highly administrative and time consuming – a number of participants wanted a form that was much simpler and less time consuming. Many found the occupational categories in the reporting forms contained in the regulations did not fit well with the nature of their businesses. Stakeholders therefore requested the Commission to revisit and consider amending the employment equity forms in the Regulations.

2.3 Amendments to Employment Equity Regulations

The Commission completed the amendments to the EE Regulations in March 2009. The main intention for amending the Regulations is to make reporting on employment equity to the Department much easier for employers without compromising the quality of the data collected. The amended format will make it much easier for employers to report online.

In order to consult broadly and gather additional information, the proposed draft amendments were published and circulated to stakeholders, including employers and NEDLAC constituencies on 8 December 2008 for public comment. Stakeholders were given until 6 February 2009 to submit their comments to the Commission. The Commission considered each and every comment before finalising

the amended Regulations. The amended Regulations will be gazetted and made available to the public in time for reporting in October 2009.

2.4 Status of DG Reviews conducted (section 43)

Sections 43, 44 and 45 of the Employment Equity Act empower the Director General to assess the extent to which an employer is complying with the Act and make recommendations. According to these sections, failure to comply with these recommendations may result in an employer being referred to the Labour Court.

In order to effect these provisions of the Act, six companies were reviewed in 2006; 26 companies were reviewed in 2007 and 74 companies in 2008¹. All of these companies (inclusive of their subsidiaries) are either directly or indirectly listed on the Johannesburg Securities Exchange (JSE).

The observations made of companies reviewed showed that none of them were fully complying with the Employment Equity Act and its Regulations. These companies were found to be violating either one or a combination of the following provisions of the Act:

- Preparing and implementing an employment equity plan with annual objectives as prescribed in section 20 of the Act
- Assigning one or more senior manager(s) (section 24)
- Consulting with employees (section 16)
- Conducting an analysis of their workplaces (section 19).

Employers were also found not to be considering the workplace environment and the Economically Active Population of the various groups in terms of race and gender when setting their numerical goals. A number of employers were aligning their employment equity numerical goals to their respective Sector Charters and Broad Based Black Economic Empowerment (BBBEE) Codes, rather than to the provisions of the Employment Equity Act. This resulted in companies showing total disregard to meet the requirements of the Act.

All of the companies reviewed thus far, except for one that has been referred to the Labour Court, have fully accepted the recommendations and are in different stages of implementing them. Companies reviewed in 2006 and 2007 have reached the stage where they have prepared their EE Plans for the approval of the Director-General.

The Department will continue to monitor whether these companies are procedurally and substantively complying with the provisions of the Act.

¹. Comair Ltd has a pending Labour Court case.